



# STAFF REPORT

**AGENDA ITEM:** 6

**L.U.C.B. MEETING:** July 9, 2020

**CASE NUMBER:** SUP 09-217 CO (CORRES.)

**LOCATION:** Known as 10577 Millington-Arlington Road in TDEC records (municipally addressed as 10769 Millington-Arlington Road)

**OWNER/APPLICANT:** Madison-Moore TN Investments LLC / Memphis Stone & Gravel Company

**REPRESENTATIVE:** Farris Bobango Branan PLC – Homer Branan

**REQUEST:** five-year time extension for an existing sand and gravel mining operation

**AREA:** +/-74.29 acres

**EXISTING ZONING:** Conservation Agriculture (CA) and SUP 09-217 CO

## CONCLUSIONS

1. The applicant is seeking special use permit major modification to allow a five-year time extension for an existing sand and gravel mining operation.
2. The Shelby County Board of Commissioners approved a resolution granting a special use permit for a sand and gravel mining operation on Monday, January 11, 2010, see pages 35-41 of this report for said resolution. Furthermore, Condition 18 of said approval states that the special use permit shall be valid for ten years from the date when State approval is received which occurred on August 10, 2010, see page 54 of this report.
3. Sub-Section 9.6.14B of the Unified Development Code (UDC) states the following: "Excluding planned developments, special use permits shall be implemented within 24 months of final approval or such permits shall be void, unless conditioned otherwise." Furthermore, Sub-Section 9.6.14C of the UDC states: "Excluding planned developments, if a special use permit has not been in use for any consecutive 24-month period, the permit shall be void. The applicant, at the time of a request for a certificate of occupancy, shall be responsible for providing proof to the Building Official of such continued use." Note that neither apply to this site—as mentioned above, the approved special use permit subject of this request was conditioned otherwise to allow for ten-years of mining activity to begin effective with State approval which, as approved by the State, resulted in an expiration date of August 10, 2020, see pages 21-22 for additional information.
4. Under the UDC, Special Use Permits typically do not expire, as is the case with the most frequent application of the zoning tool with cell towers, hotels, car lots and the like. Time extensions by the Land Use Control Board are only required in two instances: 1) where the conditions of approval set a specific expiration, or 2) where the use is not implemented within 24 months of approval. Sub-Sections 9.6.14B and 9.6.14C apply to the latter instances; this case is an example of the former instance.
5. Note this site is one of three approved sand and gravel mining sites that abut each other and were all individually approved by the Shelby County Board of Commissioners (SUP 04-213 CO, SUP 09-217 CO, and SUP 13-206 CO).
6. The extraction of aggregate (sand and gravel) resources is a transitional land use that makes important contributions to the local economy and is vital to the growth and development of Shelby County. Sand and gravel are significant non-renewable resources and readily available and practically located supplies are essential for the construction of buildings and infrastructure on which our local community and economy are built.
7. Additionally, TDEC permit and plans renewal can be found on pages 42-47 of this report, the required bond documentation can be found on pages 48-49 of this report, and examples of Memphis Stone and Gravel sites that have been reclaimed can be found on pages 50-53 of this report.
8. This project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.

## CONSISTENCY WITH MEMPHIS 3.0

This Memphis 3.0 General is not applicable as this site is located within unincorporated Shelby County.

**RECOMMENDATION:**  
*Approval with conditions*

**GENERAL INFORMATION**

**Street Frontage:** Millington-Arlington Road +/-1235.99 curvilinear feet

**Zoning Atlas Page:** 1360 and 1365

**Parcel ID:** D0130 00115

**Existing Zoning:** Conservation Agriculture (CA) and SUP 09-217 CO

**PUBLIC NOTICE**

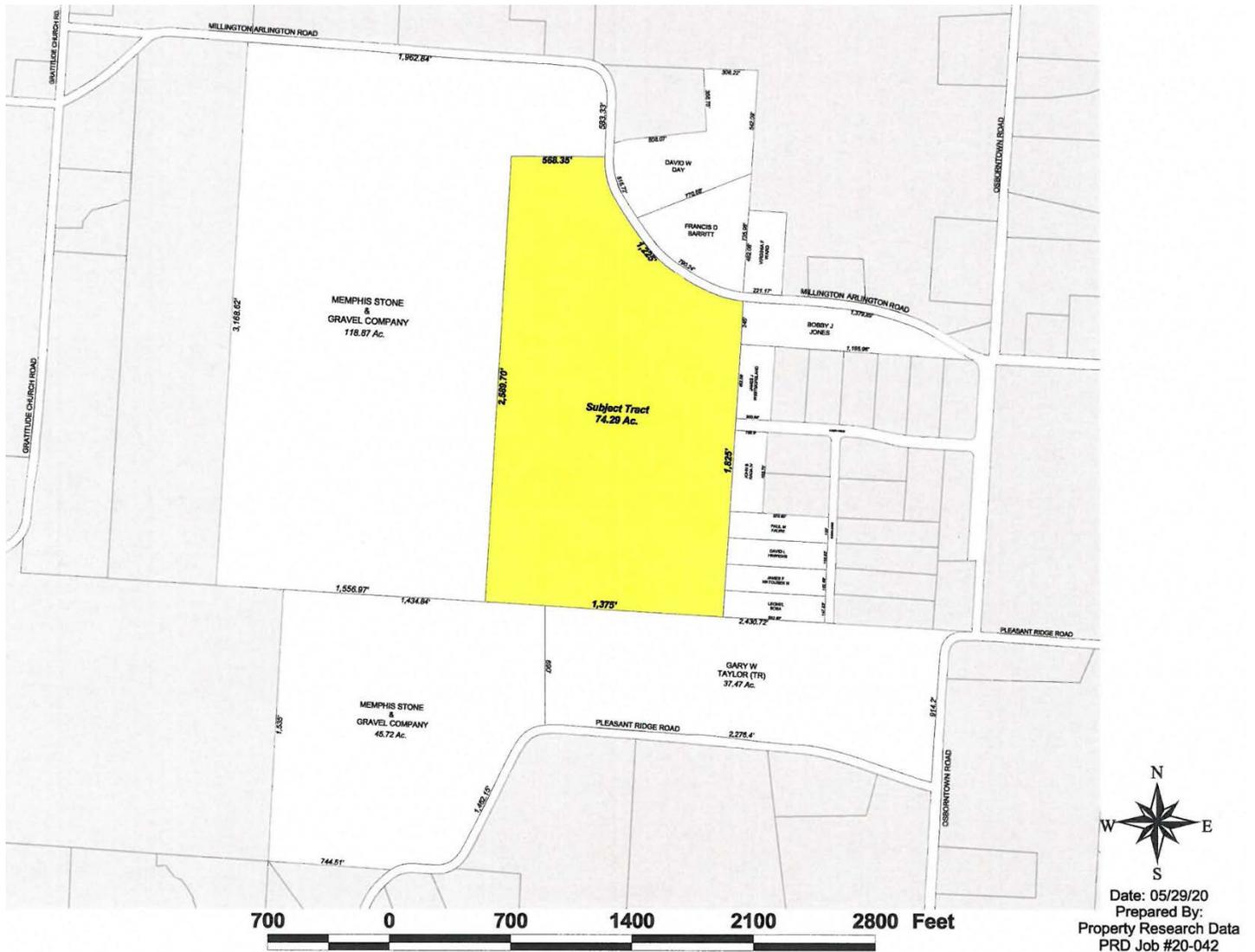
In accordance with Sub-Section 9.3.4A of the Unified Development Code, a notice of public hearing is required to be mailed and signs posted. A total of 24 notices were mailed on June 24, 2020, and a total of one sign posted at the subject property. The sign affidavit has been added to this report.

**LOCATION MAP**



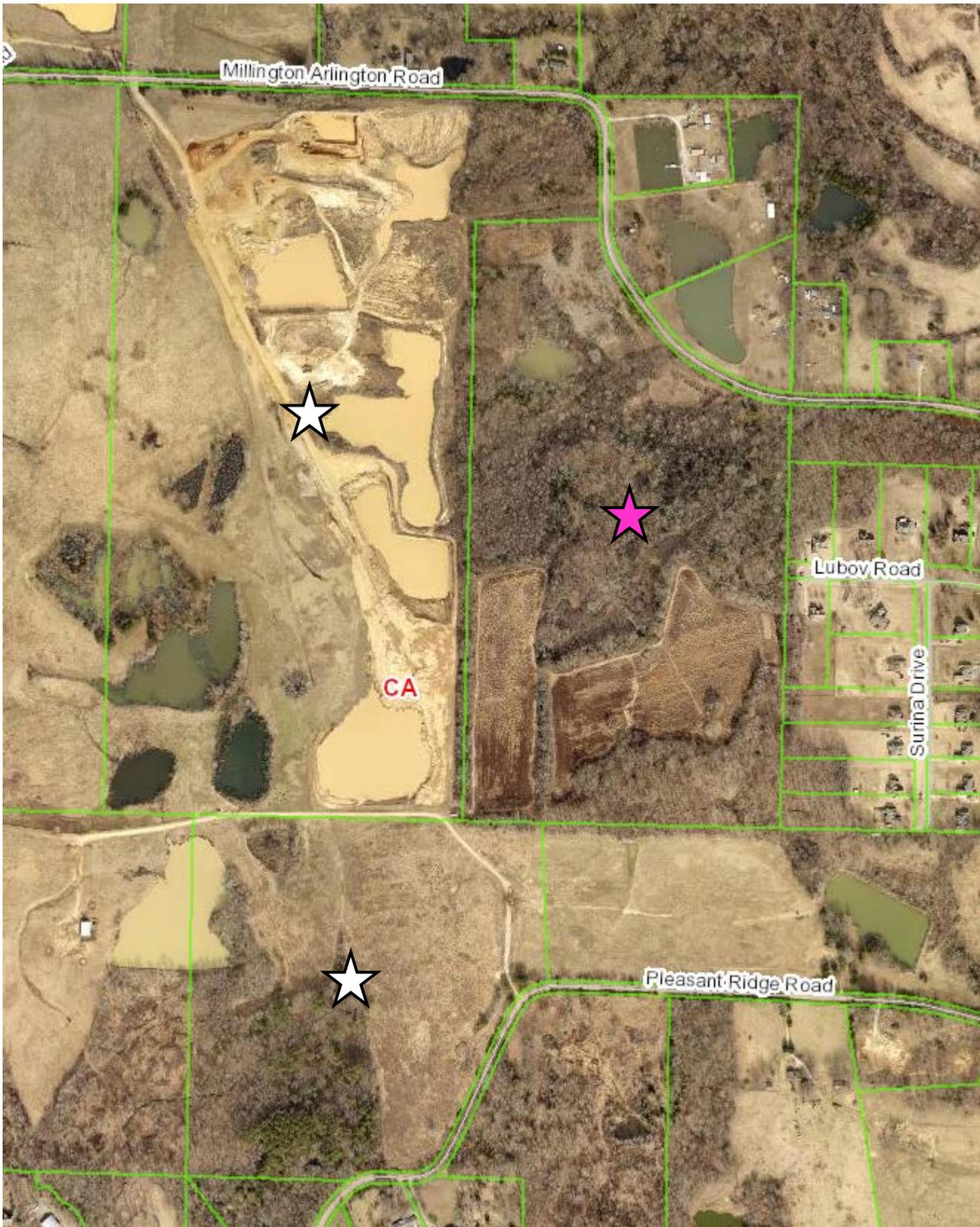
Subject property located within the pink circle, Bolton neighborhood

