



Wichita-Sedgwick County Metropolitan Area Planning Department

November 17, 2008

RRM Properties LLC
2060 Tulsa
Wichita, KS 67216

City Of Wichita
Attn: John Philbrick
455 N Main, Property Mgmt
Wichita, KS 67202

RE: CON2008-00042 - Conditional Use amendment to CU-425 for construction and demolition landfill, as amended by CON2005-00001, to add approximately four acres to the south end as Phase III, clarify prior omission of property in Phase II, and amend Condition D to eliminate the restriction to licensed waste collection vehicles and make it available to the general public during the hours of 7:00 AM to 6:00 PM Monday through Saturday, generally located southwest of K-15 and south of 31st Street South.

Dear Ladies and Gentlemen:

At its regular meeting on **October 9, 2008**, the Metropolitan Area Planning Commission considered the above-captioned request. The action of the MAPC was to **APPROVE** the request subject to the conditions stated in the enclosed resolution.

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

Sincerely,


Donna Goltry, A.I.C.P.
Principal Planner
Current Plans Division

DJG:mc
Attachment

“Special Conditions” of the settlement agreement between Cornejo & Sons, Inc. Construction and Demolition Landfill Permit No. 773 Item 2.e, stating that Cornejo will not seek to modify Permit No. 773 to expand its landfill). Approval of the amendment to the Conditional Use will be contingent on obtaining the appropriate permit from KDHE.

The majority of the land west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5 Single-family Residential (“SF-5”), and a mobile home park (at the southeast corner of 31st street and K-15) located on property zoned LC Limited Commercial (“LC”) and manufactured home park on property zoned MH Manufactured Home (“MH”) directly east of the proposed Phase III area. Several commercial uses are located at the northeast corner of 31st Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI.

CASE HISTORY: CU-425, approved in February 1997, allowed the establishment of the C&D landfill, subject to conditions, and included the initial closure date of April 1, 2003. CON2002-37, granted in 2002, extended the deadline for closure to April 1, 2004. The applicant stated that, in part, they needed the time extension due to the nearly two years that were lost between the City’s initially conditional use permit approval in 1997 and KDHE permit approval in 1999. CON2003-51 extended the deadline to April 1, 2005, and CON2005-00001 to December 31, 2010.

ADJACENT ZONING AND LAND USE:

NORTH:	LI, LC	Rock crusher, building wrecking/salvage, mobile home park, vacant commercial buildings, auto repair
SOUTH:	LI	KTA, lumber yard, Chapin Park
EAST:	LI, SF-5, MH	Railroad line, single-family residences, manufactured home park
WEST:	LI	Arkansas River, Wastewater Treatment Plant

PUBLIC SERVICES: The site has access to K-15 Highway, a four-lane expressway. Municipal sewer and water services are not necessary for this use.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide” depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a “navigable stream used for interstate commerce,” under landfill regulations and other statutory

and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.

RECOMMENDATION: Phase III was originally part of the application for the C&D permit with KDHE but removed because the applicant had not obtained ownership of the tract at time of permit issuance. The additional Phase II area is located farther from the Arkansas River than the area of Phase II already filled and may have been included within the previously authorized state permit. The requested expansion would complete use of the site as a C&D facility, and by some measure, reduce the demand for C&D capacity in other locations by the volume allowed on this site. Currently, this is the only C&D facility operating in the south part of Sedgwick County. Allowing the general public to bring loads to the facility would reduce the travel distance for smaller contractors or home remodelers in the southern part of the city and county taking C&D materials to a landfill. At the District III Advisory Board meeting held October 1, 2008, the DAB recommended (8-0) to approve the Conditional Use amendment (CON2008-00042) per staff comments and with removing the “NOT A PUBLIC FACILITY” language from Condition L to clarify that it the general public is allowed to use the landfill. This change is highlighted in gray in the recommendation. Based on these factors, it is recommended that the amendment be APPROVED subject to obtaining the appropriate state permit(s) and subject to the following conditions, with no changes to conditions except D, H and L.

- A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et. seq. shall not be permitted for disposal at the site.
- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill shall ~~not~~ may be open to the general public. The landfill shall ~~only be open to solid waste collection vehicles licensed under Chapter 7.08 of the Code of the City of Wichita.~~ A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for ~~authorization.~~ inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to

minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.

- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected with 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan, as amended" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross-section. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.
- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.
- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.
- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall include the display of the following message in 4 inch or larger letters that

contrast with the background:

~~NO TRESPASSING — NOT A PUBLIC FACILITY~~

~~THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE
TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT
VEHICLES. GARBAGE, AND HAZARDOUS WASTE, AND
MATERIAL TRANSPORTED BY PRIVATE OR UNLICENSED
VEHICLES IS NOT ALLOWED. LANDFILL OPERATES 7:00 AM TO
6:00 PM MONDAY THROUGH SATURDAY.~~

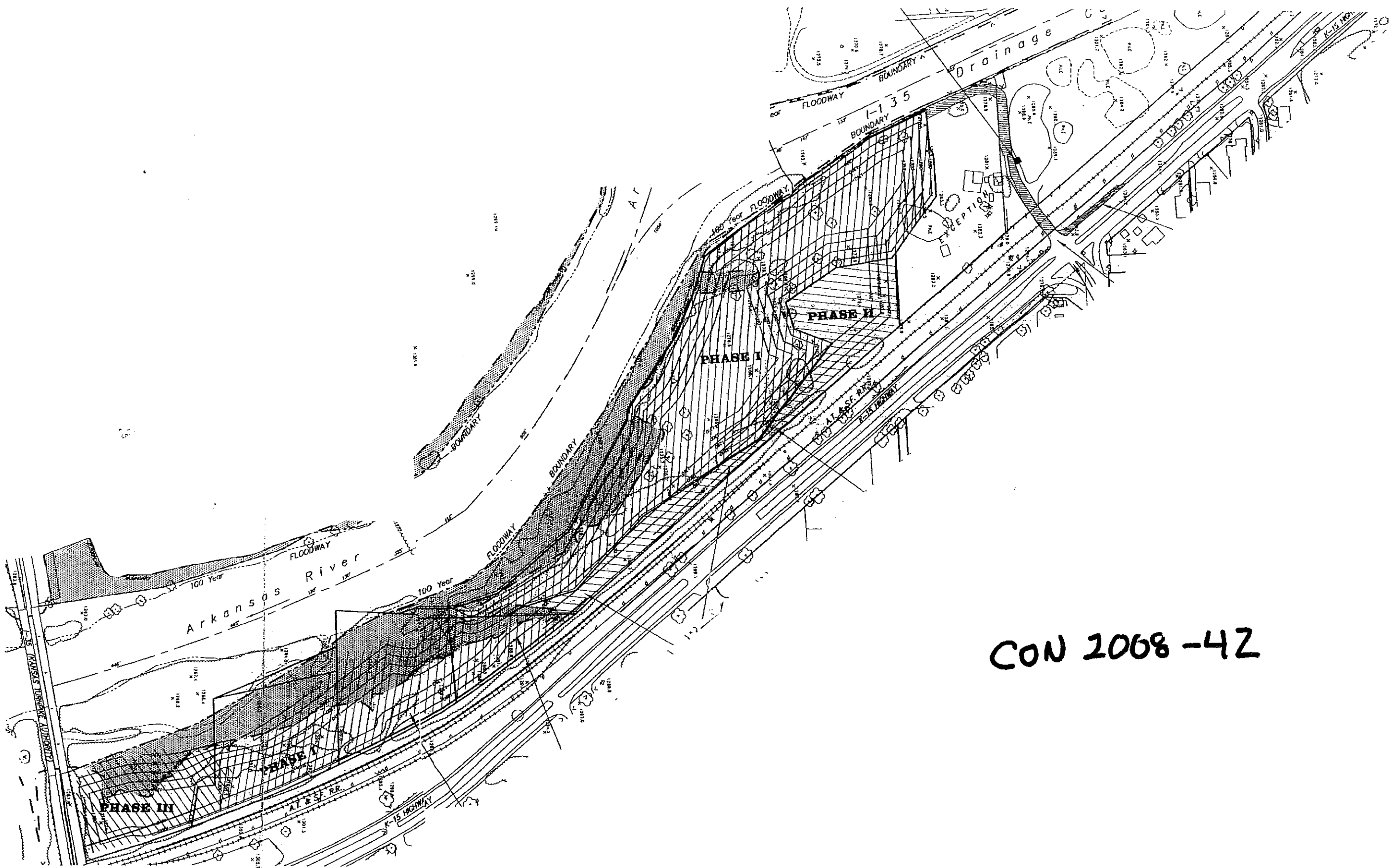
In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.
- O. The applicant shall pave the 31st Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.
- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.
- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this conditional use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The requested amendment does not involve a change in use or extension of the time for operation of the landfill. The majority of the land west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5, and a mobile home park (at the southeast corner of 31st street and K-15) located on property zoned LC and manufactured home park on property zoned MH directly east of the proposed Phase III area. Several commercial uses are located at the northeast corner of 31st Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned for "LI" subject to the conditions in CU-425, as amended by CON2002-37, CON2003-00051 and CON2005-00001. One of those conditions requires that the C&D operations cease by December 31, 2010. The base "LI" zoning district allows an extensive list of uses. Since the original conditions were established, the City has opposed a request to approve a similar operation with a similar proximity to the river.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request expands the landfill area by five to ten percent. Allowing unlicensed haulers to access the site would increase the volume of loads brought to the site.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: This amendment modestly reduces C&D capacity required in other sites by keeping it at this location. Allowing the general public to access the site reduces the distance required by contractors and remodelers to reach a landfill site and travel over public streets with loads of landfill materials. No hardship would be imposed on the applicant as proposed.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a "navigable stream used for interstate commerce," under landfill regulations and other statutory and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.

