



COUNCIL AGENDA ITEM MEMORANDUM

04/16/09
Item #8
Regular Agenda
Page 1 of 4

DEPT. /DIVISION SUBMISSION & REVIEW:

Tim Dolan, Planning Director

ITEM DESCRIPTION: SECOND READING – Z-FY-09-14: Consider adopting an ordinance authorizing a Conditional Use Permit for mining and mining storage on 119± acres located in the vicinity of the southwest corner of SH 36 (Airport Road) and North SH 317 and authorizing a zoning change from Agricultural to Light Industrial on a 26.3± acre portion of that tract.

ORIGINAL P&Z COMMISSION RECOMMENDATION: At its March 16, 2009 meeting, the P&ZC voted 4/3 (Barton, Dusek, Hurd & Secret *for*, Pope, Pilkington & Talley *against*, Luck & Martin *absent*) in favor of the Light Industrial (LI) zoning for this area with a Conditional Use Permit (CUP) for mining and mining storage. The CUP included a number of conditions (about 21) including a site plan to be adopted as part of the CUP ordinance. *At its April 6, 2009 meeting, the Planning and Zoning Commission voted 7-1 to recommend denial of the revised site plan discussed by the applicant's representative at the Council meeting, April 2, 2009. The Commission did not consider any other revisions to the recommended conditions to the CUP.*

STAFF RECOMMENDATION: Adopt ordinance on second reading with the original CUP conditions and site plan, or remand the item for reconsideration by the P&ZC with the requested changes by the applicant to the site plan previously approved and to the hours of operation (explained below).

ITEM SUMMARY: *Synopsis.* The City Council is considering whether to grant a CUP for mining and mining storage on a 119 acre tract. The City Council is being asked by the applicant to consider a revised site plan for the area covered by the CUP. The applicant may also specifically request a change in the hours of operation allowed by the CUP. On first reading, the City Council approved the CUP for mining and mining storage with the original site plan. On second and final reading, the City Council must decide: (1) whether to approve the CUP; and (2) whether to approve it with a revised site plan showing a greater area available for mining operations. The City Council may choose in its discretion to incorporate the revised site plan requested by the applicant, over the P&ZC's unfavorable recommendation—though the Staff concurs with the P&ZC in denying the revised site plan. There is no “super-majority” voting requirement on this item, since the CUP was favorably recommended by the P&ZC.

Background/Time Line. The application is for a conditional use permit for an area zoned LI (light industrial) to allow mining and mining storage. A timeline for this application is as follows:

February 2nd—Application for CUP filed for 119 acre tract; application deemed incomplete by Staff.

March 9th—application deemed administratively complete with submission of a site plan.

March 16th—P&ZC approved the CUP with 21 conditions, including a Site Plan showing a single, contiguous “mining area” near the center of the 119 acres. The vote was 4-3 in favor of approval.

March 24th—The applicant contacted the Planning Department with a request to amend the original site plan; the revised site plan indicates that “the initial locations for blasting, stockpiling of materials, crusher and access are indicated [on the site plan] . . . however, these locations will be moved and relocated over and across the 119 acres covered by the CUP” Later the same day, the realtor for the applicant advised Tim Dolan that the applicant would move forward with the original CUP and site plan which would allow them to fulfill contractual commitments the applicant has, while the request for a revised site plan was separately considered by P&ZC and the City Council.

April 2nd—at the first reading of the CUP ordinance by the City Council, during the public hearing, the realtor for the applicant advised the City Council that the applicant was requesting that the City Council consider approving the CUP with the revised site plan; the City Council approved the CUP on first reading with the original site plan.

April 6th—the revised site plan was submitted to the P&ZC for a recommendation ONLY on the revised site plan; the P&ZC voted 7-1 in favor of a “motion to deny the revised site plan” (Barton, Dusek, Hurd, Secrest, Pope, Pilkington, Luck & Talley *for denial of the revised site plan*, Hurd *against denial of the revised site plan*).

April 7th, applicant contacted Staff seeking an additional amendment of the CUP from the condition in the original CUP establishing hours of operation of 7 a.m. to 6 p.m. Monday through Friday and 7 a.m. to 7 p.m. on Saturday. The applicant sought changes allowing longer period for mining in times of inclement weather. (Note: Chapter 12 of the City Code establishes allowable hours for blasting as 8 a.m.-5 p.m., Monday through Friday. The CUP deals with hours of operation only, and doesn't change the hours allowed for blasting.

Considerations in Granting a CUP. Please refer to the Staff Report and draft minutes of case Z-FY-09-14, from the Planning and Zoning meeting, March 16, 2009. The Mining, Inc., c/o Thomas Parker for Paul Mark Woods Trust, submitted the application for a conditional use permit (CUP) for mining and mining storage of limestone for the subject property located off Airport Highway, north of SH 317. The site is the location of an existing quarry. The applicant has requested the owner's permission to continue mining the area.

This area includes a portion of the area recently annexed and a portion of the land (26.3 ± acres) already in the City Limits. Since the Planning and Zoning Commission meeting on March 16th, the applicant has submitted another CUP application, with a site plan showing a larger area for mining and mining storage in this area. That item will process through the Development Review Committee (DRC), the Planning & Zoning Commission and City Council. Provided the new CUP application is recommended for approval by the Commission, the Council will review it May 7th in a public hearing and the second reading May 21st.

The site plan will also be adopted as Exhibit 'B' to the CUP ordinance which shows the locations where the quarrying, storage, rock crushing, silt fences, berms, etc., can be placed. The applicant will use the mine for a source of needed construction materials in the Bell County area. The mining and

extraction operations will be sited and designed to minimize conflicts with adjacent land uses, and to have a minimal impact on critical habitats, natural vistas, cultural resources and the environment. The applicant has also applied for an air quality permit with the Texas Commission on Environmental Quality, Registration Number 87255, customer number CN602311896 and the regulation entity number RN105672588.

The applicant will use existing topography to screen and minimize blasting, noise, dust, vibration, and visual impacts when developing new mineral extraction sites. Where heavy equipment, mines and pits cannot be effectively screened from residential and/or commercial areas, a combination of existing topography, berms and landscaping may be utilized to screen the site. Adequate screening and buffering will be maintained between adjacent land uses and the mining site, and will be the responsibility of the new or expanded mineral extraction development. A vertical wall which measures 12± vertical feet will screen the rock crusher, stockpile area and mining area from SH 36. Because the site is within a 100 year flood plan and subject to Corp of Engineers regulation, the applicant's ability to place berms, septic tanks, and other permanent vertical improvements may be restricted.