**VICINITY MAP**

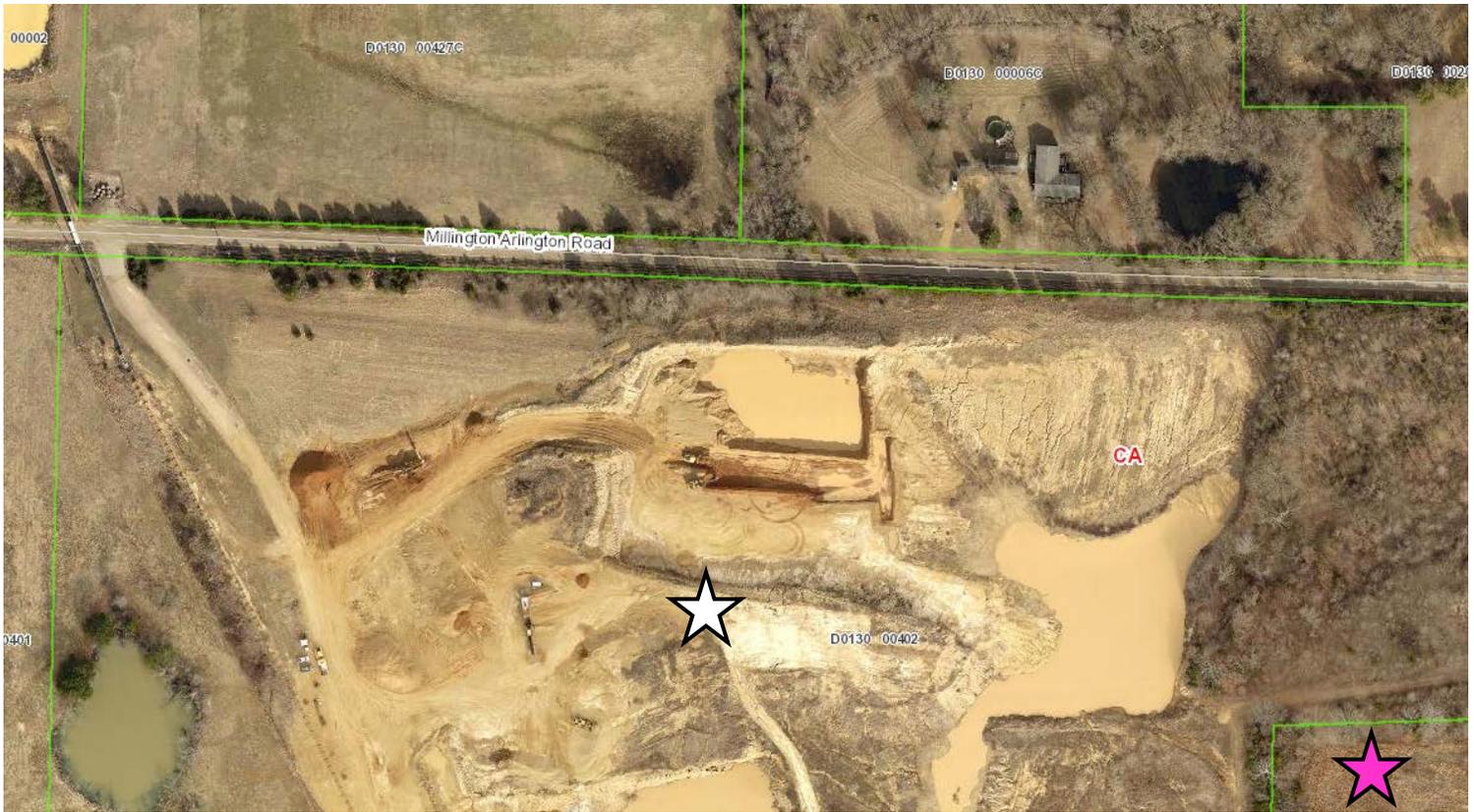


Subject property highlighted in yellow

**AERIAL IMAGERY OF LARGER MINING OPERATION AREA AND ADJACENT LAND**



The subject site of this request is indicated by a pink star and the adjacent mining operations are indicated by white stars



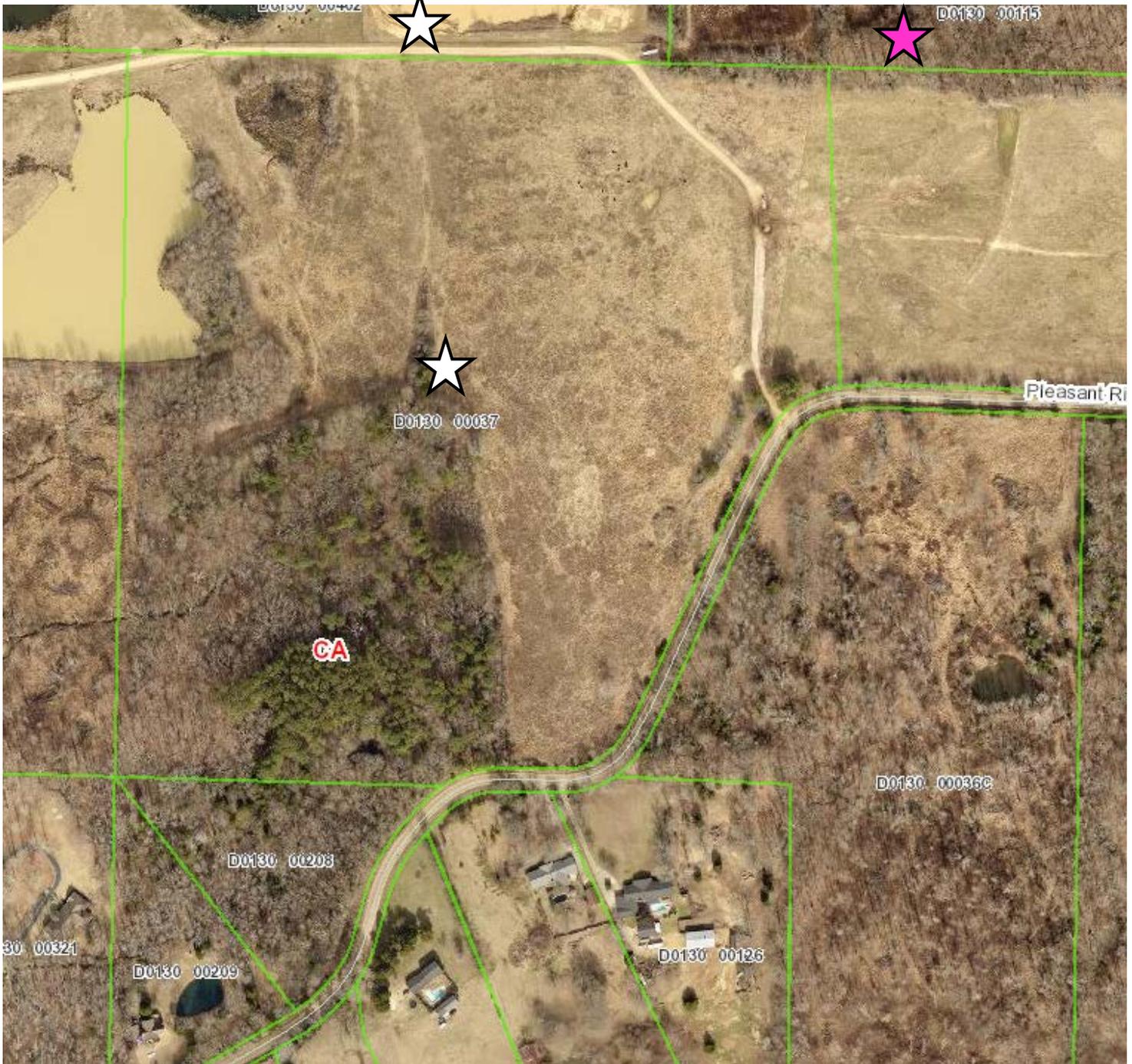
The subject site of this request is indicated by a pink star and the adjacent mining operations are indicated by a white star



