CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

February 20, 2009

Lafarge North America Inc
10170 Church Ranch Way
Ste 200
Westminster, CO 80021

RE: **CON2008-00060** - County Conditional Use to amend boundary of CU-91 to enlarge area of excavation, generally located on the southwest corner of 37th Street North and West Street.

Dear Ladies and Gentlemen:

At its regular meeting on **February 4, 2009**, the Sedgwick County Commission considered the above captioned request. The action of the Commission was to **APPROVE** the request, to amend conditions 9 and 11, and to add condition 15, subject to the following conditions:

1. The applicant dedicating 75 feet of half-street right-of-way for 37th Street beginning at the center line of West Street; thence west a distance of 350 feet, and dedicating 50 feet of half-street right-of-way for the remaining portion of 37th Street.

2. The applicant dedicating 75 feet of half-street right-of-way for West Street beginning at the center line of 37th Street; thence south a distance of 350 feet, and dedicating 50 feet of half-street right-of-way for the remaining portion of West Street.

3. The applicant proceeding in accordance with the Operational Plan approved by the Metropolitan Area Planning Commission and redeveloping the sand pit as had been generally approved by the Planning Commission on the Redevelopment Sketch plan.

4. A minimum 58-inch high fence being constructed and maintained along the perimeter of the site on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction.

a. A 48-inch or higher chain link fence with three or more strands of barbed wire; or

b. A 48-inch or higher solid metal or solid masonry fence with three or more strands of barbed wire; or

c. A 48-inch or higher wood fence which may have cracks or openings not in excess of five percent of the area of such fence with three or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation. A performance bond in the amount of $12,500 shall be submitted prior to the publication of the resolution, to guarantee the construction of the fence.

5. The earth shall be extracted to a minimum depth of two feet below the normal water table as determined by the City-County Health Department.

6. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no steeper than five horizontal to one vertical.

7. The applicant submitting a restrictive covenant to the Planning Department in a form satisfactory to County legal counsel, providing that no foreign matter, such as rubbish, car bodies, etc., shall be deposited within the excavation after approval of the conditional use by the Board of County Commissioners.

8. The natural drainage flow shall be maintained and protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet the approval of the Wichita-Sedgwick County Flood control Office and the County Engineer, and shall be according to the specifications and standards of these authorties.

9. Recreational activities such as boating, fishing, skiing, etc., will be permitted in the area once the extraction activity has ceased operation.

10. All slopes, excepting those slopes used for a beach or recreational purposes, shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.

11. The final excavation should be no closer than 160 feet from the south right of way line of 37th Street North; 100 feet from the west right of way line of West Street and 100 feet from the west and south property lines.

12. The applicant complying with Conditions No. 1, 2 and 7 prior to the publication of the resolution effectuating the conditional use.

13. The property being platted prior to the issuance of any zoning permits other than those necessary for the proposed sand and gravel extraction operation.

14. Any violation of conditions attached shall declare the conditional use permit null and void.

15. An independent soil study will be required by the applicant to study the types of soils that make up the west property/shore line, included in the study should be recommendations of ways to mitigate erosion along the west property/shore line.

If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

Derrick K. Slocum
Associate Planner
Current Plans Division

DKS:mc

Copies to: MKEC, Attn: Brian Lindebak, 411 N. Webb, Wichita, KS 67206
Kevin Rohner, 15100 E. Courtner Atherton Rd., Sugar Creek, MO 64058
Tom Sanders, 3414 N. Hoover, Wichita, KS 67205
William Miller, 4402 Gold St., Wichita, KS 67217
Sam Hudson, Hudson Investments, LLC, 3754 N Ridgeport Ct., Wichita, KS 67205
Kelly Parks, BOCC IV, Mail Stop County, Room 320
Bill Buchanan, County Manager County Room 343
Bob Parnacott, County Law, Mail Stop Room 359
Delano Township, Mabel Bucy, 5727 W. 25Th St. N., Wichita, KS 67205
Glen Wiltse County Code Enforcement, 1144 S Seneca, Wichita, KS 67213
Jim Weber County Public Works, 1144 S Seneca, Wichita, KS 67213
Park Township, Richard L McClure, 5500 N Maize Road, Maize, KS 67101

RESOLUTION NO 24-09

A RESOLUTION FOR A CONDITIONAL USE AMENDMENT TO CU-91 TO AMEND THE BOUNDARY TO ENLARGE THE AREA OF EXCAVATION AND TO ALLOW PRIVATE RECREATION ACTIVITIES ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D AS ADOPTED BY RESOLUTION NO. 84-01, AS SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita Sedgwick County unified Zoning Code, a Conditional Use amendment to CU-91 to amend the boundary to enlarge the area of excavation and to allow private recreation activities on 153.67-acres of property zoned SF-20 Single-family Residential ("SF-20").