The applicant will need to ensure that mining sites and associated off-site stockpiles are maintained during the life of the operation, particularly in regard to the control of noxious weeds and dust. Any reclamation of mining and extraction sites is an integral part of all mining operations, and will be required and completed in a manner that will encourage future land uses that are compatible with local comprehensive plans. All road construction projects shall meet or exceed the minimum requirements for storm water runoff.

The City Council must consider the following items when reviewing a conditional use permit (CUP):

1. The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity;
2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
4. The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development;
5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Current Land Use
North	Vacant – area being annexed as Agriculture (A)
East	Vacant – area being annexed as Agriculture (A)
South	Vacant – county land
West	Vacant – area being annexed as Agriculture (A)

Future Land Use & Character Plan – The map shows this area as Agriculture (A). When the City Council adopted the Plan, Staff advised they would update the map twice a year. A portion of this area will be shown as industrial for the mining and mining storage area, provided the CUP is approved.

This CUP property was subject to a ‘Development Agreement’ when the City Council annexed areas near here in 2008. This area contained more than 10 acres, and had an agriculture classification since the mine was inactive. The City offered development agreements to property owners who owned more than 10 acres and the Bell County Tax Appraisal District had classified as having an exemption for agriculture, timber or wildlife management. The same agreement states if a property owner changes the use of its land, here the continuation of mining, that it would trigger annexation. The property owner sought voluntary annexation, leasing the area to continue the mining operation.

Thoroughfare Plan – This application conforms to the Thoroughfare Plan for access to State Highway 36 (SH36) designated as a Freeway.

The applicant also contacted Staff April 7th, requesting to amend the condition on operating time, allowing longer periods for mining due to inclement weather. Staff recommends keeping the condition as written in the proposed ordinance: *During construction, all work associated with the proposed project shall occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday.*

FISCAL IMPACT: NA

ATTACHMENTS:

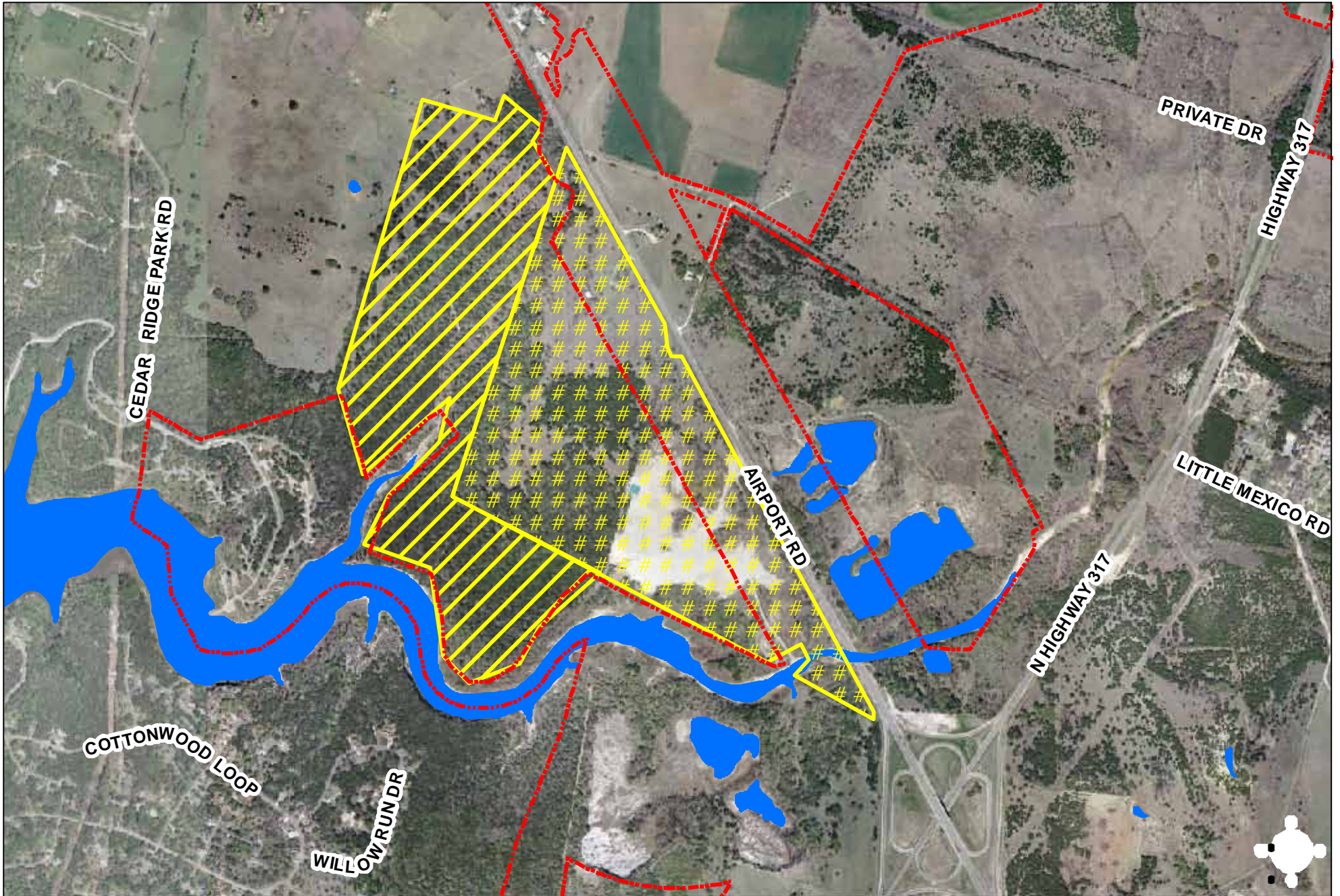
- [Aerial](#)
- [Land Use and Character Map](#)
- [Zoning Map](#)
- [Buffer Map](#)
- [Contrasting Map between Area Annexed – A & LI Zoning](#)
- [Site Plan](#)
- [P&Z Staff Report \(Z-FY-08-14\)](#)
- [P&Z Minutes Excerpts \(March 16, 2008 & April 6, 2009\)](#)
- [Ordinance](#)