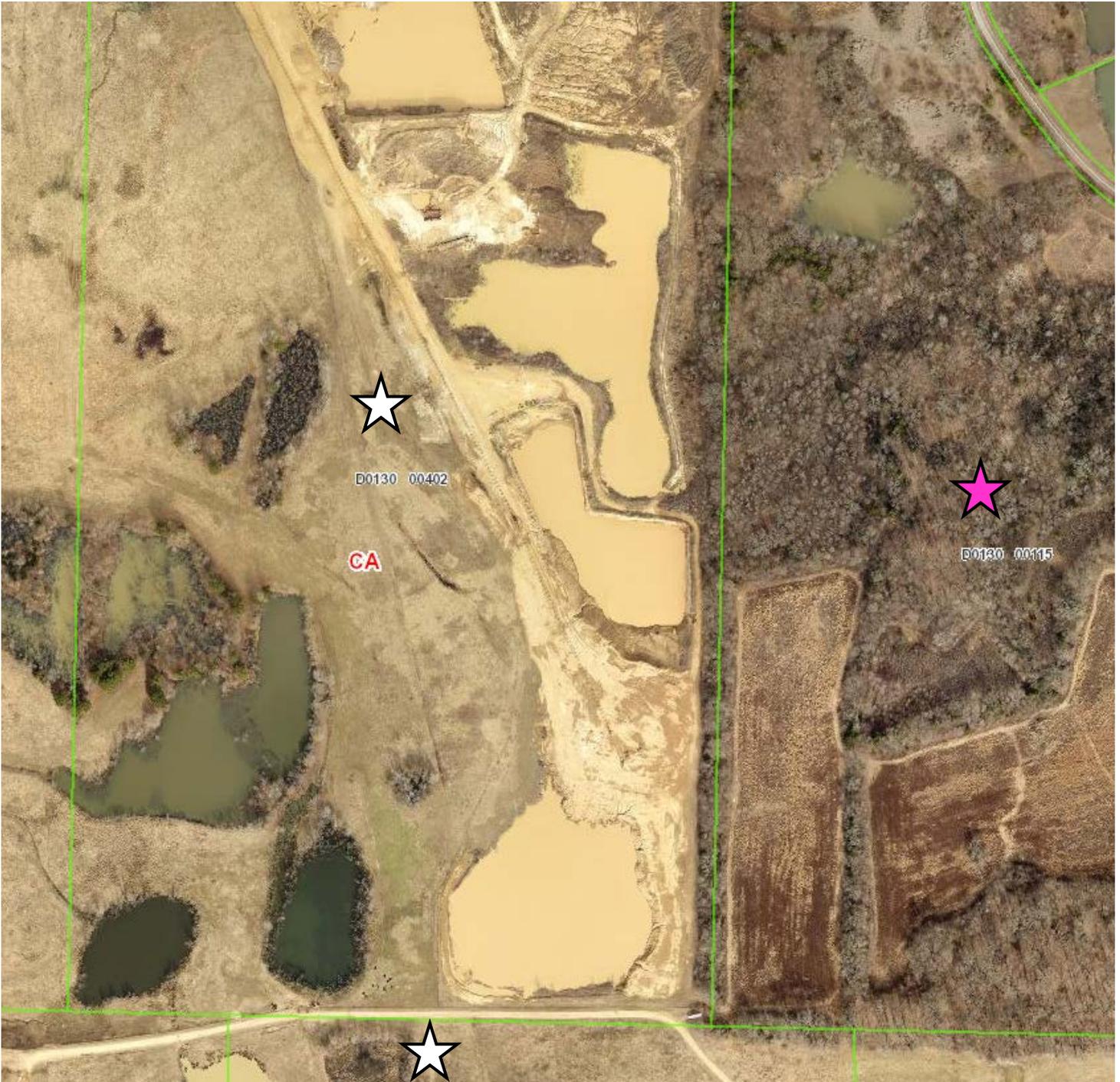
The subject site of this request is indicated by a pink star and the adjacent mining operations are indicated by a white star



The subject site of this request is indicated by a pink star

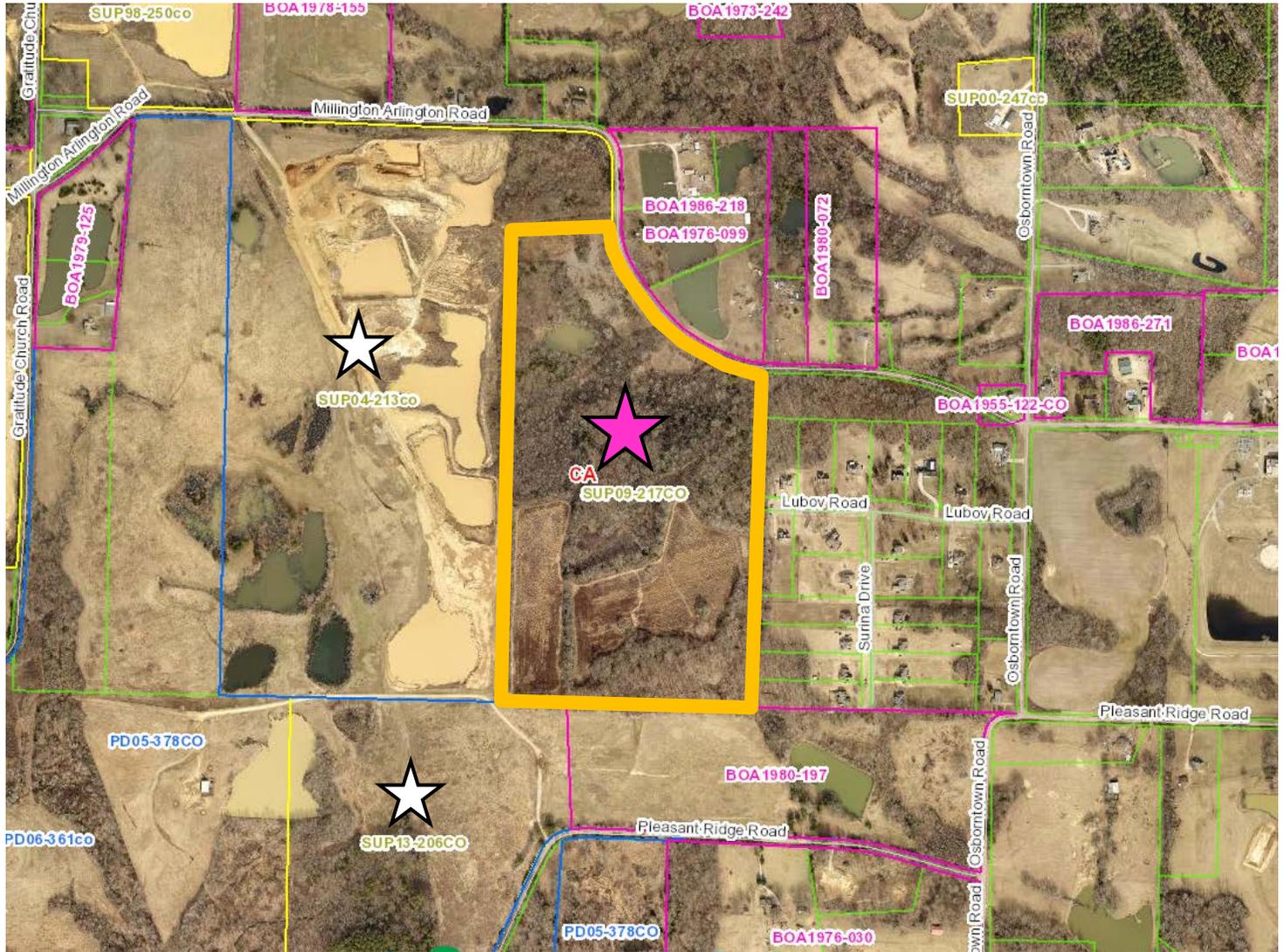


The subject site of this request is indicated by a pink star and the adjacent mining operations are indicated by white stars



The subject site of this request is indicated by a pink star and the adjacent mining operations are indicated by white stars

**ZONING MAP**



Subject property outlined in orange and indicated by a pink star and the adjacent mining operations are indicated by white stars

**Existing Zoning:** Conservation Agriculture (CA)

**Surrounding Zoning**

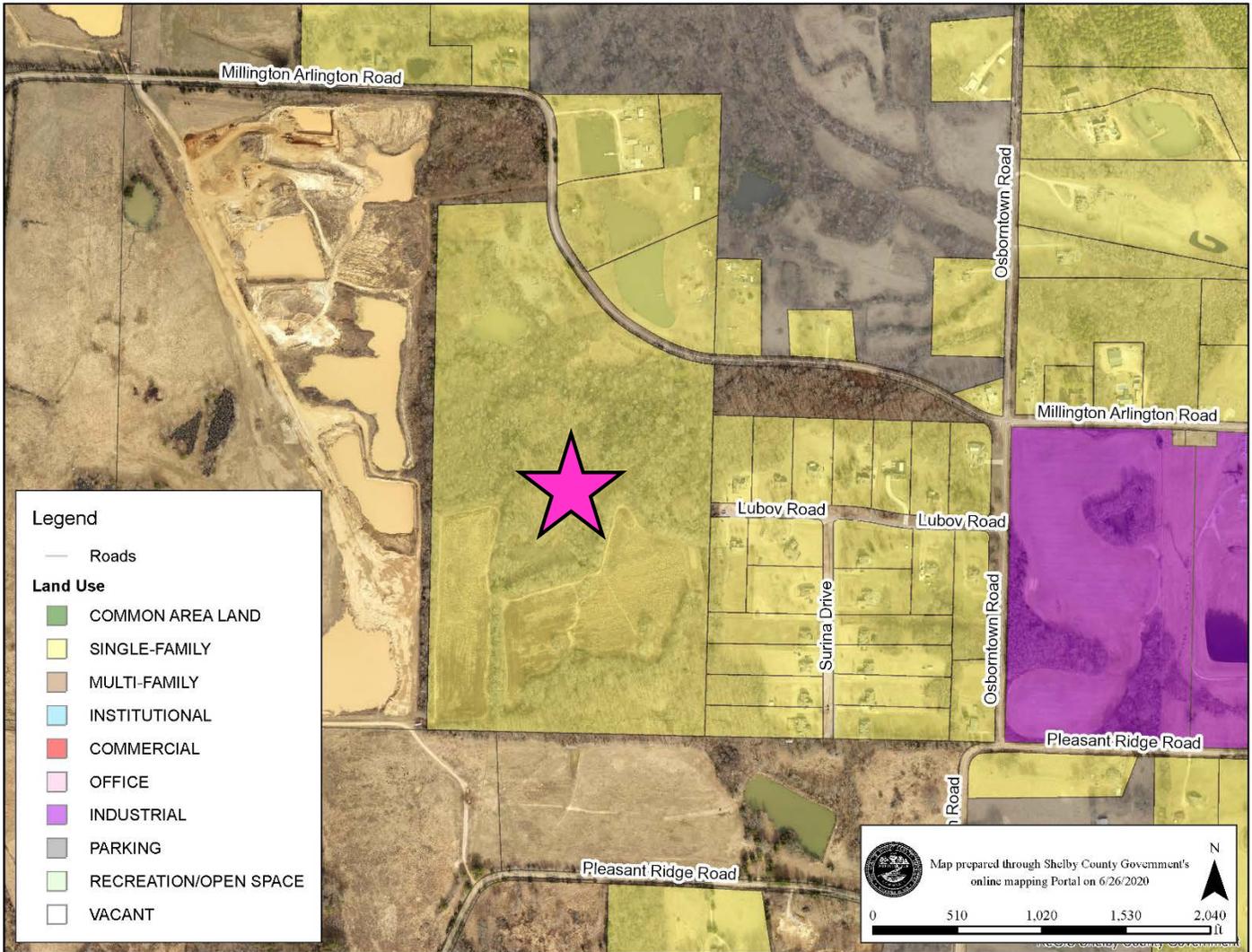
**North:** Conservation Agriculture (CA)