Case No. CON 2008-00060

Legally described below:

The Northeast Quarter of Section 35, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT there from the following tracts:

a.) BEGINNING at the southwest corner of said Northeast Quarter; thence north along the west line of said Northeast Quarter, 295 feet; thence southeasterly to a point on the south line of said Northeast Quarter, 295 feet east of said southwest corner; then west along the south line of said Northeast Quarter, 295 feet to the POINT OF BEGINNING.

b.) BEGINNING at the northeast corner of said Northeast Quarter; thence south to the southeast corner of said Northeast Quarter; thence west 50 feet; thence north parallel to and 50 feet west of the east line of said Northeast Quarter to a point 350 feet south of the north line of said Northeast Quarter; thence west 25 feet; thence north parallel to and 75 feet west of the east line of said Northeast Quarter to the north line of said Northeast Quarter; thence east to the POINT OF BEGINNING, dedicated for street purposes.

c.) BEGINNING at the northeast corner of said Northeast Quarter; thence west to the northwest corner of said Northeast Quarter; thence south 50 feet; thence east parallel to and 50 feet south of the north line of said Northeast Quarter to a point 350 feet west of the east line of said Northeast Quarter; thence south 25 feet; thence east parallel to and 75 feet south of the north line of said Northeast Quarter to the east line of said Northeast Quarter; thence north to the POINT OF BEGINNING, dedicated for street purposes.

d.) BEGINNING at the northeast corner of said Northeast Quarter; thence west 600 feet; thence south 600 feet; thence east 600 feet; thence north 600 feet to the POINT OF BEGINNING, EXCEPT that part for road.

Generally located on the southwest corner of 37th Street North and West Street

SUBJECT TO THE FOLLOWING AMENDED CONDITIONS:

9. Recreational activities such as boating, fishing, skiing, etc., will be permitted in the area once the extraction activity has ceased operation.

11. The final excavation should be no closer than 160 feet from the south right of way line of 37th St N; 100 feet from the west right of way line of West St. and 100 feet from the west and south property lines.

15. An independent soil study will be required by the applicant to study the types of soils that make up the west property/shore line, included in the study should be recommendations of ways to mitigate erosion along the west property/shore line.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional Use shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

Commissioners present and voting were:

DAVID M. UNRUH	Aye
TIM R. NORTON	Aye
KELLY PARKS	Aye
GWEN WELSHIMER	Aye
KARL PETERJOHN	Aye

DATED this 4th day of February, 2009

BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS

Kelly Parks

KELLY PARKS, CHAIRMAN
Fourth District

ATTEST:

KELLY B. ARNOLD
County Clerk

APPROVED AS TO FORM ONLY:

ROBERT W. PARNACOTT
Assistant County Counselor

AGENDA ITEM NO. 11

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

STAFF REPORT

MAPC December 4, 2008
Tentative BoCC Date: 1/07/09
(If protests are received)

CASE NUMBER: CON2008-00060

APPLICANT/AGENT: Lafarge North America, Attn: Kevin Rohner (Owner/Applicant)
MKEC Engineering Consultants Inc, Attn: Brian Lindebak (Agent)