Z-FY-09-14

Outblock #2088-A

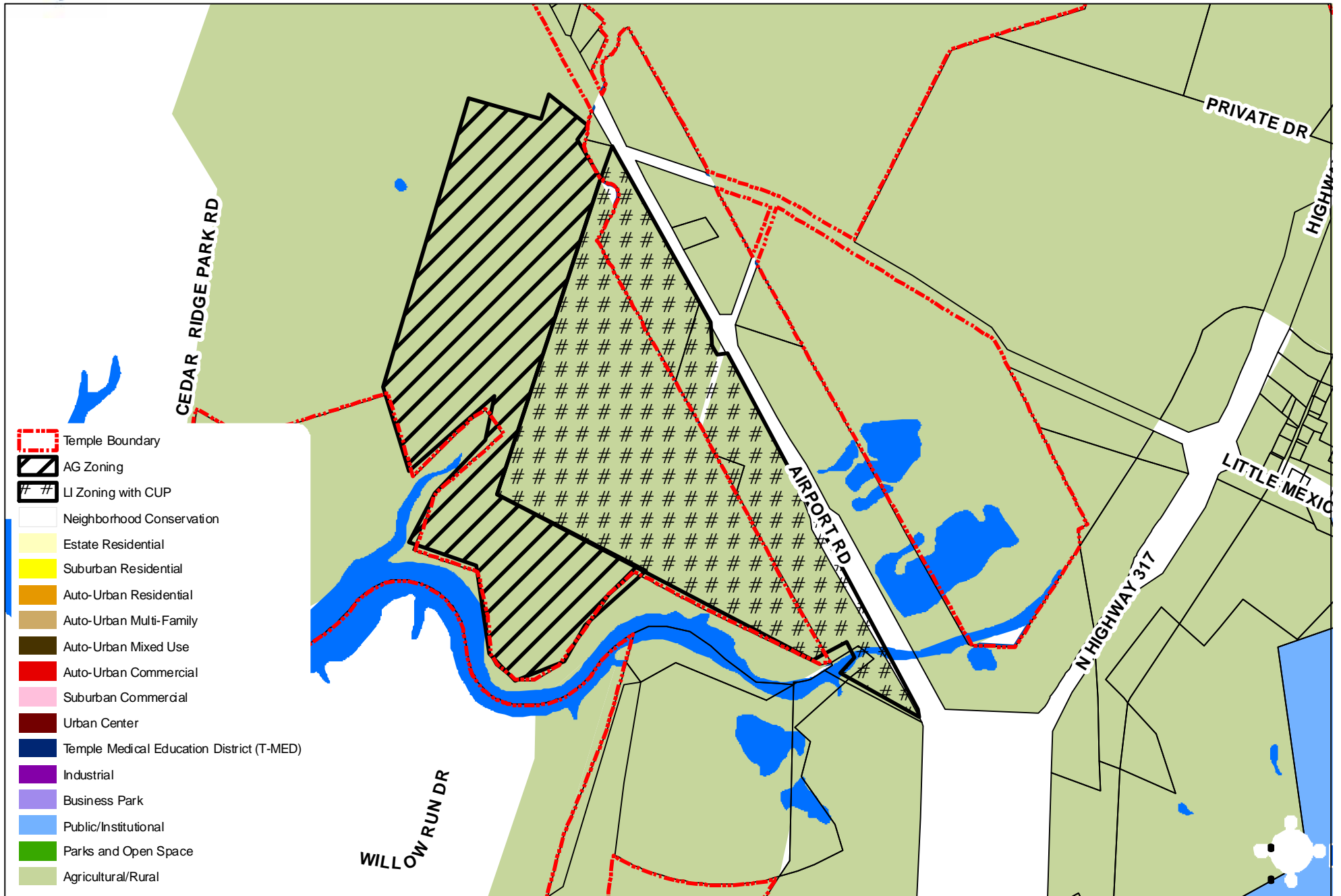
Mining Operations





















Temple Boundary
 AG Zoning
 # # # LI Zoning with CUP

CUP for Mining

1 inch = 1,000 feet
J Stone 2.5.9



-  Temple Boundary
-  AG Zoning
-  LI Zoning with CUP
-  Neighborhood Conservation
-  Estate Residential
-  Suburban Residential
-  Auto-Urban Residential
-  Auto-Urban Multi-Family
-  Auto-Urban Mixed Use
-  Auto-Urban Commercial
-  Suburban Commercial
-  Urban Center
-  Temple Medical Education District (T-MED)
-  Industrial
-  Business Park
-  Public/Institutional
-  Parks and Open Space
-  Agricultural/Rural