**East:** Conservation Agriculture (CA)

**South:** Conservation Agriculture (CA)

**West:** Conservation Agriculture (CA)

**LAND USE MAP**



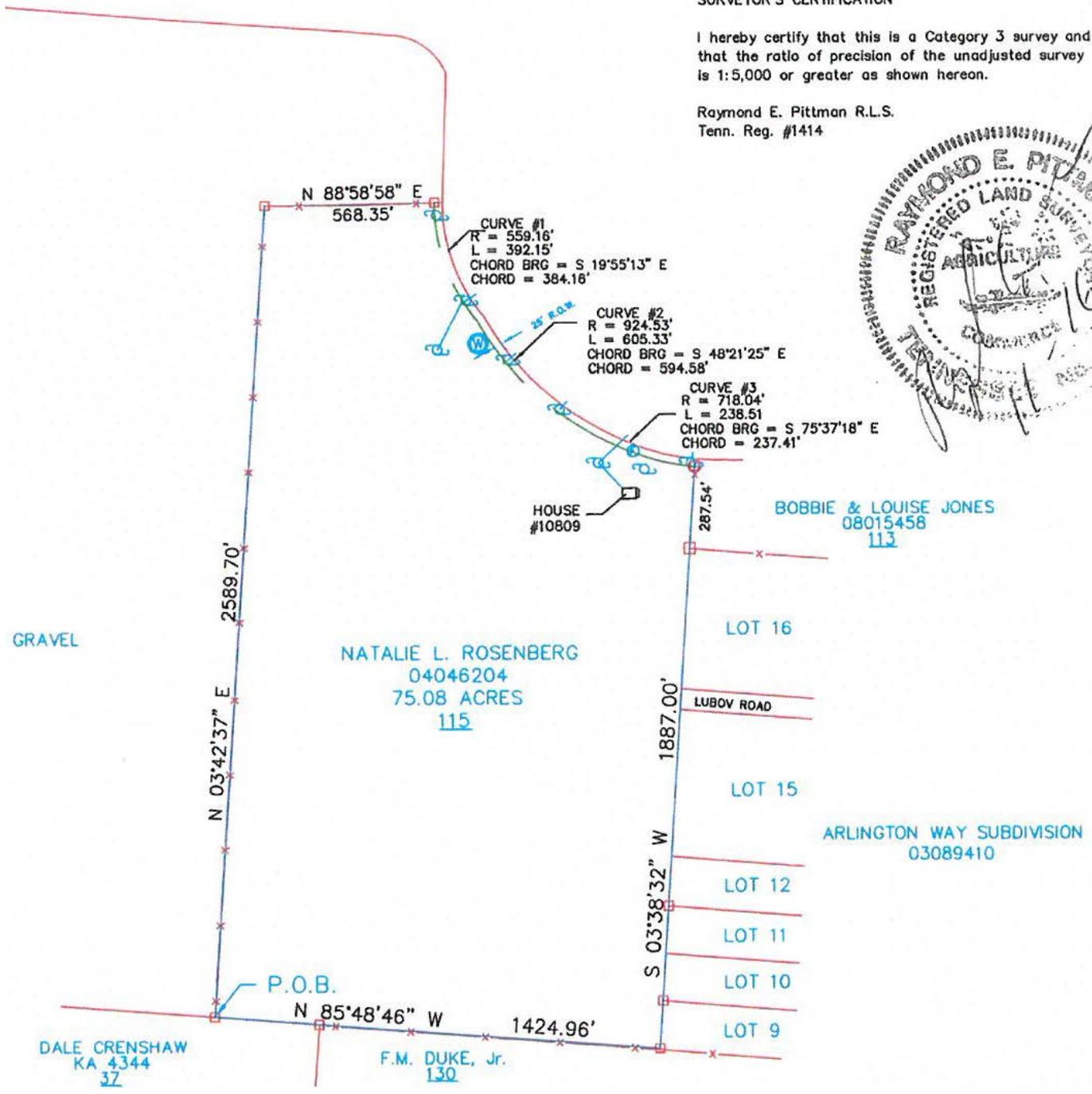
Subject property indicated by a pink star

**PLOT PLAN**

**SURVEYOR'S CERTIFICATION**

I hereby certify that this is a Category 3 survey and that the ratio of precision of the unadjusted survey is 1:5,000 or greater as shown hereon.

Raymond E. Pittman R.L.S.  
Tenn. Reg. #1414

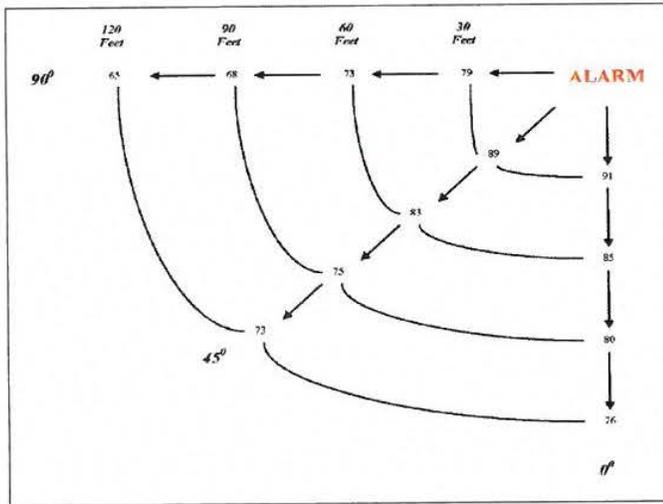


**BEST MANAGEMENT PRACTICES**

Best Management Practices



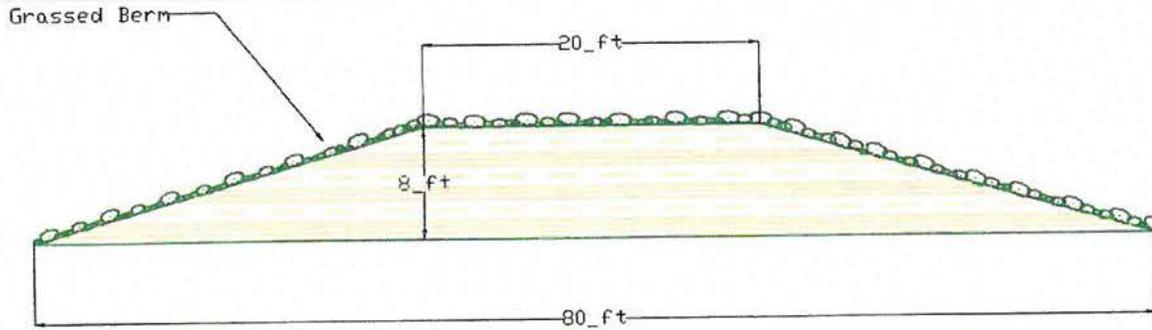
Conveyors to be used to move raw material to the wash plant.



Broadband (sbh) sound: The bbs-tek BackAlarm uses a broadband sound instead of the irritating single frequency sound of conventional reversing alarms. The source of sound is instantly locatable and is directional toward the danger zone, but dissipates rapidly when turned away. The diagram shows how sound quickly dissipates away from its source using broadband sound.

Reclamation





Typical Vegetated Berm Section

**EROSION CONTROL**

Memphis Stone & Gravel Company follows the practices described in the Tennessee Department of Environment and Conservation's *Erosion and Sediment Control Handbook*, Second Edition, 2002, for environmental compliance. Erosion and sedimentation control is accomplished using a variety of engineering controls and practices including the following techniques controls:

- Settling Ponds
- Diversion Berms
- Drainage Ditches
- Terraced Slopes
- Temporary permanent Seeding
- Silt Fence
- Check dams
- Temporary cover using mulch or seeding with grasses

**RECLAMATION AND REVEGETATION PLAN**

All topsoil is segregated from other less fertile parts of the overburden strata. Topsoil is stockpiled as berms around operational areas until it can be returned to promote re-vegetation. The berms are temporarily seeded with grass or mulched to reduce soil erosion. All high-walls are reduced to blend with the approximate original contour. Slopes are reduced to a gradient no steeper than 3 foot horizontal to 1 foot vertical (3:1).

The general plan for re-vegetation is to reestablish grass cover as quickly as possible following disturbance. This is accomplished by grading slopes then drilling in grass seed. Seeded areas are normally protected with temporary covering (e.g., blown hay, mulch) to reduce detachment during precipitation events. In some areas turf reinforced matting (TRM) may be used when ground conditions warrant. Seeded slopes will often be erumped. All discharge points will be reinforced using TRM or hard armor methods (e.g., rip rap).

