



Wichita-Sedgwick County Metropolitan Area Planning Department

June 28, 2019

Lou Robelli
5841 Prospect Road, Suite B
Park City, KS 67204

Pete Molitor
3170 North Ohio
Wichita, KS 67219

Jason Byrne
2329 West Harborlight Street
Wichita, KS 67204

RE: CON2019-00012 - County request to approve a Conditional Use Permit to permit Mining or Quarrying of sand on Property zoned SF-20 Single-Family Residential located west of North Hoover Road and south of West 53rd Street North.

Dear Applicants:

At its regular meeting on May 23, 2019, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to APPROVE the request in accordance with the attached resolution.

Since there were no protest petitions filed regarding this application, the MAPC decision is final.

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

Sincerely,

David L. Yearout, AICP
Principal Planner

Copies to: MABCD - Kelly Dixon
BoCC #4 Lacey Cruse
Justin Waggoner
Bradley Stoskopf, 6415 W. 53rd Street North, Wichita, KS 67205

CONDITIONAL USE RESOLUTION NO. CON2019-00012

WHEREAS, Pete Molitor, Jason Byrne and Terri Nigg (Owners) (Applicants), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use to operate a mining and quarrying of sand operation on property zone SF-20 Single-Family Residential and located on the west side of North Hoover Road and south of West 53rd Street North and legally described as:

The South Half of the West half of the West Half of the Northeast Quarter of Section 22, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

TOGETHER WITH

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TOGETHER WITH

The South Half of the East Half of the Northeast Quarter of Section 22, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas LESS AND EXCEPT a tract Beginning at the Southeast corner of the Northeast Quarter of Section 22, thence North along the East line of said section a distance of 785 feet; thence West, parallel with the South line of the Northeast Quarter a distance of 330 feet; thence South parallel with the East line of said Northeast Quarter a distance of 785 feet to the South line of the Northeast Quarter; thence East along the South line of the Northeast Quarter a distance of 330 feet to the point of beginning LESS AND EXCEPT a tract Commencing at the Southeast corner of said Northeast Quarter; thence North on an assumed bearing of North 00 degrees East 795.00 feet along the East line of said Northeast Quarter; thence on a bearing of North 90 degrees West 50.00 feet for the Point of Beginning; thence with the following bearings and distances from the preceding course: thence on a bearing of North 90 degrees West 550.00 feet; thence on a bearing of South 00 degrees East 90.00 feet; thence on a bearing of North 90 degrees West 325.00 feet; thence on a bearing of North 00 degrees East 360.00 feet; thence on a bearing of North 90 degrees East 285.00 feet; thence on a bearing of South 00 degrees East 160.00 feet; thence on a bearing of South 51 degrees 20' 35" East 128.06 feet; thence on a bearing of North 90 degrees East 490.00 feet to a point 50.00 feet west of said East Quarter Section line; thence on a bearing of South 00 degrees East 30.00 feet being 50 feet West of and parallel with said East Quarter Section line 30 feet to the point of beginning.

TOGETHER WITH

A tract of land in the Northeast Quarter of Section 22, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the Southeast corner of the Northeast Quarter of Section 22, thence North along the East line of said section a distance of 785 feet; thence West, parallel with the South line of said Northeast Quarter a distance of 330 feet; thence South parallel with the East line of said Northeast Quarter a distance of 785 feet to the South line of said Northeast Quarter; thence East along the South line a distance of 330 feet to the point of beginning.

TOGETHER WITH

A tract of land in the Northeast Quarter of Section 22, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence North on an assumed bearing of North 00 degrees East 795.00 feet along the East line of said Northeast Quarter; thence on a bearing of North 90 degrees West 50.00 feet for the Point of Beginning; thence with the following bearings and distances from the preceding course: thence on a bearing of North 90 degrees West 550.00 feet; thence on a bearing of South 00 degrees East 90.00 feet; thence on a bearing of North 90 degrees West 325.00 feet; thence on a bearing of North 00 degrees East 360.00 feet; thence on a bearing of North 90 degrees East 285.00 feet; thence on a bearing of South 00 degrees East 160.00 feet; thence on a bearing of South 51 degrees 20' 35" East 128.06 feet; thence on a bearing of North 90 degrees East 490.00 feet to a point 50.00 feet west of said East Quarter Section line; thence on a bearing of South 00 degrees East 30.00 feet being 50 feet West of and parallel with said East Quarter Section line 30 feet to the point of beginning.