6. Impact of the proposed development on community facilities: Increased traffic to the site would be anticipated if it is accessible by the general public.
7. Neighborhood support or opposition. There has been significant neighborhood opposition to earlier requests to extend landfill operations at this location.



CON 2068-42

CONDITIONAL USE RESOLUTION NO. CON2008-00042

WHEREAS, RRM Properties, LLC, and Cornejo & Sons, Inc. (owners, lessee and applicants) and City of Wichita, Kansas, (owner and lessor); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), request a Conditional Use amendment to CU-425 for construction and demolition landfill, as amended by CON2005-00001 on property zoned LI Limited Industrial ("LI") described as:

That part of Government Lot 1 in Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T. & S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1 / 4 of said Sec. 10, with the west right-of-way line of said A.T. & S.F. Railroad; thence west along the north line of said NE 1 / 4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1 / 4; thence east parallel with the north line of said NE 1 / 4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T. & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1 / 4 of Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47' W, 1526.15 feet and S37° 31' E , 859.98 feet from the Northeast corner of the said NE 1/4 of said Sec. 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE 1/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46' W, 46.59 feet, N13°15' W, 213.50 feet, N43°01' W, 349.10 feet, N28° 53' W, 472.42 feet, N49° 23' W, 417.83 feet, S25°00' W, 138.42 feet, S76°24' W, 96.58 feet, N31° 05' W, 209.45 feet, N05°10' W, 194.00 feet, N47°00' W, 25.48 feet; thence S 89°47' E, 248.34 feet to the point of beginning, TOGETHER WITH those portions of Government Lots 1 and 2 of Sec. 11, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from the The Burlington Northern and Santa Fe Railway Company's (formerly the Atchison, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence N80°00' W, 137.6 feet; thence N05°15' W, 60.25 feet; thence west to the left bank of the Arkansas River.

AND

A tract of land in the Northeast Quarter of Section 10, Township 28 South, Range 1 East of the Sixth P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47' W, 1526.15 feet and S37° 31' E ,

859.98 feet from the Northeast corner of the said NE/4 of said Section 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46' W, 46.59 feet, N13°15'W, 213.50 feet, N43°01'W, 349.10 feet, N28° 53'W, 472.42 feet, N49° 23'W, 417.83 feet, S25°00'W, 138.42 feet, S76°24'W, 96.58 feet, N31° 05'W, 209.45 feet, N05°10'W, 194.00 feet, N47°00'W, 25.48 feet; thence S 89°47'E, 248.34 feet to the point of beginning, shown by actual survey to contain 4.30 acres more or less.

AND

That part of the West Half (W ½) of the Southwest Quarter (SW ¼) of Section 11, Township 28 South, Range 1 East of the 6th P.M. in Sedgwick County, Kansas, bounded on the South by the Kansas Turnpike Right-of-Way; on the West by the Arkansas River; on the East by the Right-of-Way of the Atchison, Topeka & Santa Fe Railroad; and on the North by the tract of land heretofore deeded to the Atchison, Topeka & Santa Fe Railroad Company, as disclosed in Book 548 at Page 136 of the Register of Deeds of Sedgwick County, Kansas, and containing approximately 4 Acres, more or less.

AND

Commencing on the W line of RR & 378.75' SE of the N line of the NE/4; then W 526.58' for the beginning; then SE 260.26' then Easterly 121.39' to the center line of the creek; then SW 141.2' to the E line of the canal; then NW to a point West of beginning; then E 21.47' to the point of beginning in Section 10, Township 28 South, Range 1 East.

Generally located southwest of K-15 and south of 31st Street South.