Seeding for permanent re-vegetation should consist of the following characteristics:

Seeding Dates	Grass Seed Variety	Percentages
February 1 to July 1	Kentucky 31 Fescue Korean Lespedeza English Rye	50% 15% 5%
June 1 to August 15	Kentucky 31 Fescue English Rye Korean Lespedeza German Millet	55% 20% 15% 10%
April 15 to August 15	Bermuda (bulked) Annual Lespedeza	70% 30%
August 1 to December 1	Kentucky 31 Fescue English Rye White Clover	70% 20% 10%
February 1 to December 1	Kentucky 31 Fescue Crown Vetch English Rye	70% 25% 5%

Lime Fertilizer Rates will generally be applied as follows:

Initial planting- Lime: 3 tons/acre Fertilizer (13-13-13): 600 lbs/acre	For successive years prior to 100% re-vegetation Fertilizer (13-13-13): 300 lbs/acre (as needed)
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Established permanent vegetative cover will be mowed twice per year in May and September. As areas are mined a lake will be formed to compensate for the mined material. Generally, a water body 20 to 30 percent of the mined area will be developed. These lakes will be designed to be supportive of aquatic habitat and/or recreational use. Examples of reclaimed areas can be found at Memphis Stone & Gravel Company's website [www.msg gravel.com](http://www.msg gravel.com)



A dedicated water truck will be available to control dust on haul roads.

**Special Use Application- Site Plan (Sheet 2)**  
**Memphis Stone & Gravel Company**  
**Duke Property Extension**  
**Ward/Block/Parcel: D013000115**  
**74.29 Acres September 30, 2009**  
**Drawing By: AGP**

**SITE PHOTOS**

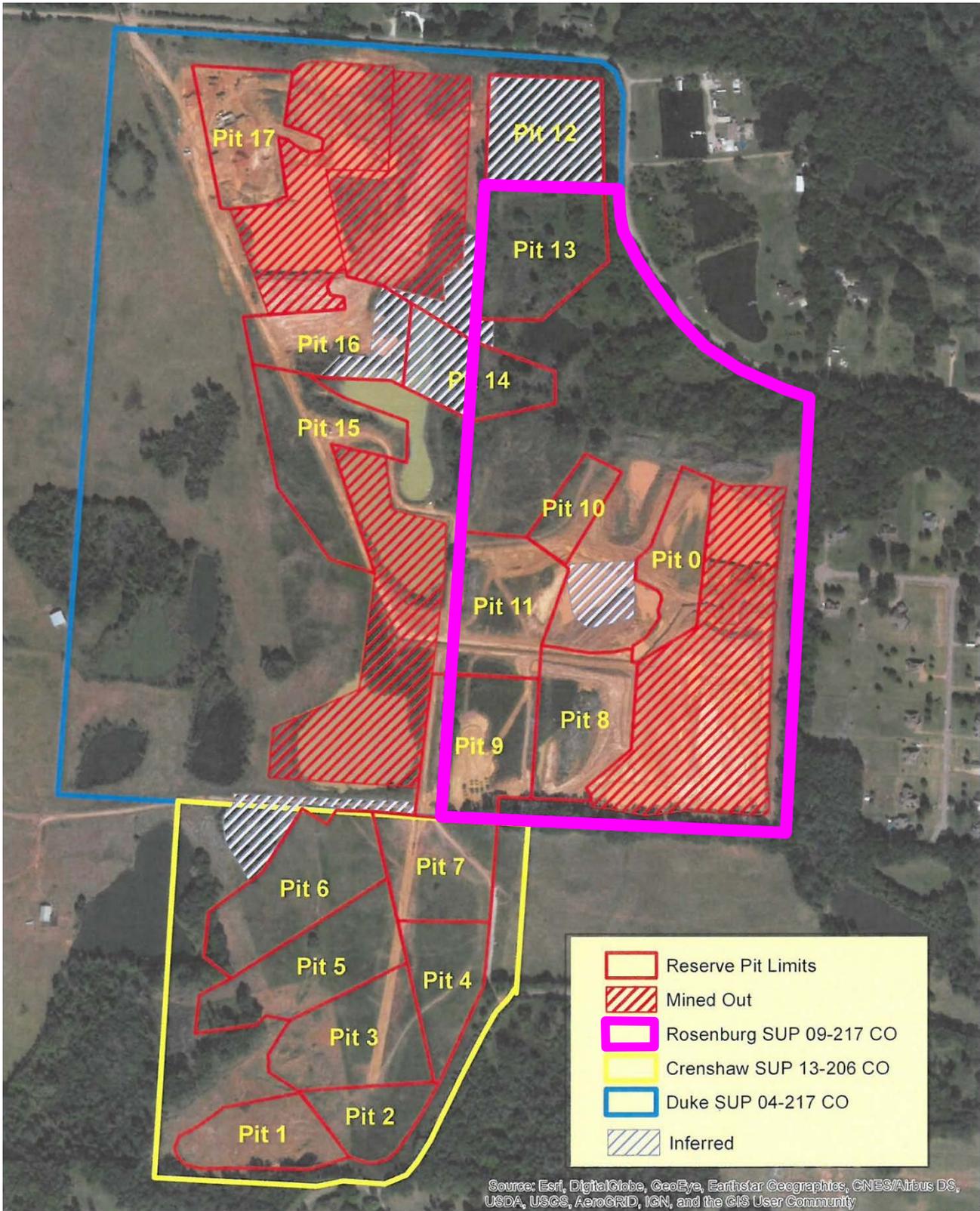




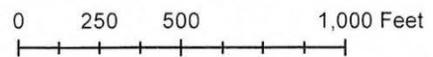


New fence added on north end on the eastern side (fence is 1500 ft. total length)

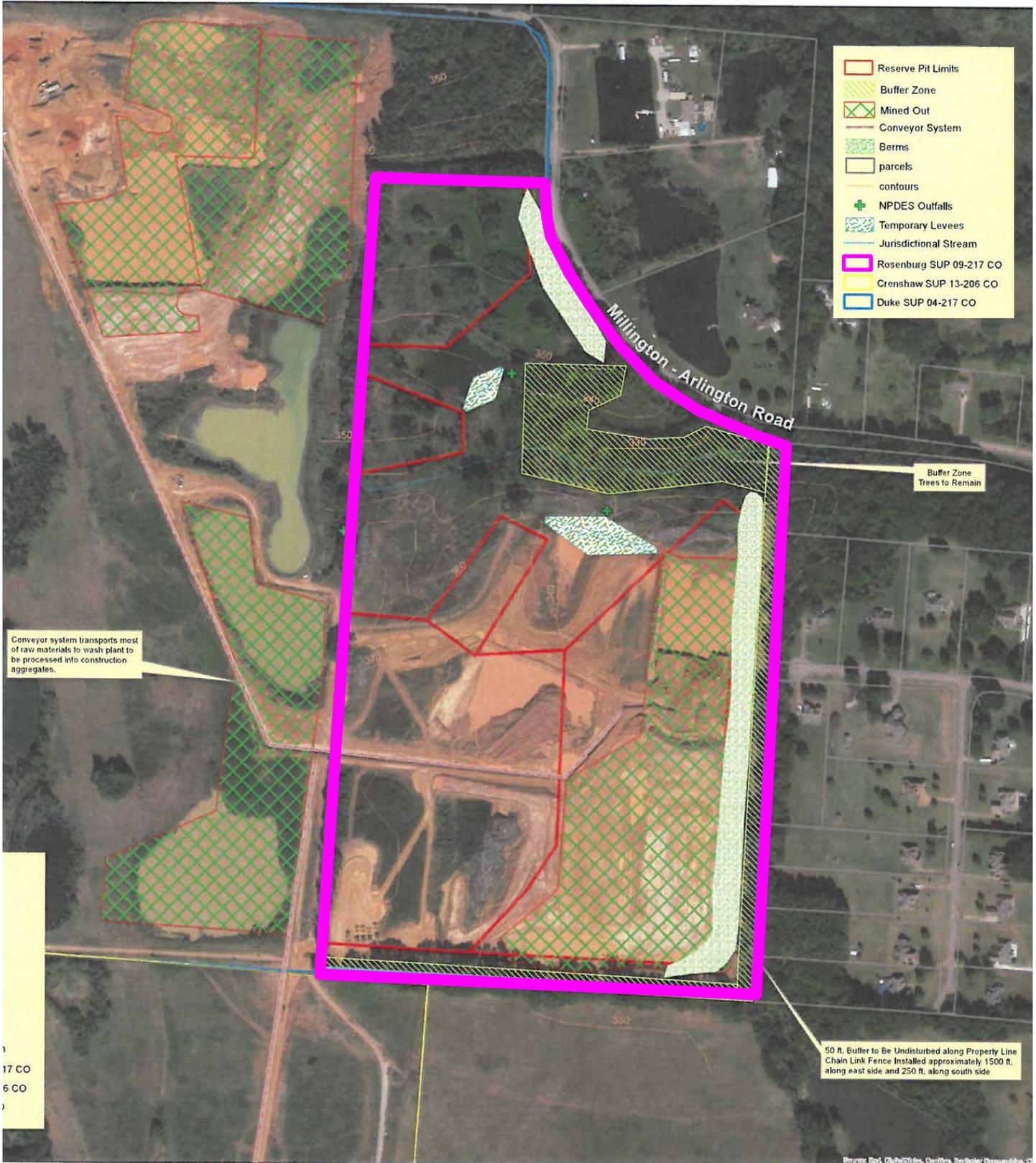
**MINING PLAN**



Duke, Rosenberg, Crenshaw  
Mine Plan 05-27-2020  
Subject site outlined in pink



**SITE PLAN**



Subject site outlined in pink

## **STAFF ANALYSIS**

### **Request**

The application and letter of intent have been added to this report, see pages 28-33 of this report.

The request is for a five-year time extension for an existing sand and gravel mining operation.