CUP for Mining

1 inch = 1,000 feet

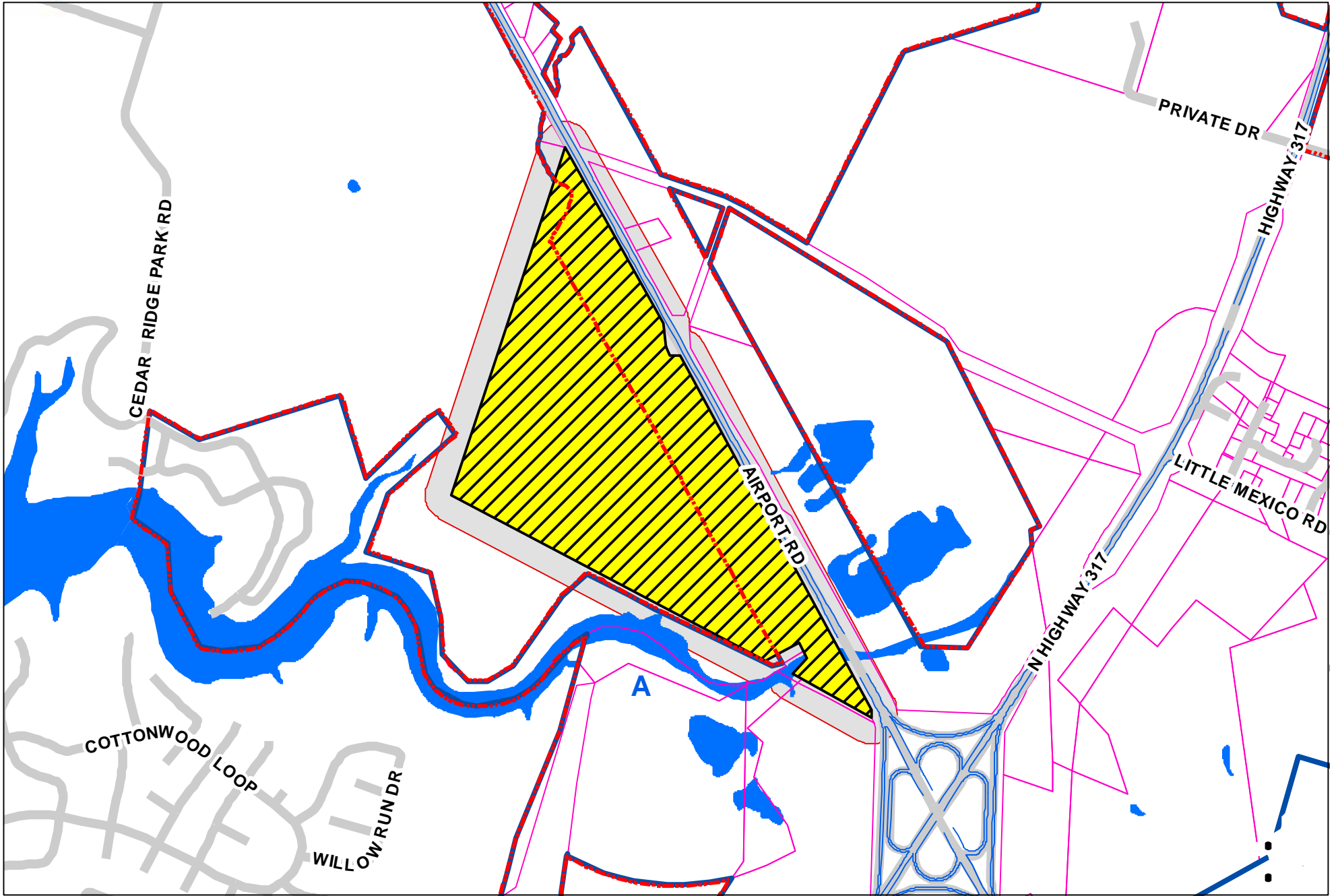
J Stone 2.5.9



Z-FY-09-14

Outblock #2088-A

Mining Operations



 Temple Boundary
  ZFY0914
  200' Buffer

CUP for Mining

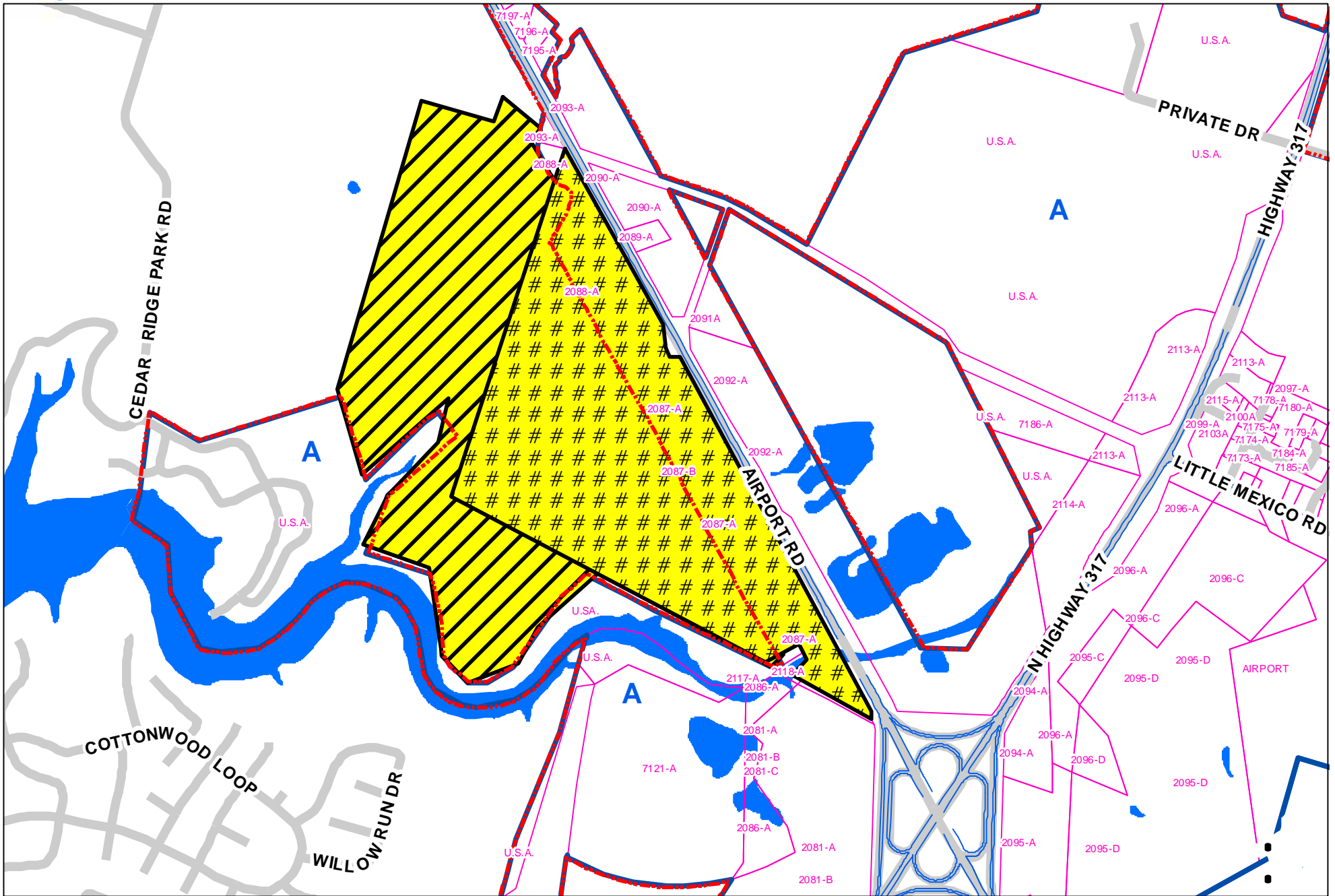
1 inch = 1,000 feet
J Stone 2.5.9



Z-FY-09-14

OB# 2087-A&B and 2088-A

Quarry Expansion



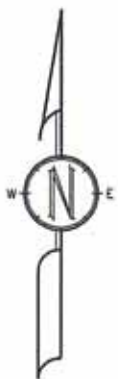
 Temple Boundary
  AG Zoning
  LI Zoning with CUP