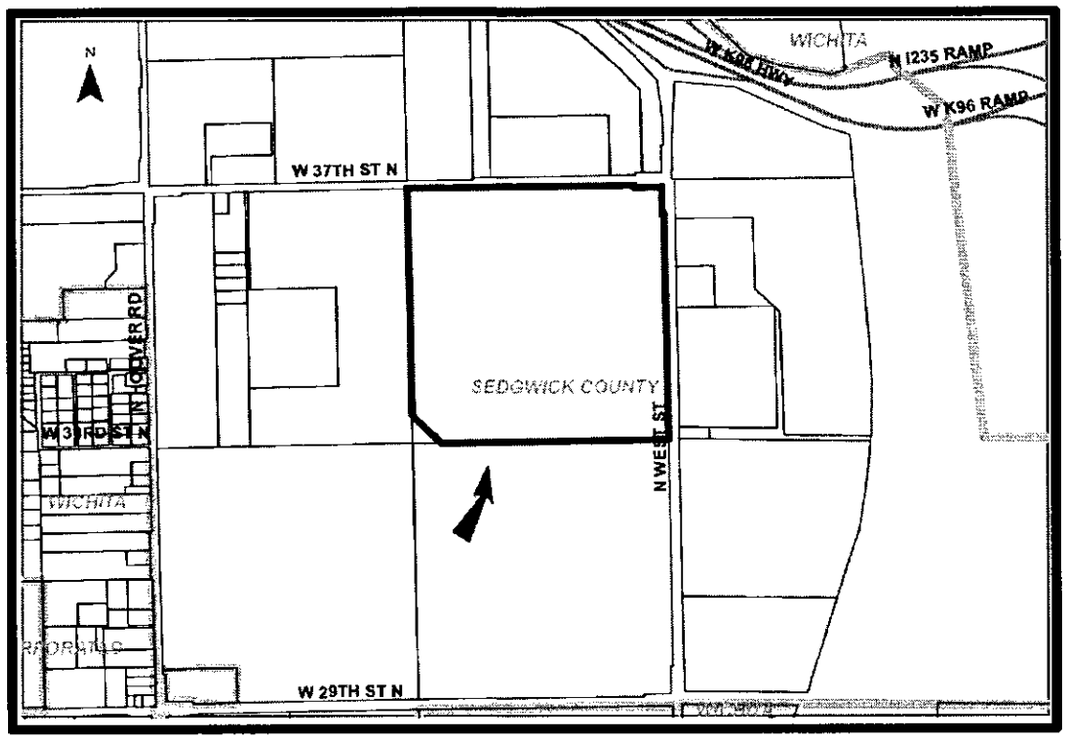
REQUEST: Amendment to CU-91 to amend the boundary to enlarge area of excavation

CURRENT ZONING: SF-20 Single-family Residential ("SF-20")

SITE SIZE: 153.67 acres

LOCATION: Generally located on the southwest corner of 37th Street North and West Street.

PROPOSED USE: Additional excavation and future recreational activities



BACKGROUND: The applicant requests an amendment to conditions on an existing Conditional Use (CU-91) for a mining and quarrying (sand extraction) operation on property zoned SF-20 Single-family Residential ("SF-20") generally located at the southwest corner of the intersection of 37th Street North and West Street. The request is to amend conditions 9 and 11 on CU-91 to allow for recreation once the operation is completed (condition 9) and to expand the boundaries of the excavation area (condition 11). Currently the conditions read as follows:

9. No recreational activities such as boating, fishing, skiing, etc., being permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendment.

11. The excavation not approaching 37th Street, West Street, or the south and west property lines nearer than the 250 feet as indicated on the Operational Sketch Plan.

The applicant has stated that the reason for requesting this amendment is to allow for additional excavation of valuable sand, and according to the applicant, there have been people that have expressed interest in the possibility of using the extraction lake for different opportunities in the future, after the applicant has ceased operation of the sand pit. With those two factors, the applicant looks to change the wording of conditions 9 and 11 to read as follows:

9. Private recreational activities such as boating, fishing, skiing, etc., will be permitted in the area once the extraction activity has ceased operation.

11. The final excavation should be no closer than 75 feet from the 37th Street and West Street property lines and no closer than 20 feet from the south and the west property lines as indicated on the submitted site plan.

Staff was contacted by the owner of the property abutting the west property line about his concerns in regards to the 20-foot setback. The property owner was concerned about the possibility of erosion especially since the twenty foot sliver of land, along with the sliver of land on his property, is the only barrier separating the applicant's lake with the lake on the property to the west of the subject site. The property owner did contact the representative with Lafarge to discuss his concerns regarding the setback. According to the property owner, they came to an agreement to which Lafarge agreed to increase the setback to 50-feet instead of 20-feet, slope the shoreline and to add material (i.e. vegetation, riprap, concrete, etc.) to that shore to mitigate erosion. In response to the change in the request (staff is still waiting for confirmation in writing by the applicant), condition 11 would read as follows:

11. The final excavation should be no closer than 75 feet from the 37th Street and West Street property lines, 50 feet from the west property line and 20 feet from the south property line as indicated on the revised site plan.

The applicant does propose to keep the LC Limited Commercial ("LC") zoned property, located at the northeast corner of the subject site as is, with the potential of future commercial

use on the site.

Property north of the site is zoned SF-20 and LI Limited Industrial ("LI") and is developed as a solid waste disposal and transfer station. Property south of the site is zoned SF-20, and is currently undeveloped, but is almost entirely occupied by a large extraction pit, the remains of a former sand extraction operation. Property west of the subject site is zoned SF-20 and is also occupied by a large extraction pit due to previous extraction activities. Property east of the subject site, across West Street, is zoned LI and GI General Industrial ("GI") and is currently being used for sand extraction.