### **Approval Criteria**

Staff agrees the approval criteria in regard special use permits as set out in Section 9.6.9 of the Unified Development Code are met.

#### *9.6.9 Approval Criteria*

*No special use permit or planned development shall be approved unless the following findings are made concerning the application:*

- 9.6.9A *The project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.*
- 9.6.9B *The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations.*
- 9.6.9C *The project will be served adequately by essential public facilities and services such as streets, parking, drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant will provide adequately for such services.*
- 9.6.9D *The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance.*
- 9.6.9E *The project complies with all additional standards imposed on it by any particular provisions authorizing such use.*
- 9.6.9F *The request will not adversely affect any plans to be considered (see Chapter 1.9), or violate the character of existing standards for development of the adjacent properties.*
- 9.6.9G *The governing bodies may impose conditions to minimize adverse effects on the neighborhood or on public facilities, and to insure compatibility of the proposed development with surrounding properties, uses, and the purpose and intent of this development code.*
- 9.6.9H *Any decision to deny a special use permit request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record, per the Telecommunications Act of 1996, 47 USC 332(c)(7)(B)(iii). The review body may not take into account any environmental or health concerns.*

### **Site Description**

The subject property is a single parcel (D0130 00115) of +/-74.29 acres municipally addressed as 10769 Millington-Arlington Road. The site is zoned Conservation Agriculture (CA) with the granted SUP 09-217 CO to allow sand and gravel mining and the site is adjacent to vacant land also approved for sand and gravel mining and single-family residential on lots of at least two acres.

### **Site History**

The Shelby County Board of Commissioners approved a resolution granting a special use permit for a sand and gravel mining operation (SUP 09-217 CO) on Monday, January 11, 2010, see pages 35-41 of this report for said resolution. Furthermore, Condition 18 of said approval states that the special use permit shall be valid for ten years from the date when State approval is received, see page 22, which occurred on August 10, 2010, see page 54 of this report. This State approval suffices as the special use permit having been implemented within the required 24-month time period as required by Sub-Sections 16-32-4A of the 1981 Zoning Code in effect at the

time. Note the reference partially relating to obtaining a use and occupancy permit equating to “being implemented” in the aforementioned sub-section would not be applicable to a mining operation as the Office of Construction Code Enforcement does not issue use and occupancy permits for such operations. In regard to Sub-Section 16-32-4B of the 1981 Zoning Code this clause is not applicable as Condition 18 defines the time validity of said approval and again the Office of Constructing Code Enforcement does not issue use and occupancy permits to mining operations.

Condition 18 from the resolution of the approved SUP 09-217 CO states:

18. This special use permit shall be valid for ten years from the date when state approval is received. A request for extension will initiate a review and updating of the site plan and the site plan conditions as appropriate. An extension may be granted by the Land Use Control Board, subject to the right of appeal to the appropriate legislative bodies by any citizen who spoke at the public hearing, by the applicant or by the Office of Planning and Development.

Sub-Sections 16-32-4A and 16-32-4B of the 1981 Zoning Code stated:

A. Excluding planned developments as described in Chapter 16-52, special use permits shall be implemented (use and occupancy permit) within two years of final approval or such permits shall be void. The land use control board, however, upon application, may grant extensions in increments not exceeding two years upon a finding that the character of the neighborhood has not substantially changed since approval of the original special use that would require a public hearing as in the case of the original granting of the special use;

B. Excluding planned developments as described in Chapter 16-52, if a special use permit has not been in use for any two consecutive year period, the permit shall be void. The applicant, at the time of a request for a use and occupancy permit, shall be responsible for providing proof to the building official of such continued use;

### Conclusions

The applicant is seeking special use permit major modification to allow a five-year time extension for an existing sand and gravel mining operation.

The Shelby County Board of Commissioners approved a resolution granting a special use permit for a sand and gravel mining operation on Monday, January 11, 2010, see pages 35-41 of this report for said resolution. Furthermore, Condition 18 of said approval states that the special use permit shall be valid for ten years from the date when State approval is received which occurred on August 10, 2010, see page 54 of this report.

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Additionally, TDEC permit and plans renewal can be found on pages 42-47 of this report, the required bond documentation can be found on pages 48-49 of this report, and examples of Memphis Stone and Gravel sites that have been reclaimed can be found on pages 50-53 of this report.

This project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.

## **RECOMMENDATION**

Staff recommends approval with conditions.

### **Conditions – Revisions**

Proposed language is indicated in **bold, underline**; deletions are indicated in ~~**bold strikethrough**~~

1. Ancillary uses shall be limited to business office functions relating to the mine operation. Processing on-site shall include digging, loading, screening and mixing.
2. Any uses permitted by this Special Use Permit shall comply with all other applicable Federal, State and Local laws and ordinances. The applicant shall secure all environmental permits necessary for regulatory compliance including permits related to water and air pollution controls, wetlands and aquatic resources as needed.
3. Applicant has constructed and operates a conveyor system to transport material mined from this site across Millington-Arlington Road to the Memphis Stone and Gravel Company plant site, subject to the review and approval of the Shelby County Division of Public Works and the execution of any agreements deemed necessary by the Shelby county Attorney as approved in SUP 04-213 CO.

4. Road access to the property shall be limited to a single entrance onto Millington Arlington Road as approved in SUP 04-213 CO.
5. In order to minimize the deposit of materials from the site onto the public road, the wheels of vehicles exiting from the site shall be kept free of gravel, dirt and debris. Wheel washing equipment shall be installed for the cleaning of vehicles exiting the site.
6. The owner of the operation shall maintain all ways and roads within the site in a dust-free condition, provided that the treatment produces no potential pollution hazards to the ground and surface waters of the area. The plant site and each active extraction site shall be accessible by way of an all-weather road not less than (22) twenty-two feet wide, prior to the beginning of construction on said sites. Any business office shall have a minimum 100-ft. Setback from the nearest property line, and from the nearest public right-of-way.
7. Screening shall be provided, prior to the commencement of operations, so that mineral extraction operations and the conveyor will not be visible from Millington-Arlington Road or from nearby residence. An eight-foot (8') to twelve-foot (12') berm as necessary, shall be installed and maintained in order to block these views. The berm placed on Millington-Arlington Road will be mowed on a regularly scheduled basis in order to maintain a neat appearance. Areas alongside the berm will be inspected for litter on at least a biweekly basis. The four large trees along Millington-Arlington Road shall remain undisturbed as shown in the final site plan.
8. Additional screening shall be provided and maintained as shown in the final site plan, to include preservation of existing tree cover and the planting of a screen of evergreen trees where existing tree cover is thin or non-existent.
9. No mining shall be conducted within 75 feet of the perimeter of the site or within 100 feet of any street right-of-way or within 250 feet of any building used for residential purposes. Excavation shall be allowed within the 75-foot area adjacent to the property approved under SUP 04-213 CO.
10. Overburden shall be retained on a suitable portion of the site and shall be used for back fill.
11. All excavations shall be filled and the land restored, **regraded**, and resloped as nearly as practicable to its original condition and grade within 90 days after the date sand, gravel, or other extraction operations cease provided, however, that any excavation made closer than 250 feet to a lot line of the property which is the site of the sand, gravel or other extraction operations shall be filled, and the land restored, regraded, and resloped within nine (9) months from the date the excavation within 250 feet of such lot line is completed unless the owner of the property abutting or adjoining such lot line agrees, in writing, to an extension of completed. Such written agreement, and the compliance with the same, shall be in conformance with Section IX. D. 2. (4) of the Zoning Ordinance.
12. Land shall be restored, regraded, and resloped as nearly as practicable to its original condition and grade provided, however, that after such reclamation activities, no slope on such land shall be steeper than 3 feet horizontal to one foot vertical and no greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
13. Restoration of the land shall provide top soil capable of supporting the same species of vegetation that previously occurred naturally on site in comparable conditions and locations.

14. Prior to the commencement of sand, gravel, or other extractions operations, the applicant for the special permit shall submit to the Building Official a performance bond in the amount required by the Building Official per acre for each acre proposed to be used for sand, gravel, or other extraction operations to ensure that the land shall be restored, regraded, and resloped as provided above when such mining or extraction operations cease. Such performance bond shall be released after reclamation activities are complete and the condition, grade, and drainage of the land are approved in writing by the Building Official and County Engineer provided, however, that a proportionate release of such bond may be authorized by the Building Official and/or County Engineer for phased or partial reclamation.
15. Equipment used in sand, gravel, or other extraction or processing operations shall be operated in such a manner that noise and vibration are prevented, to the extent possible, from emanating beyond the boundaries of the site.
16. A copy of the State Mining Permit application shall be submitted for review by the Office of Planning and Development upon submittal to the Tennessee Department of Environment and Conservation. Said application shall discuss the assessment of the environmental impact of the proposed sand, gravel, or other extractive operation and processing in addition to other requirements of said permit application.
17. A copy of the State approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan.
18. This special use permit shall be valid for (10) ten years from the date when state approval is received. A request for extension will initiate a review and updating of the site plan and the site plan conditions as appropriate. An extension may be granted by the Land Use Control Board, subject to the right of appeal to the appropriate legislative bodies by any citizen who spoke at the public hearing, by the applicant or by the Office of Planning and Development.
19. On-site operations shall be permitted Monday through Saturday and shall be limited to the hours of 6:00 A.M. to 7:00 P.M., providing that no operations shall occur except during daylight.
20. Storm water discharge and Aquatic Resource Alteration Permit review shall be subject to the authority of the Tennessee Department of Environment and Conservation.
21. No greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
22. Neither road construction, nor reclamation nor any other on-site activity shall create any obstruction of the natural flows of storm water draining onto the site.
23. Memphis Stone and Gravel Company shall have surveyed the property for any water production wells. Any such wells found on the site shall be properly sealed as outlined in Sections 9 of the Shelby County Well Construction Code, except as may be directed by Memphis and Shelby County Health Department for the purpose of monitoring water quality.
24. A deed restriction shall be imposed to disclose for future use of the land that the subject property has been mined for sand and gravel.