CUP for Mining

1 inch = 1,000 feet

J Stone 2.5.9

Agricultural



WOODS ROBINS TRUST
A-0529 McCampbell Longley
Property ID 130699
Geographic ID 0549250000
192.831 Acres
Vol. 5632 / Page 741



119 Acre C.U.P.

192.831 Acres
C.U.P. Area
119 Acres

NOTES:

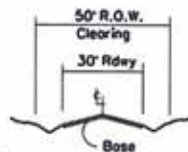
1. No proposed signs since only mining personnel will be present.
2. No setbacks or easements within C.U.P. property boundaries.
3. No Landscaping or fencing proposed.

Texas Commission on Environmental Quality

4. Air Quality Registration No. 87255
5. Customer Reference No. CN60231896
6. Regulation Entity No. RN105672588

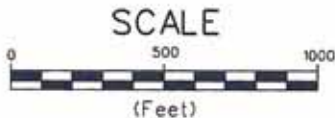
Corps
Land

State Highway 36



Proposed Access Road

Agricultural



PROJECT: MOUNTAIN COUNTY - 480232007 - AG 331
 MICHAEL J. LONGLEY (OWNER) - 480232007 - AG 331



PLANNING & ZONING COMMISSION MEMORANDUM

03/16/09
Item 3
Regular Agenda
Page 1 of 5

APPLICANT:

Mining, Inc. c/o Thomas Parker for Paul Mark Woods Trust

DEPT. /DIVISION SUBMISSION & REVIEW:

Tim Dolan, AICP, Planning Director

ITEM DESCRIPTION: Z-FY-09-14: Hold a public hearing to discuss and recommend action for a Conditional Use Permit for mining and mining storage on 119± acres which includes a 26.3± acre tract of land in the Temple City Limits, described as Outblock 2088-A, City Addition, to be zoned Light Industrial District, and the City Council's review of the applicant's request for permanent zoning for a 92.7± acre tract of land out of the McCampbell Langley Survey, Abstract No. 529 and the Elias Tuttle Survey, Abstract No. 835 upon annexation for the Light Industrial District with a Conditional Use Permit for mining and mining storage to be located in the vicinity of the southwest corner of SH 36 (Airport Road) and North SH 317.

STAFF RECOMMENDATION: The annexation and zoning for Light Industrial (LI) for this area will have its second reading and approval April 2, 2009 by the City Council. Today, the Commission should consider a conditional use permit for mining and mining storage of limestone for the subject property located off Airport Highway, north of SH 317. The site is the location of an existing limestone quarry. The applicant has requested the owner's permission to continue mining the area. Staff requests the Commission recommend approval of the Staff's conditions. The applicant agrees.

ITEM SUMMARY: City Staff will recommend a Light Industrial (LI) zoning for this area with a Conditional Use Permit (CUP) for mining and mining storage, with the site plan to be adopted as part of the ordinance subject to the conditions discussed below. The site plan will also be adopted which shows the locations where the quarrying, storage, rock crushing, silt fences, berms, etc will be placed. If for example, an applicant wanted to quarry material outside of the adopted plan area, an applicant would be required to apply again for the CUP process. The remaining area being annexed, outside of the quarry will be zoned Agriculture (A).

The site characteristics for the subject property are characterized as relatively sloping (0-7% slope) to sloping toward the east (35-40% slope). The proposed rock crusher, mining and mining storage area and activities would be located on the relatively flat portion of the site. There are currently past stockpiles located onsite. A scale house (450 square feet) would be placed on-site north of the access road from State Highway 36 for truck access entering and leaving the site.

The applicant will use the mine for a source of needed construction materials in the Bell County area. The mining and extraction operations will be sited and designed to minimize conflicts with adjacent land uses, and to have a minimal impact on critical habitats, natural vistas, cultural resources and the environment. The applicant has also applied for an air quality permit with the Texas Commission on Environmental Quality, Registration Number 87255, customer number CN602311896 and the regulation entity number RN105672588.

The applicant will use existing topography to screen and minimize blasting, noise, dust, vibration, and visual impacts when developing new mineral extraction sites. Where heavy equipment, mines and pits cannot be effectively screened from residential and/or commercial areas, a combination of existing topography, berms and landscaping may be utilized to screen the site. Adequate screening and buffering will be maintained between adjacent land uses and the mining site, and will be the responsibility of the new or expanded mineral extraction development. Here a vertical wall which measures 12± vertical feet will screen the rock crusher, stockpile area and mining area from SH 36.

The applicant will need to ensure that mining sites and associated off-site stockpiles are maintained during the life of the operation, particularly in regard to the control of noxious weeds and dust. Any reclamation of mining and extraction sites is an integral part of all mining operations, and will be required and completed in a manner that will encourage future land uses that are compatible with local comprehensive plans. All road construction projected shall meet or exceed the minimum requirements for storm water runoff.

The Planning and Zoning Commission must consider the following items when reviewing a conditional use permit (CUP):

1. The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity;
2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
4. The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development;
5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Surrounding Property and Uses

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West	Vacant – area being annexed as Agriculture (A)

Future Land Use & Character Plan – The map shows this area as Agriculture (A). When the City Council adopted the Plan, Staff would revise the map twice with updates. A portion of this area will be shown as industrial for the mining and mining storage area, provided the approval of the CUP.

This area was part of a ‘Development Agreement’ when the City Council annexed area near here in 2009, which began in 2008. This area contained more than 10 acres, and had an agriculture classification since the mine was inactive. By practice the Legal Department offered development agreements to property owners who owned more than 10 acres, and the county assessor’s office had classified it as agriculture or wildlife management. The same agreement states if a property owner changes the use of its land, here the continuation of mining, that it would trigger annexation. The property owner sought voluntary annexation, leasing the area to continue the mine.