CASE HISTORY: The site is unplatted. The site's original Conditional Use (CU-91) was approved in 1966. In 2007, an amendment to CU-91 was filed (CON2007-00006) to reduce the minimum excavation distance from 250 feet to 100 feet, but was later withdrawn from consideration.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-20 & LI	Waste Disposal Station
SOUTH:	SF-20	Vacant Excavated Land
EAST:	LI	Sand Pit
WEST:	SF-20	Vacant Excavated Land

PUBLIC SERVICES: West Street is a paved two-lane minor arterial roadway. County Public Works has indicated in the past that the paving along this stretch of West Street is thicker than normal due to the fact that a higher than usual volume of trucks travel this roadway. 37th Street North is a two-lane minor arterial roadway that is paved up to the entrance of the solid waste disposal station, approximately 750 feet west of the intersection with West Street. According to the 2007 Traffic Volume Flow Map, West Street at this location has 4,799 Average Daily Trips (ADTs). Municipal water and sewer services have not been extended to this site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as "Urban Develop Mix" within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the proposed amendment to CU-91 be **APPROVED, subject to the original conditions and the following amended conditions:**

9. Private recreational activities such as boating, fishing, skiing, etc., will be permitted in the area once the extraction activity has ceased operation.

11. The final excavation should be no closer than 75 feet from the 37th Street and West Street property lines, 50 feet from the west property line and 20 feet from the south property line as indicated on the revised site plan.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood**: Property north of the site is zoned SF-20 and LI Limited Industrial ("LI") and is developed as a solid waste disposal and transfer station. Property south of the site is zoned SF-20 and is currently undeveloped, but is almost entirely occupied by a large extraction pit, the remains of a former sand extraction operation. West of the site is zoned SF-20 and is also occupied by a large extraction pit due to previous extraction activities. Property east of the site, across West Street, is zoned LI and GI General Industrial ("GI") and is currently being used for sand extraction.

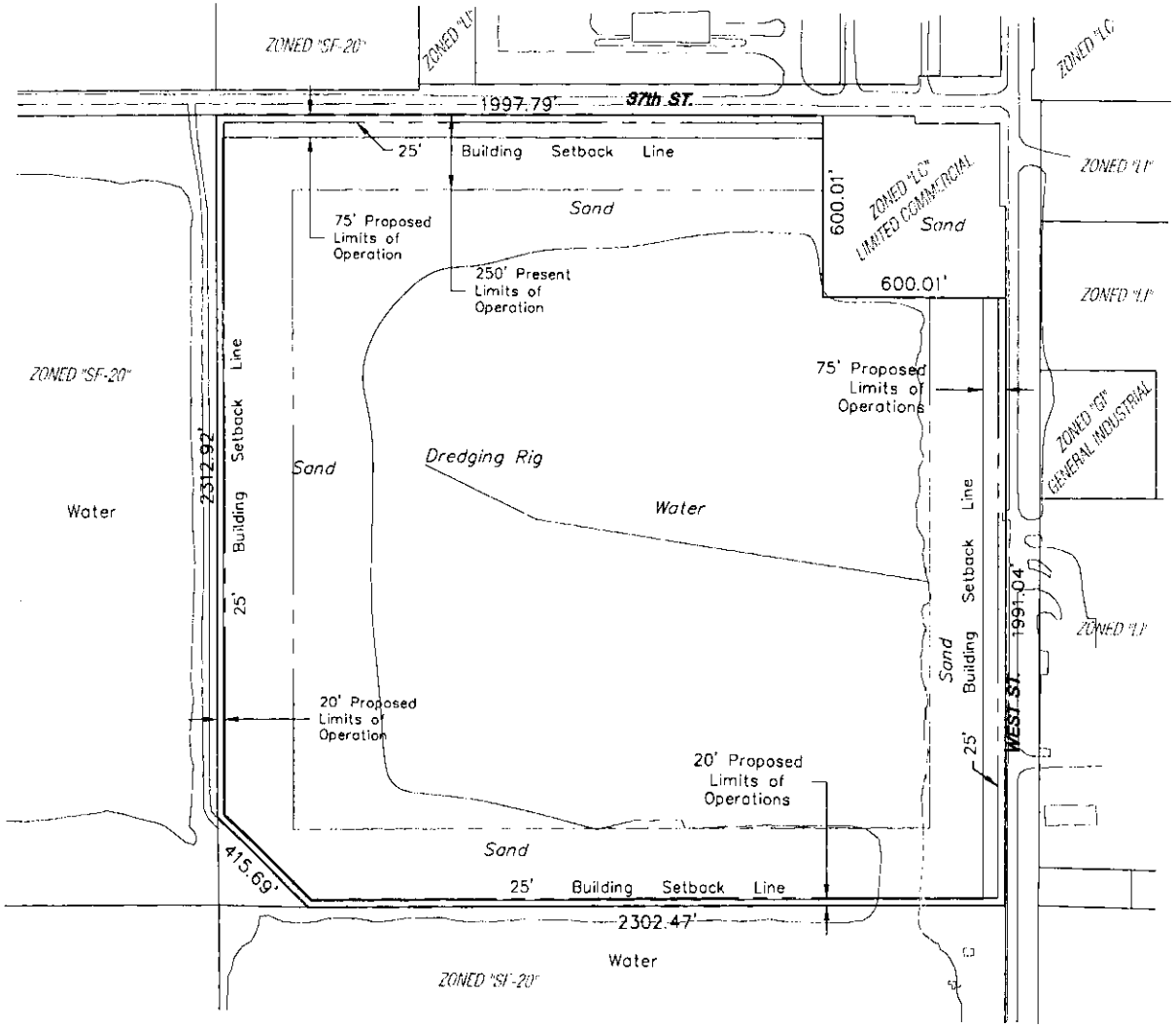
2. **The suitability of the subject property for the uses to which it has been restricted**: The site is zoned SF-20 and the site could be used for a residential development, or any other uses permitted by right in the SF-20 zone district, surrounding the excavation lake. However, sand extraction is a resource based activity requiring the activity to occur where the sand is located and this location has several operating and closed sand extraction sites surrounding the subject site. Also, the close vicinity to a solid waste disposal/transfer station, mining and quarrying operations and a small airport makes this location less desirable for residential development.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The amendment to the existing Conditional Use would not pose a new threat to this area of the county, which is characterized by several sand extraction sites that are in operation and several closed sand extraction sites. Furthermore, the conditions of approval in this staff report are designed to mitigate any adverse impact this use may have on surrounding properties.