25. The applicant shall maintain public liability insurance with coverage of at least \$1,000,000.00 for personal injury to more than one person, \$300,000.00 for personal injury of only one person, and \$25,000.00 for damage to property. Insurance should be kept in effect at all times during mining operations.
26. The mining excavation shall not disturb the confining layer above the Memphis Sands aquifer.
27. Prior to the commencement of mining operations, a six-foot chain link fence shall be constructed along the eastern side of the project area 1,500 feet and extending along the southeastern side of the project 250 feet. The fence shall be between the berm and the 50-foot undisturbed buffer zone as indicated on the site plan addendum. The fence shall be removed at the time of reclamation.
28. The rental house on the front of the property shall be allowed to remain until such time as it is necessary to be removed.
29. No permit to operate the excavation shall be issued until an impact analysis is performed by the Groundwater Institute of the University of Memphis and/ or the US Geological Survey.
- 30. In accordance with Condition 18, a five (5)-year time extension is hereby granted to start on the previous date of expiration which, based upon State approval, has been determined as August 10, 2020. Thus, this time extension expires on August 10, 2025.**

**DEPARTMENTAL COMMENTS**

The following comments were provided by agencies to which this application was referred:

**City/County Engineer:** No comments received.

**City/County Fire Division:** No comments received.

**City Real Estate:** No comments received.

**City/County Health Department:**

Water Quality Branch & Septic Tank Program:

- NO SEPTIC TANK ISSUES

**Shelby County Schools:** No comments received.

**Construction Code Enforcement:** No comments received.

**Memphis Light, Gas and Water:** No comments received.

**Office of Sustainability and Resilience:** No comments received.

**APPLICATION**



*Memphis and Shelby County*  
*Office of Planning and Development*  
CITY HALL 125 NORTH MAIN STREET-SUITE 468 MEMPHIS, TENNESSEE 38103-2084 (901) 576-6601

**APPLICATION FOR SPECIAL USE PERMIT  
MAJOR MODIFICATION APPROVAL  
(CORRESPONDENCE CASE)**

Date: May 21, 2010

Case #: SUP 09-217 CO

PLEASE TYPE OR PRINT

Property Owner of Record: Madison-Moore TN Investments LLC Phone #: 901-774-4000

Mailing Address: P.O. Box 1603 City/State: Memphis, TN Zip 38101

Property Owner E-Mail Address: jmadison@lehmanroberts.com

Applicant: Memphis Stone & Gravel Company Phone # 901-947-5730

Mailing Address: P.O. Box 1683 City/State: Memphis, TN Zip 38101

Applicant E- Mail Address: alan.parks@msg gravel.com

Representative: Same as Applicant Phone #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip \_\_\_\_\_

Representative E-Mail Address: \_\_\_\_\_

Engineer/Surveyor: Same as Applicant Phone # \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip \_\_\_\_\_

Engineer/Surveyor E-Mail Address: \_\_\_\_\_

Street Address Location: 10577 Millington-Arlington Road

Distance to nearest intersecting street: ~1200 ft. to the east of Gratitude Church Road & Millington-Arlington Road

	Parcel 1	Parcel 2	Parcel 3
Area in Acres:	<u>74.29 Acres</u>	_____	_____
Existing Zoning:	<u>Agriculture</u>	_____	_____
Existing Use of Property	<u>sand and gravel mining</u>	_____	_____
Requested Use of Property	<u>same</u>	_____	_____

**Major Modification(s):** Time extensions (see Subsection 9.6.14B of the UDC) to and requests to exceed the 24-month limitation on discontinuance (see subsection 9.6.14C) of approved special use permits shall be processed as a major modification, subject to the provisions of Chapter 9.16. Yes  No

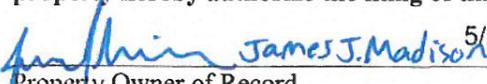
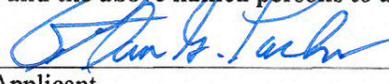
**SIGN POSTING** – A sign or signs shall be erected on-site no more than 30 days or less than 10 days prior to the date of the Land Use Control Board hearing. See Sub-Section 9.3.4C of the UDC for further details on sign posting.

**9.16.3 Findings of Fact**

The appropriate authority, pursuant to the individual Chapters of this Article, shall make the following findings in its approval, approval with conditions or rejection of an extension:

- A. Changed conditions of the neighborhood and area in which the time extension is being made, as compared to conditions present during the original approval;
- B. Changed conditions of the site in which the request is being made, as compared to conditions present during the original approval;
- C. Any administrative or legislative policy, ordinance, regulation or comprehensive or neighborhood plan that has been adopted since the time of the original approval; and
- D. The scope of construction, such as the size of the site or building, involved with the original approval.

I (we) hereby make application for the Correspondence Case described above and on the accompanying materials. I (we) accept responsibility for any errors or omissions which may result in the postponement of the application being reviewed by the Memphis & Shelby County Land Use Control Board at the next available hearing date. I (We), owner(s) of the above described property hereby authorize the filing of this application and the above named persons to act on my behalf.

	5/29/2020		5/29/2020
Property Owner of Record	Date	Applicant	Date
Madison-Moore Investment, LLC		Memphis Stone & Gravel Company	

**REQUIRED MAJOR MODIFICATIONS:** The following revisions to existing Special Use Permits shall be processed as Major Modifications. Please note that any revision to a Special Use Permit that varies from any standard of the UDC will require the submission of a variance application to the Board of Adjustment.

- A. Any request for a time extension, provided the Special Use Permit has not expired (see Sub-Section 9.6.12B of the UDC).
- B. A 5% increase in the number of housing units in a development approved by Special Use Permit (see Item 9.6.12C(1)(a) of the UDC).
- C. Any revisions to a structure, dedicated street, easement or landscape screen in a Special Use Permit that exceed the following (see Item 9.6.12C(1)(b) of the UDC):
  - 1. 25 feet or more for site plans of two or less acres;
  - 2. 50 feet or more for site plans of more than two but less than eight acres;
  - 3. 100 feet or more for site plans of eight acres but less than 20 acres; and
  - 4. 150 feet or more for site plans of 20 acres or more.
- D. Any other revisions to a Special Use Permit site plan that would otherwise require the issuance of a Special Exception, such as increased height of more than 10% (see Section 9.14.1 of the UDC).

**GUIDE FOR SUBMITTING**

**SPECIAL USE PERMIT MAJOR MODIFICATION APPROVAL/CORRESPONDENCE CASE**

- A. **THE APPLICATION** - Two (2) collated sets of this application in accordance with the requirements of the Unified Development Code and as outlined below shall be submitted to OPD. The following information is required to be submitted for consideration as a complete application, and except for copies of the Site/Concept Plan, shall be provided on sheets of 8.5"x11" in size. The application with original signatures shall be completed either with legible print or typewritten. Each application set shall be compiled in the following order:
  - 1) This application, 8.5"x11" Site/Concept Plan, Plot Plan, Legal Description, Vicinity Map, 2-3 sets of gummed-backed Mailing Labels, 2 sets of paper copied Mailing Labels, Letter of Intent, 20"x24" Site/Concept Plan (folded) and a copy of Deed(s).
  - 2) A compact disc with all submittal documents in "PDF" and any proposed conditions in "WORD".

## APPROVAL CRITERIA

### 9.6.9 Special Use Permit Approval Criteria

No special use permit or planned development shall be approved unless the following findings are made concerning the application:

Please address each sub-section below (Provide additional information on a separate sheet of paper if needed).

- The project will not have a substantial or undue adverse effect upon the adjacent property, the character of the neighborhood, traffic condition, parking, utility facilities and other matters affecting the public health, safety and general welfare (UDC sub-section 9.6.9A).
- 1. **The project is permitted by special permit in the conservation agricultural (CA) district, which is the old agricultural district. The special permit is for a period of time to allow the extraction to occur and then the property is reclaimed. This property is in an area and adjacent to approved special permits that allowed the extraction of sand and gravel. Many have already been reclaimed and are now being used as residential, farming, or open space. The project will have no substantial and undue adverse effect on the adjacent property as there are generous set-backs, vegetation, berms and buffers. There will be adequate parking, restroom facilities and waste receptacles provided on site. The majority of the material will move by conveyors through parcels with existing special permits to the main plant facility. All vehicle traffic will exit at the existing entrance and exit on Millington-Arlington Road. There will be no substantial and undue adverse effect on other matters such as public health, safety and general welfare.**
- The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations (UDC sub-section 9.6.9B).
- 2. **The application is permitted by special permit and will be constructed, arranged and operated in the same general manner as other special permits in this area with adequate set-backs, berms and buffering to be compatible with the immediate vicinity. The material will be removed to the main plant by a conveyor system and all traffic will be to the north on existing roads. There will be no interference with development or use of adjacent property. Other previously approved special permits have been reclaimed and used for residential or farming uses.**
- The project will be served adequately by essential public facilities and services such as streets, park drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant provide adequately for such services (UDC sub-section 9.6.9C).
- 3. **The proposed special permit will utilize existing roads and conveyor systems to the to Millington-Arlington Road. The conveyor system is elevated over the road with a license from Shelby County. The conveyor system moves the material to**

**the main plant located on the north side of Millington-Arlington Road. Refuse disposal will be provided and there is fire protection and public water along with adequate sanitary facilities that will be provided by using portable facilities or permanent facilities, depending on the circumstance.**

- The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance (UDC sub-section 9.6.9D).
- 4. The special permit will not result in the destruction, loss or damage of any features determined by the governing bodies to be of significance natural, scenic or historic importance. The property will be reclaimed as required by ordinance and state statutes and used as productive residential, or farms or open space.**
- The project complies with all additional standards imposed on it by any particular provisions authorizing such use (UDC sub-section 9.6.9E).
- 5. The proposed special permit will comply with the requirements of the UDC under section 6.5.**
- The request will not adversely affect any plans to be considered (see UDC Chapter 1.9) or violate the character of existing standards for development of the adjacent properties (UDC sub-section 9.6.9F).
- 6. The special permit will not adversely affect and plans to be considered (UDC chapter 1.9) or violate the character of existing standards of development of the adjacent properties (UDC section 9.6.9).**
- The governing bodies may impose conditions to minimize adverse effects on the neighborhood or on public facilities, and to insure compatibility of the proposed development with surrounding properties, uses, and the purpose and intent of this development code (UDC sub-section 9.6.9G).
- 7. The special permit, to the best of our knowledge, will not require additional conditions imposed by the governing bodies.**

**LETTER OF INTENT**

**MEMPHIS STONE AND GRAVEL CO.**

ESTABLISHED 1910

HIGHWAY CONTRACTOR • PRODUCER OF CAMDEN ROAD GRAVEL,  
CONCRETE AND ASPHALT AGGREGATES, ROAD BASE MATERIALS,  
AND OTHER GRANULAR CONSTRUCTION MATERIALS.