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of October 9, 2008, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to amend CU-425 for construction and demolition landfill, as amended by CON2005-00001 on property zoned LI Limited Industrial ("LI") described as:

That part of Government Lot 1 in Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T. & S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1 / 4 of said Sec. 10, with the west right-of-way line of said A.T. & S.F. Railroad; thence west along the north line of said NE 1 / 4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1 / 4;

Conditional Use Resolution No. CON2008-00042

thence east parallel with the north line of said NE 1 / 4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T. & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1 / 4 of Sec. 10, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47' W, 1526.15 feet and S37° 31' E , 859.98 feet from the Northeast corner of the said NE 1/4 of said Sec. 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE 1/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46' W, 46.59 feet, N13°15' W, 213.50 feet, N43°01' W, 349.10 feet, N28° 53' W, 472.42 feet, N49° 23' W, 417.83 feet, S25°00' W, 138.42 feet, S76°24' W, 96.58 feet, N31° 05' W, 209.45 feet, N05°10' W, 194.00 feet, N47°00' W, 25.48 feet; thence S 89°47' E, 248.34 feet to the point of beginning, TOGETHER WITH those portions of Government Lots 1 and 2 of Sec. 11, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from the The Burlington Northern and Santa Fe Railway Company's (formerly the Atchison, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence N80°00' W, 137.6 feet; thence N05°15' W, 60.25 feet; thence west to the left bank of the Arkansas River.

AND

A tract of land in the Northeast Quarter of Section 10, Township 28 South, Range 1 East of the Sixth P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly right-of-way line of the A.T. & S.F. Railroad, N89° 47' W, 1526.15 feet and S37° 31' E , 859.98 feet from the Northeast corner of the said NE/4 of said Section 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46' W, 46.59 feet, N13°15' W, 213.50 feet, N43°01' W, 349.10 feet, N28° 53' W, 472.42 feet, N49° 23' W, 417.83 feet, S25°00' W, 138.42 feet, S76°24' W, 96.58 feet, N31° 05' W, 209.45 feet, N05°10' W, 194.00 feet, N47°00' W, 25.48 feet; thence S 89°47' E, 248.34 feet to the point of beginning, shown by actual survey to contain 4.30 acres more or less.

AND

That part of the West Half (W ½) of the Southwest Quarter (SW ¼) of Section 11, Township 28 South, Range 1 East of the 6th P.M. in Sedgwick County, Kansas, bounded on the South by the Kansas Turnpike Right-of-Way; on the West by the Arkansas River; on the East by the Right-of-Way of the Atchison, Topeka & Santa Fe Railroad; and on the North by the tract of land heretofore deeded to the Atchison, Topeka & Santa Fe Railroad Company, as disclosed in Book 548 at Page 136 of the Register of Deeds of Sedgwick County, Kansas, and containing approximately 4 Acres, more or less.

AND

Commencing on the W line of RR & 378.75' SE of the N line of the NE/4; then W 526.58' for the beginning; then SE 260.26' then Easterly 121.39' to the center line of the creek; then SW 141.2' to the E line of the canal; then NW to a point West of beginning; then E 21.47' to the point of beginning in Section 10, Township 28 South, Range 1 East.
Generally located southwest of K-15 and south of 31st Street South.

Approved subject to the following conditions:

- A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et. seq. shall not be permitted for disposal at the site.
- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill may be open to the general public. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.
- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected within 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan, as amended" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross-section. Landfill operations shall be staged, with berms to be constructed and

seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.

- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.
- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.
- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall include the display of the following message in 4 inch or larger letters that contrast with the background:

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE. GARBAGE
AND HAZARDOUS WASTE IS NOT ALLOWED. LANDFILL OPERATES 7:00
AM TO 6:00 PM MONDAY THROUGH SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10

years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.

- O. The applicant shall pave the 31st Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.
- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.
- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this conditional use shall be considered null and void.

Adopted this 4th Day of October 2008.

METROPOLITAN AREA PLANNING COMMISSION

Darrell Downing
Darrell Downing, Chair MAPC

ATTEST:

John L. Schlegel
John L. Schlegel, Secretary

STAFF REPORT

MAPC October 9, 2008

DAB III October 1, 2008

(Revised per DAB Recommendation)

CASE NUMBER: CON2008-00042

APPLICANT/OWNER: RRM Properties, LLC, RRM, LLC and Cornejo & Sons, Inc.
(applicants, owners and lessee); City of Wichita (owner - lessor)