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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 May 23, 2019, 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 operate a mining and quarrying of sand operation on property zone SF-20 Single-Family Residential located on the west side of North Hoover Road and south of West 53rd Street North and legally described as:

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Subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission, including the phasing sequence shown thereon. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular FAA AC150/5200-33 "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The proposed Redevelopment Plan submitted by the applicant shall be followed. Any modification or proposed change in uses after the conclusion of the extraction operation shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
4. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
5. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.

6. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
7. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
8. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
10. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
12. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. The Conditional Use for the extraction operation shall be valid for a period of 10 years.
14. Hours of operation for extraction shall be limited to 7:00 a.m. to 7:00 p.m. six days a week. Sunday operations are prohibited.
15. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.
16. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.
17. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
18. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
19. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

20. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
21. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00012.

Adopted this 23rd Day of May, 2019

METROPOLITAN AREA PLANNING COMMISSION


Cindy Miles, Chair, MAPC

ATTEST:


Dale Miller, Secretary

STAFF REPORT
MAPC May 23, 2019

CASE NUMBER: CON2019-00012

OWNER/AGENT: Lou Robelli, Pete Molitor, Jason Byrne (owners)

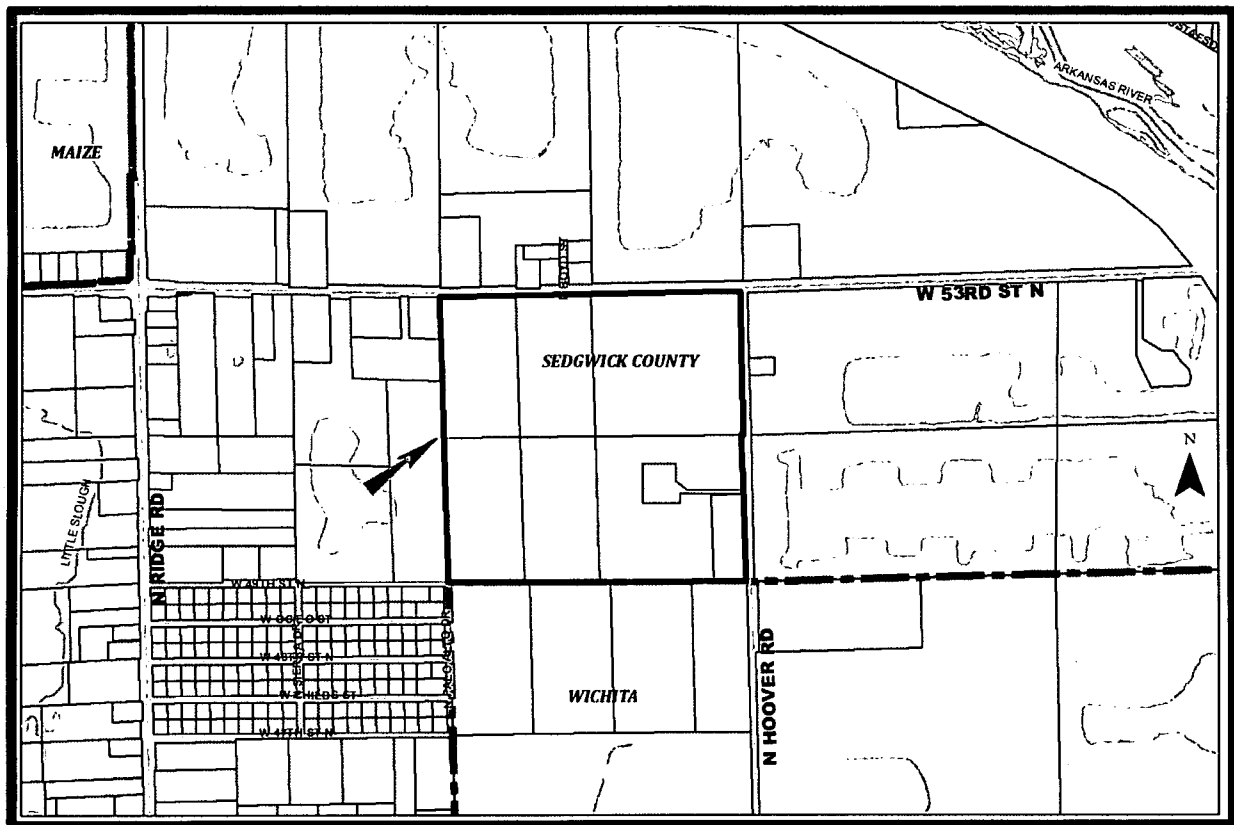
REQUEST: County Conditional Use to allow a mining and quarrying operation