4. **Conformance of the requested change to adopted or recognized Plans/Policies**: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as "Urban Develop Mix" within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include

Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

5. **Impact of the proposed development on community facilities:** The use of this property should have limited impact on community facilities. West Street is already constructed to meet truck traffic and this particular use has minimal sewer and water needs, which can be met without the presence of public services.



LEGAL DESCRIPTION

The Northeast Quarter of Section 35, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT therefrom the following tracts:

a.) BEGINNING at the southwest corner of said northeast quarter; thence north along the west line of said northeast quarter, 295 feet; thence southeasterly to a point on the south line of said northeast quarter, 295 feet east of said southwest corner; then west along the south line of said northeast quarter, 295 feet to the POINT OF BEGINNING.

b.) BEGINNING at the northeast corner of said northeast quarter; thence south to the southeast corner of said northeast quarter; thence west 50 feet; thence north parallel to and 50 feet west of the east line of said northeast quarter to a point 350 feet south of the north line of said northeast quarter; thence west 25 feet; thence north parallel to and 75 feet west of the east line of said northeast quarter to the north line of said northeast quarter; thence east to the POINT OF BEGINNING, dedicated for street purposes.

c.) BEGINNING at the northeast corner of said northeast quarter; thence west to the northwest corner of said northeast quarter; thence south 50 feet; thence east parallel to and 50 feet south of the north line of said northeast quarter to a point 350 feet west of the east line of said northeast quarter; thence south 25 feet; thence east parallel to and 75 feet south of the north line of said northeast quarter to the east line of said northeast quarter; thence north to the POINT OF BEGINNING, dedicated for street purposes.

NOTES

1. We request to modify the existing CU-91 to allow for all outdoor recreation on the subject property, including motorized water sports activities.
2. We request that the limits of excavation on the property be expanded from the present 250 foot limit to 20 feet on the south and west and 75 feet on the north and the east, EXCEPT, the northeast most 600' by 600' corner tract.
3. Presently there are no buildings on the property.

CONDITIONAL USE PERMIT - Site Plan

Lying within a portion of the NE. ¼, Sec. 35, T26S, R1W, 6th P.M.

WEST STREET AND 37TH ST. N.

OWNERS / DEVELOPER: Lafarge North America, Inc. Attn: Kevin Rohner 15100 E. Courtney Atherton Rd., Sugar Creek, MO 64058 (816) 257-4034

N

1"= 400'

400 0 400

MKEC ENGINEERING CONSULTANTS, INC.
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 8400