Thoroughfare Plan – This application conforms to the Thoroughfare Plan for access to State Highway 36 (SH36) designated as a Freeway.

Staff Suggested Conditions of Approval Staff recommends approval of Z-FY-09-14 subject to:

- 1) The project shall proceed in substantial conformance with the plans and application materials submitted February 2, 2009, amended on March 9, 2009, and March 12, 2009 and on file except as amended by the conditions herein. The DRC deemed it complete March 9, 2009.
- 2) The field notes for the area shall be adopted as Exhibit ‘A’.
- 3) The mining and mining storage shall be limited to the area shown on the site plan, adopted as Exhibit ‘B’.
- 4) The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 5) The maximum height of stockpiles shall not exceed 30 feet.
- 6) All operations will be conducted in a manner that complies the maximum permissible environmental noise levels specified of 75 decibels received stated in Zoning Ordinance Section 7-300 (Noise) and the City of Temple Code of Ordinances four hours of operation to be Monday-through Friday, 7:00 a.m. to 6:00 p.m.
- 7) Blasting shall be done by permit and in accordance with regulations found in Chapter 12 of the City of Temple Code of Ordinances.

- 8) Site illumination shall be designed and located so that lighting sources are not directly visible from the highway or residential uses. Lighting shall not cast glare on adjacent properties.
- 9) A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house.
- 10) An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state and or federal regulations.
- 11) Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.
- 12) The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 13) During construction, all work associated with the proposed project shall occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday.
- 14) Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.
- 15) Private improvements shall be clearly shown and labeled as such on each sheet of the construction plans. The note below shall appear on the cover sheet of the construction plans for private improvements:

The City of Temple shall not be responsible for the maintenance of roadway and appurtenant improvements, including storm drainage structures and pipes for all roadways in the development, specifically driveways and private accesses.
- 16) The applicant shall be responsible for preventing mud, dirt and debris from the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties. One access point for construction (via SH 36) shall be approved by the Texas Department of Transportation (TXDOT).
- 17) The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.
- 18) Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in conformance with city code and geotechnical assessments. Monitoring shall be required as determined appropriate by the engineer or geologist of record and in accordance with the Comprehensive Road Standards (DCC) with final reports submitted to the City of Temple Fire Department.
- 19) A final storm water drainage report and plan prepared by a professional engineer licensed in the State of Texas shall be submitted to and approved by City of Temple construction services prior to construction. The storm water plan shall have supporting calculations and, in the event that a computer program is used as an aid in the analysis, all input data and variables used shall be clearly identified. This includes but is not necessarily limited to: design storm unit hydrograph data points; basin data & time of concentration calculation; runoff hydrograph; reach data; storage / infiltration data; and a summary of the hydraulic design parameters for each storm water conveyance and detention / infiltration element proposed on the plans. Final "as built" drawings and material test reports shall be delivered to the City of Temple Construction Services upon completion.
- 20) The storm water facilities shall be owned and maintained by the property owner.

21) The property owner and lessee shall be responsible for the long-term operation, maintenance, repair and replacement of the storm water facility, and that the City of Temple will not be responsible for the maintenance of the storm water facility.

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map and Buffer Map
Contrasting Map between Area Annexed – A & LI Zoning
Site Plan

**EXCERPTS FROM THE
PLANNING & ZONING COMMISSION MEETING**

**MONDAY, MARCH 16, 2009
(REVISED ON APRIL 7, 2009)**

ACTION ITEMS

Z-FY-09-14: Hold a public hearing to discuss and recommend action for a Conditional Use Permit for mining and mining storage on 119± acres which includes a 26.3± acre tract of land in the Temple City Limits, described as Outblock 2088-A, City Addition, to be zoned Light Industrial District, and the City Council's review of the applicant's request for permanent zoning for a 92.7± acre tract of land out of the McCampbell Langley Survey, Abstract No. 529 and the Elias Tuttle Survey, Abstract No. 835 upon annexation for the Light Industrial District with a Conditional Use Permit for mining and mining storage to be located in the vicinity of the southwest corner of SH 36 (Airport Road) and North SH 317 (Applicant: Thomas Parker for Paul Mark Woods Trust).

Mr. Tim Dolan, Planning Director, presented the background to the Commission and stated the Commission should consider a conditional use permit (CUP) for mining and mining storage of limestone for the subject property located off Airport Highway, north of SH 317. The site is the location of an existing limestone quarry. The applicant had requested the owner's permission to continue mining the area.

Mr. Dolan stated if the CUP was recommended for approval tonight, it would appear on the City Council agenda on April 2nd for the Ordinance's first reading followed by a second reading on April 16th.

Mr. Dolan stated this would be the site plan that would be adopted as **Exhibit "B"** showing the proximity of the facilities being planned by the applicant which included the roadway access from SH 36 with the area being planned for the storage area, the mining area, detention pond, and several fences and berms. The Commission must consider several items when reviewing a CUP.

Mr. Dolan went on to state the conditions:

1. The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity;
2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;

3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
4. The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development;
5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Mr. Dolan also stated there are 21 stipulations being recommended by Staff for the CUP and they've been shown to the applicant and no questions have been raised by the applicant.

1. The project shall proceed in substantial conformance with the plans and application materials submitted February 2, 2009, amended on March 9, 2009, and March 12, 2009 and on file except as amended by the conditions herein. The DRC deemed it complete March 9, 2009.
2. The field notes for the area shall be adopted as **Exhibit 'A'**.
3. The mining and mining storage shall be limited to the area shown on the site plan, adopted as **Exhibit 'B'**.
4. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
5. The maximum height of stockpiles shall not exceed 30 feet.
6. All operations will be conducted in a manner that complies the maximum permissible environmental noise levels specified of 75 decibels received stated in Zoning Ordinance Section 7-300 (Noise) and the City of Temple Code of Ordinances four hours of operation to be Monday-through Friday, 7:00 a.m. to 6:00 p.m.
7. Blasting shall be done by permit and in accordance with regulations found in Chapter 12 of the City of Temple Code of Ordinances.

8, Site illumination shall be designed and located so that lighting sources are not directly visible from the highway or residential uses. Lighting shall not cast glare on adjacent properties.

9. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house.

10. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state and or federal regulations.

11. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.

12. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

13. During construction, all work associated with the proposed project shall occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday.

14. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.

15. Private improvements shall be clearly shown and labeled as such on each sheet of the construction plans. The note below shall appear on the cover sheet of the construction plans for private improvements:

The City of Temple shall not be responsible for the maintenance of roadway and appurtenant improvements, including storm drainage structures and pipes for all roadways in the development, specifically driveways and private accesses.

16. The applicant shall be responsible for preventing mud, dirt and debris from the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties. One access point for construction (via SH 36) shall be approved by the Texas Department of Transportation (TXDOT).

17. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.

18. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in

conformance with city code and geotechnical assessments. Monitoring shall be required as determined appropriate by the engineer or geologist of record and in accordance with the Comprehensive Road Standards (DCC) with final reports submitted to the City of Temple Fire Department.

19. A final storm water drainage report and plan prepared by a professional engineer licensed in the State of Texas shall be submitted to and approved by City of Temple construction services prior to construction. The storm water plan shall have supporting calculations and, in the event that a computer program is used as an aid in the analysis, all input data and variables used shall be clearly identified. This includes but is not necessarily limited to: design storm unit hydrograph data points; basin data & time of concentration calculation; runoff hydrograph; reach data; storage / infiltration data; and a summary of the hydraulic design parameters for each storm water conveyance and detention / infiltration element proposed on the plans. Final "as built" drawings and material test reports shall be delivered to the City of Temple Construction Services upon completion.

20. The storm water facilities shall be owned and maintained by the property owner.

21. The property owner and lessee shall be responsible for the long-term operation, maintenance, repair and replacement of the storm water facility, and that the City of Temple will not be responsible for the maintenance of the storm water facility.

Mr. Dolan stated a total of five letters were sent out to property owners in the vicinity. Only two letters were received back in opposition to this request. The Commission was given copies of these responses prior to the meeting.

Mr. Dolan stated Staff requested the Commission to recommend approval of the CUP with the Staff's recommendations to which the applicant agreed.

Chair Pope opened the public hearing for comment.

Mr. Robert Boop of 10990 W. Highway 36 approached the Commission. Mr. Boop is a property owner in the area and stated this project will be nothing more than leaving a 120 acre hole in the ground which would never be repaired or used for anything else. Mr. Boop opposed this request due to the desolation and destruction he felt it would bring to the area.

Mr. Mark Forbes of 10044 State Highway 36 approached the Commission to speak. Mr. Forbes stated a few years back another pit had been opened and when some of the blasting occurred it created cracks in his sheetrock which Mr. Forbes spent approximately \$4,000 out of his own pocket to have repaired.

Mr. Forbes was also concerned the mining would end up extending all the way up to the highway and the amount of traffic and dust this would create.

Commissioner Talley asked Mr. Forbes about his written concern regarding the oil and grease from the crusher and trucks affecting the drinking water. Mr. Forbes stated when it rains, it all goes to Lake Belton which is where the area gets their water. Mr. Forbes did admit he had never tasted any tainted water himself but was just looking at possibilities down the road.

Mr. Keith Debault of P.O. Box 32, Rockdale, Texas addressed the Commission. to respond to some of the issues raised. In reference to spillage or contamination Mr. Debault stated their equipment was fitted with "spill kits" which are absorbent pads and buckets in case a hydraulic hose broke or some type of rupture occurred. He stated all of their diesel tanks would be double lined to help prevent any kind of spills. It is a law that if a 5 or 10 gallon spill occurs, it has to be cleaned up properly.

Mr. Debault also stated the mining operation would be looking at working perhaps 3-5 acres per year. When asked by the Commission where the mining would occur exactly, Mr. Tim Dolan responded they would not expand outward than what is shown on the current site plan without coming through the CUP process again. Mr. Dolan stated that was why Staff recommended the site plan be adopted as **Exhibit "B."**

Regarding the dynamite issues, Mr. Debault stated they would put up seismographs to measure the waves but dynamiting can be done very close to anything without any type of damage, which has been proven over the years. The people they use for blasting are insured and well trained and they try to discourage any blasting during high humidity or cloudy days.

Chair Pope asked Mr. Debault about keeping down the dust and noise. Mr. Debault responded they would have misters at each transfer point for dust and a water truck would be on-site in the areas being worked in. With the newer equipment and the type of engines they have now, the noise should not be a problem.

Mr. Tom Parker, Engineer from Mine Services, P.O. Box 32, Rockdale, Texas approached the Commission. Mr. Parker stated he did not want to leave anybody the idea that this was the only area which would be worked on. Mr. Parker offered to submit a revised map showing a year by year plan in areas where they anticipated doing work. Mr. Dolan explained why the site plan currently submitted should be adopted as part of the plan to show that it would occur only in this area. If expansion were required, the applicant would have to go through the CUP process again which included proper newspaper notification(s), contact of all pertinent property owners, and another hearing. Mr. Parker agreed to proceed as is.

Mr. Damon Boniface, 5038 Lakeaire Circle, Temple, Texas approached the Commission. Mr. Boniface manages a surface water treatment plant located on Lake Belton and spoke regarding the pollution and/or contamination issue raised. Mr. Boniface stated that State agencies have stringent rules and regulations for compliance should problems or violations occur. Once a violation occurred, a time period is allowed to cure or fix that violation. If the violation is fixed during that given time period, it is not recorded and will not show up on any records.

There being no further speakers, discussion or questions, Chair Pope closed the public hearing.

Commissioner Hurd made a motion to approve **Z-FY-09-14** request from county land to Light Industrial (LI) with the CUP for mining and mining storage subject to City Council annexing the land and subject to Staff's 21 recommendations and that the request complied with the Future Land Use Plan, the Thoroughfare Plan and water services. Commissioner Secrest made the second.

Motion passed. (4:3)

AYE:

Commissioner Barton
Commissioner Dusek
Commissioner Secrest
Commissioner Hurd

NAY:

Vice-Chair Pilkington
Chair Pope
Commissioner Talley

ABSENT:

Commissioner Susan Luck
Commissioner Derek Martin

**EXCERPTS FROM THE
PLANNING & ZONING COMMISSION MEETING**

MONDAY, APRIL 6, 2009

ACTION ITEMS

Z-FY-09-14: Discuss and make recommendation on a revised site plan for a Conditional Use Permit (CUP) for mining and mining storage on a 119± acre tract of land zoned Light Industrial District (LI) located in the vicinity of the southwest corner of SH 36 (Airport Road) and North SH 317, out of the McCampbell Langley Survey, Abstract No. 529 and the Elias Tuttle Survey, Abstract No. 835 (Applicant: Thomas Parker for Paul Mark Woods Trust).