CURRENT ZONING: SF-20 Single-Family Residential

SITE SIZE: 155 acres

LOCATION: Generally located on the west side of North Hoover Road and south of West 53rd Street North

PROPOSED USE: Establish a sand pit



BACKGROUND: The applicant requests a Conditional Use to allow “Mining and Quarrying” for the establishment of a new sand pit. The undeveloped property, located on the west side of North Hoover Road and south of West 53rd Street North, is currently zoned SF-20 Single-family Residential (“SF-20”).

According to the information provided from the applicants in its proposed Operational Plan, approximately 80 acres of the subject property will be excavated over a 10-year period of time. There are 8 proposed cells for excavation, beginning in the southeast portion of the excavation area and moving counterclockwise until the excavation is completed in the northwest portion of the excavation area. Home site and outbuildings that are on the property on the west side of Hoover Road are to be removed and this area will become the operations area for the sand pit. There is a new access point proposed north of the drive entrance to the existing home at which the scale house and traffic point for the sand pit operations will occur, which is approximately ¼-mile south of 53rd Street North. This information has been shared with Sedgwick County Public Works for comment. The site is not currently fenced, but fencing of the excavation area will be a condition of approval. (Proposed Operations Plan attached).

Based on information from the County GIS, the average depth of the groundwater in this area will be approximately 10 feet from the surface. This is calculated based on the elevation shown for the water on the property to the east (1330) that has previously been excavated as opposed to the ground elevation of the subject property (1340).

The applicant has submitted a Redevelopment Plan for the subject property which shows future creation of lots presumed for residential development surrounding the expected pond remaining in the middle of the excavation area, with no other specific uses identified.

The Unified Zoning Code lists “Mining or Quarrying” as a Conditional Use in the SF-20 zoning district. The Unified Zoning Code lists 23 conditions with which “Mining or Quarrying” should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

The land to the north, east and west of the subject property is in the unincorporated portion of Sedgwick County and are zoned SF-20 Single-Family Residential. The land to the east is now used agriculturally, but has previously had portions of the property excavated with the remaining ponds left. There is no indication of a previous zoning case on this property and the area of excavation appears to extend almost to the Arkansas River on the eastern end of the property. The land to the north is a combination of land devoted to an existing sand pit operation with some single-family homes along the north side of 53rd Street North. The land to the east is mostly agricultural with a remnant of an old excavation site. There is also a homesite along of the south side of 53rd Street North. The property south of the application area is within the City of Wichita; is zoned SF-5 Single-Family Residential (SF-5); and has a Conditional Use for Sand Extraction and a Rock Crusher (CON2014-12 and CON2017-04).

CASE HISTORY: The property is zoned SF-20 Single-Family Residential. The site is unplatted. There are no records of previous zoning actions regarding the subject property.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-20	sand pit and residential
SOUTH:	SF-5	sand pit
EAST:	SF-20	cropland
WEST:	SF-20	cropland

PUBLIC SERVICES: Hoover Road is a paved, two-lane County Road with open ditches. 53rd Street North is also a paved, two-lane County Road with open ditches. Other basic utility services are in the area. There are no public water or sanitary sewer services in the immediate area.

CONFORMANCE TO PLANS/POLICIES: The "2035 Wichita Future Growth Concept Map" of the Comprehensive Plan identifies this property within the Wichita Future Growth Area, as a "new residential area." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) is most appropriate in a more agricultural area similar in character to that existing in the immediate area, especially given the history and current use of neighboring properties for a similar use. The proposed redevelopment plan for the subject property indicates future residential use once the extraction operation is completed. As such, the use is not considered having a negative impact to the existing uses provided appropriate measures are taken to mitigate the impacts from the activity on existing infrastructure.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental effect on the surrounding properties, as they are developed with agriculture. Therefore, based on the information submitted, staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission, including the phasing sequence shown thereon. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular FAA AC150/5200-33 "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The proposed Redevelopment Plan submitted by the applicant shall be followed. Any modification or proposed change in uses after the conclusion of the extraction operation shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
4. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
5. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
6. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.

7. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
8. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
10. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
12. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. The Conditional Use for the extraction operation shall be valid for a period of 10 years.
14. Hours of operation for extraction shall be limited to 7:00 a.m. to 7:00 p.m. six days a week. Sunday operations are prohibited.
15. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.
16. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.
17. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
18. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
19. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
20. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
21. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00012.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The land to the north, east and west of the subject property is in the unincorporated portion of Sedgwick County and are zoned SF-20 Single-Family Residential. The land to the east is now used agriculturally, but has previously had portions of the property excavated with the remaining ponds left. There is no indication of a previous zoning case on this property and the area of excavation appears to extend almost to the Arkansas River on the eastern end of the property. The land to the north is a combination of land devoted to an existing sand pit operation with some single-family homes along the north side of 53rd Street North. The land to the east is mostly agricultural with a remnant of an old excavation site. There is also a homesite along of the south side of 53rd Street North. The property south of the application area is within the City of Wichita; is zoned SF-5 Single-Family Residential (SF-5); and has a Conditional Use for Sand Extraction and a Rock Crusher (CON2014-12 and CON2017-04).
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be used for the uses permitted by its current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval subject to the recommended conditions is felt to appropriately mitigate any potential detrimental impacts on neighboring properties; especially given the fact there are existing sand pit operations in the immediate area.
4. **Length of time the property has been vacant as currently zoned:** The subject property is presently used for agricultural purposes and has an existing residence which is proposed to be removed.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The "2035 Wichita Future Growth Concept Map" of the Comprehensive Plan identifies this property within the Wichita Future Growth Area, as a "new residential area." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) is most appropriate in a more agricultural area similar in character to that existing in the immediate area, especially given the history and current use of neighboring properties for a similar use. The proposed redevelopment plan for the subject property indicates future residential use once the extraction operation is completed. As such, the use is not considered having a negative impact to the existing uses provided appropriate measure are taken to mitigate the impacts from the activity on existing infrastructure.
6. **Relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner:** The establishment of this sand pit will provide another supplier of this material into the marketplace; which benefits the public by providing more than one supplier. A denial of the request would harm the owners by removing the opportunity to improve the income potential from the land above what could be expected from an agricultural use.
7. **Impact of the proposed development on community facilities:** There are no anticipated impacts to the existing community facilities. Both Hoover Road and 53rd Street North are paved County roads that see existing traffic of the nature anticipated from the subject property.

Staff Report Attachments:

Operations Plan

Redevelopment Plan

Other supporting information from applicants

1. The perimeter of the excavation limits shall conform to the approximate size and shape indicated on this Operational Plan. To assist in the enforcement of the Operational Plan, a copy of the approved Operational Plan shall be posted on site.
2. Fencing of the site is not required provided excavation does not exceed five feet in depth, a "No Trespassing" sign must be posted on site.
3. Sufficient overburden material shall be retained in the area of extraction. Overburden shall be used to grade and construct the banks of the pit in lieu of sandy material to prevent erosion.
4. Side slopes of the extraction area shall be no steeper than five horizontal to one vertical foot. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass to prevent erosion.
5. All operational roads, stockpiles, work areas, or areas of soil disturbance shall be maintained in a sand or gravel condition and/or shall be treated with water or other acceptable dust suppressant to effectively minimize blowing dust.
6. No equipment, overburden, or sand shall be stored or stockpiled within 100 feet of any public right of way, or 50 feet to any property line.
7. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
8. The site must be properly graded and planted with vegetative cover within 60 Days of the completion of the sand extraction operations. All stockpiled material and equipment must also be removed from the property.
9. Best Management Practices (BMP) shall be in place any time extraction activities occur. BMP selection shall include, but not limited to, silt fence, ditch checks, grass berms, and seeding to prevent sedimentation from leaving the site.

1. Strip overburden from Extraction Area 1 and stockpile adjacent to Area 1.
2. Remove sand from Extraction Area 1 to limits indicated.
3. Stabilize and seed banks of Extraction Area 1 with overburden material prior to moving to Extraction Area 2.
4. Repeat steps 1-3 for Extraction Areas 2-8.
5. After completion of Sand Extraction, the entire site must be properly graded and planted with vegetative cover within 60 Days.



Issue	Date	By	Description
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-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
			Date: 4/12/2019
Checked By:			Issue No. 0



ent:
AIR CAPITOL
INDUSTRIAL PARK LLC
5841 PROSPECT ROAD
PARK CITY, KANSAS

OPERATIONAL PLAN

Sheet No.
OP1

Project No.
2142