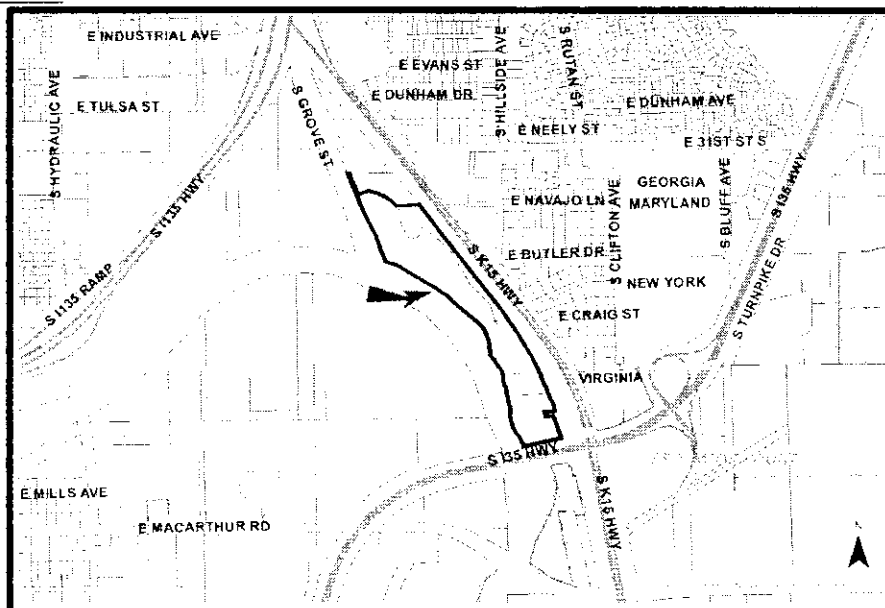
REQUEST: Conditional Use amendment to CU-425 for construction and demolition landfill, as amended by CON2005-00001, to add approximately four acres to the south end as Phase III, five additional acreage in Phase II, and amend Condition D to eliminate the restriction to licensed waste collection vehicles and make it available to the general public during the hours of 7:00 AM to 6:00 PM Monday through Saturday

CURRENT ZONING: Limited Industrial ("LI")

SITE SIZE: 36.77 acres (additional area 8.93 acres)

LOCATION: Southwest of K-15 and south of 31st Street South

PROPOSED USE: Construction and demolition landfill



BACKGROUND: The applicant is requesting a Conditional Use amendment to CU-425 as amended by CON2005-00001, and previously by CON2003-00051 and CON2001-00037, for a construction and demolition (C&D) landfill. The applicant is not requesting any change in use or extension of time for operation of the C&D landfill. The property is zoned Limited Industrial ("LI") and located southwest of the intersection K-15 with 31st Street South, including the land between K-15 and the Arkansas River, from south of the terminus of 31st Street South to I-35 (KTA).

First, the amendment requests four acres be added to the south end as Phase III.

Second, according to the applicant, the Kansas Department of Health and Environment ("KDHE") permit included approximately 5 acres acquired subsequent to the original CU-425 approval, and this land, which is part of Phase II, would be added to the Conditional Use.

Third, the applicant has requested to eliminate the restriction that only licensed waste collection haulers can bring loads to the facility and make it available to the general public during the hours of 7:00 AM to 6:00 PM Monday through Saturday (Condition D of CON2005-00001). The applicant has stated the reason to allow the general public to bring C&D loads is for the convenience of those living in the south part of the City or County, avoiding the longer transporting of loads over city roads and streets to the C&D landfill in the north part of the city.

Total size of the Conditional Use would be 36.77 acres. The expansion areas are owned by Cornejo and Sons, Inc. and RRM, LLC c/o Ron Cornejo.

Previous cases: In the amendment, CON2005-00001, the applicant received a five-year extension of time to complete and halt construction and demolition (C&D) landfill operations by December 31, 2010. It had received two earlier extensions; CON2003-00051 that extended the time to April 1, 2005, and CON2002-00037 that extended the time to April 1, 2004. CU-425 originally had an expiration date of April 1, 2003. This application does not include a request for an extension of the time, which would remain as December 31, 2010. The applicant has stated that the majority of Phase I and II already have been filled as per the site plan, and the additional land in Phase III would allow the continued operation of the landfill through this timeframe.

Access to the site is by a driveway connecting to Highway K-15 owned by the City of Wichita and leased to the applicant.

When landfill operations cease it is expected the site will be redeveloped into a park. By a separate lease agreement, the applicant is required to fill and level the site consistent with a site plan contained in the lease agreement whenever landfill operations cease. The lease agreement expired on April 1, 2005, but was automatically extended to be coterminous with extensions to the Conditional Use permit. The permit from KDHE is granted for a ±22-acre facility with disposal permitted on ±13 acres (Phases I and II). The permit notes that the facility area was reduced from ±26 acres and disposal area from ±17 acres due to Phase III property not having been acquired at the time of permit issuance. They have now acquired this land. (The applicant will need to seek clarification and approval from KDHE on the additional land based on the