Mr. Tim Dolan, Planning Director, stated as part of the public hearing discussed April 2nd with the City Council. The applicant's representative testified about a revised site plan to be used and on April 3rd the City Attorney and City Manager offices asked to acquiesce to the City Council's ideas for the Commission to review a revised site plan. None of the 21 conditions changed and they are as follows:

1. The project shall proceed in substantial conformance with the plans and application materials submitted February 2, 2009, amended on March 9, 2009, and March 12, 2009 and on file except as amended by the conditions herein. The DRC deemed it complete March 9, 2009.
2. The field notes for the area shall be adopted as **Exhibit 'A'**.
3. The mining and mining storage shall be limited to the area shown on the site plan, adopted as **Exhibit 'B'**.
4. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
5. The maximum height of stockpiles shall not exceed 30 feet.
6. All operations will be conducted in a manner that complies the maximum permissible environmental noise levels specified of 75 decibels received stated in Zoning Ordinance Section 7-300 (Noise) and the City of Temple Code of Ordinances four hours of operation to be Monday-through Friday, 7:00 a.m. to 6:00 p.m.
7. Blasting shall be done by permit and in accordance with regulations found in Chapter 12 of the City of Temple Code of Ordinances.

8, Site illumination shall be designed and located so that lighting sources are not directly visible from the highway or residential uses. Lighting shall not cast glare on adjacent properties.

9. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house.

10. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state and or federal regulations.

11. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.

12. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

13. During construction, all work associated with the proposed project shall occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday.

14. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.

15. Private improvements shall be clearly shown and labeled as such on each sheet of the construction plans. The note below shall appear on the cover sheet of the construction plans for private improvements:

The City of Temple shall not be responsible for the maintenance of roadway and appurtenant improvements, including storm drainage structures and pipes for all roadways in the development, specifically driveways and private accesses.

16. The applicant shall be responsible for preventing mud, dirt and debris from the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties. One access point for construction (via SH 36) shall be approved by the Texas Department of Transportation (TXDOT).

17. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.

18. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in

conformance with city code and geotechnical assessments. Monitoring shall be required as determined appropriate by the engineer or geologist of record and in accordance with the Comprehensive Road Standards (DCC) with final reports submitted to the City of Temple Fire Department.

19. A final storm water drainage report and plan prepared by a professional engineer licensed in the State of Texas shall be submitted to and approved by City of Temple construction services prior to construction. The storm water plan shall have supporting calculations and, in the event that a computer program is used as an aid in the analysis, all input data and variables used shall be clearly identified. This includes but is not necessarily limited to: design storm unit hydrograph data points; basin data & time of concentration calculation; runoff hydrograph; reach data; storage / infiltration data; and a summary of the hydraulic design parameters for each storm water conveyance and detention / infiltration element proposed on the plans. Final "as built" drawings and material test reports shall be delivered to the City of Temple Construction Services upon completion.

20. The storm water facilities shall be owned and maintained by the property owner.

21. The property owner and lessee shall be responsible for the long-term operation, maintenance, repair and replacement of the storm water facility, and that the City of Temple will not be responsible for the maintenance of the storm water facility.

Mr. Dolan stated this item is still scheduled for the April 16th City Council meeting for a second reading. He went through the background information again for the Commission's review and stated the plan before them tonight was what the applicant requested to be considered at the City Council meeting on April 2nd, which City Council then asked the P&Z Commission to review and make a recommendation on.

Mr. Dolan stated that the previous CUP notices mailed out totaled 5 notices, 2 notices denied approval.

Chair Pope stated the basic changes to this site plan are the additional future sites for the crushing operation and Mr. Dolan confirmed.

No public hearing is required for this item but the Commission can take comments from the public, if desired.

Mr. Lloyd Thomas approached the Commission and stated on the April 6th drawing it sets forth more of the buffer area along the highway that would be maintained to ensure the mining operation stayed out of that area. The previous drawing on March 16th did not show this. This is a better presentation of what will transpire at the mining operation.

Commissioner Barton asked if the City Council already voted on this and Mr. Thomas said yes. Mr. Dolan stated the CUP was approved on the first reading on April 2nd, and the City Council asked that the Commission make a recommendation on the site plan only.

Mr. Robert Boop, 10990 W. Highway 36, approached the Commission and requested again that the Commission deny this item. It would become a 120 acre hole that will not benefit anyone and only detrimental to the area. Mr. Boop reiterated his previous concerns about this matter.

After all speakers were finished a discussion followed by the Commission regarding the recommendation on the revised site plan only. Commissioner Barton stated if he had seen this before and knew the site plan would be expanded at the original meeting, he would probably have not voted the way he did at the original meeting on March 16th.

Mr. Dolan stated he brought that issue up with City Council and Trudi Dill, Deputy City Attorney, approached the dais and stated "ultimately the outcome of the CUP is determined by the City Council." Mr. Dolan stated the City Council voted on the CUP and 21 conditions but the question from City Council was the recommendation on the revised site plan.

Ms. Dill stated that the Planning Department originally understood the first site plan would limit the mining area to the smaller area but the applicant was saying that was not their intention.

The Commissioners all seemed in agreement it was their understanding when they voted at March 16th meeting, that if the site plan were to be expanded, the applicant would have to come back through the P&Z Commission and start the procedure over. Ms. Dill stated that this was the Planning Department's recommendation but it is not the City Council's desire.

Commissioner Talley asked if this was recommended by the P&Z Commission could the Commission also request another public hearing for the City Council and Ms. Dill and Mr. Dolan stated there was probably not sufficient time for required notification and advertising for the next meeting scheduled.

Commissioner Talley made a motion to deny the recommendation for the revised site plan on the CUP and Commissioner Luck made the second.

Motion passed. (7:1)

With Commissioner Hurd voting against this motion and Commissioner Martin being absent.