GENERAL OFFICES

P. O. BOX 1683

MEMPHIS, TENN. 38101

May 29, 2020

Josh Whitehead, AICP  
Planning Director  
Memphis & Shelby County  
Office of Planning & Development  
City Hall, 125 N. Main St., Ste. 468

RE: Modification to S.U.P.  
Memphis Stone & Gravel Company's "Rosenburg Property"  
S.U.P. 09-217 CO

Dear Josh:

Memphis Stone & Gravel Company (MS&G) requests a modification to its existing Special Use Permit (S.U.P.) 09-217 CO. The permitted area, which is commonly referred to as the "Rosenburg Property", has a time limit of 10 years and is set to expire this year, August 2020. MS&G requests an additional five (5) years to complete the mining and reclamation. You may recall, that our Rosenburg Property is one part of three separate parcels that contain material reserves for our North Plant facility. The other two locations, SUP 04-217 CO ("Duke Property") and SUP 13-206 CO ("Crenshaw Property"), which are owned by the company, are all part of the same production operation as the subject property. The five years will also coincide with the remaining time currently in place for the Duke Property. The Duke and Rosenburg are adjacent and are treated as one from a mining and reclamation planning perspective. No other modifications are being requested, only a time frame extension is required.

The Rosenburg Property currently contains a high-quality sand and gravel deposit that supplies MS&G's customers with specification road base materials, concrete aggregate, landscape products, drainage media, and fill sand. All traffic entering and exiting the project area will continue to use Millington-Arlington Road at the northwest corner of the Duke property. The raw materials mined on these properties are transported by a conveyor system to MS&G's wash plant located at 10236 Millington-Arlington Road.

Mr. Whitehead  
May 29, 2020  
Page 2 of 2

Please note that the haul route will not change from what has been in place. Also, the mining and reclamation and NPDES permits from the Tennessee Department of Environment and Conservation have been issued and are active.

Enclosed is the application supporting documents, public notification materials, and the filing fee for this modification request. If you should have any questions please contact me at (901) 947-5730.

Sincerely,



Alan G. Parks  
Memphis Stone & Gravel Company

Enclosure

**SIGN AFFIDAVIT**

**AFFIDAVIT**

Shelby County  
State of Tennessee

I, Alan Parks, being duly sworn, depose and say that at \_\_\_\_\_ am/pm on the 24 day of June, 2020, I posted 1 Public Notice Sign(s) pertaining to Case No. SUP 09-217CO at Millington-Arlington Road, providing notice of a Public Hearing before the X Land Use Control Board, \_\_\_\_\_ Memphis City Council, \_\_\_\_\_ Shelby County Board of Commissioners for consideration of a proposed Land Use Action ( \_\_\_\_\_ Planned Development, X Special Use Permit, \_\_\_\_\_ Zoning District Map Amendment, \_\_\_\_\_ Street and/or Alley Closure), a photograph of said sign(s) being attached hereon and a copy of the sign purchase receipt or rental contract attached hereto.

*Alan G. Parks*  
Owner, Applicant or Representative

6-25-2020  
Date

Subscribed and sworn to before me this 25<sup>TH</sup> day of JUNE, 2020.

*Fara H. Foster*  
Notary Public

My commission expires: AUG. 29, 2020



**SUP 09-217 CO RESOLUTION**

Item #: 29

Moved by: BUNKER

Prepared by: Dave Adams, OPD

Seconded by: MULROY

Approved by: Robert Rolwing

**RESOLUTION PURSUANT TO SECTION 8 OF THE ZONING ORDINANCE-RESOLUTION OF THE COUNTY OF SHELBY AND THE CITY OF MEMPHIS, TENNESSEE, GRANTING A USE VARIATION FOR LAND LOCATED ON THE SOUTH SIDE OF MILLINGTON-ARLINGTON ROAD, ±1,400 FEET WEST OF OSBORNTOWN ROAD, KNOWN AS CASE NO. S.U.P. 09-217 CO.**

---

**WHEREAS**, Sections 8 and 9 of the Zoning Ordinance-Regulations of the City of Memphis and Shelby County, being a section of the Joint Ordinance-Resolution No. 3064 dated October 6, 1980, as amended, authorized the Shelby County Board of Commissioners and the Memphis City Council to grant a special use permit for certain stated purposes subject to standards of general applicability in the various zoning districts beyond five miles from the Memphis City limits; and

**WHEREAS**, Application has been made by Memphis Stone and Gravel Company for a special use permit with respect to the property located on the south side of Millington-Arlington Road, ±1,400 feet west of Osborntown Road within the Agricultural (AG) District for the purpose of conducting sand and gravel mining operations, beyond the five-mile limit; and

**WHEREAS**, The Office of Planning and Development has reviewed the application in accordance with the special use permit provisions of the Zoning Ordinance-Regulations and reported its findings and recommendations to the Land Use Control Board; and

**WHEREAS**, A public hearing in relation thereto was held before the Memphis and Shelby County Land Use Control Board on November 12, 2009, and said board has

studied and reported its recommendation to the Board of Commissioners regarding the following potential effects of granting the use variation on:

- A. The character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public safety and general welfare;
- B. The compatibility of the proposed building or use with the immediate vicinity and the potential interference of said building or use on the development or use of adjacent property;
- C. The adequacy of public facilities including existing streets, parking, drainage, refuse disposal, fire protection, water and sewer or that such facilities will be provided;
- D. The destruction, loss or damage to features of significant natural, scenic or historic importance from the proposed building or use; and

**WHEREAS,** The Memphis and Shelby County Land Use Control Board and/or the Memphis and Shelby County Office of Planning and Development has recommended certain conditions be attached to the use variation to reduce any potential adverse impacts of the proposed building or use on the neighborhood, adjacent property owners, public facilities and significant natural, scenic or historic features;

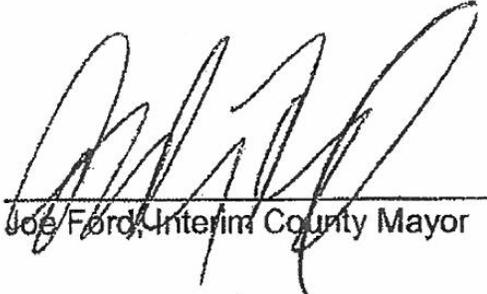
**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That a special use permit is granted for the purpose of conducting sand and gravel mining in accordance with the site plan incorporated in the application, and subject to the attached conditions, all within the above mentioned Agricultural (AG) District.

**BE IT FURTHER RESOLVED,** That this permit merely authorizes the filing of applications to acquire a Certificate of Use and Occupancy, or a Building Permit, and other required permits and approvals, provided that no such Certificate of Use and Occupancy shall be granted until all conditions imposed by the Board of Commissioners have been

met.

**BE IT FURTHER RESOLVED,** That this Resolution take effect from and after the date it shall have been passed by this Board of County Commissioners, and become effective as otherwise provided by law, and thereafter shall be treated as in full force and effect by virtue of the passage thereof by the Board of Commissioners of Shelby County, Tennessee.



  
\_\_\_\_\_  
Joe Ford, Interim County Mayor  
Date: 1/19/10

ATTEST:

  
\_\_\_\_\_  
Caroline Duggan  
Clerk of County Commission

ADOPTED: JANUARY 11, 2010

## **SITE PLAN CONDITIONS**

4

### **Memphis Sand and Gravel – Duke II Mining Operation**

#### **S.U.P. 09-217 CO**

#### **As Adopted by the Shelby County Board of Commissioners**

**January 11, 2010**

A Special Use Permit is hereby granted to the Memphis Stone and Gravel Company to allow sand and gravel mining on the 74.29 acre Natalie L. Rosenberg and Raymelle Williams tract (Instrument No. 04046204, Shelby County Register's Office), located at 10769 Millington-Arlington Road, in accordance with a site plan approved by the Office of Planning and Development with the following conditions:

1. Ancillary uses shall be limited to business office functions relating to the mine operation. Processing on-site shall include digging, loading, screening and mixing.
2. Any uses permitted by this Special Use Permit shall comply with all other applicable Federal, State and Local laws and ordinances. The applicant shall secure all environmental permits necessary for regulatory compliance including permits related to water and air pollution controls, wetlands and aquatic resources as needed.
3. Applicant has constructed and operates a conveyor system to transport material mined from this site across Millington-Arlington Road to the Memphis Stone and Gravel Company plant site, subject to the review and approval of the Shelby County Division of Public Works and the execution of any agreements deemed necessary by the Shelby county Attorney as approved in S.U.P. 04-213 CO.
4. Road access to the property shall be limited to a single entrance onto Millington Arlington Road as approved in S.U.P. 04-213 CO.
5. In order to minimize the deposit of materials from the site onto the public road, the wheels of vehicles exiting from the site shall be kept free of gravel, dirt and debris. Wheel washing equipment shall be installed for the cleaning of vehicles exiting the site.
6. The owner of the operation shall maintain all ways and roads within the site in a dust-free condition, provided that the treatment produces no potential pollution hazards to the ground and surface waters of the area. The plant site and each active extraction site shall be accessible by way of an all-weather road not less than 22 feet wide, prior to the beginning of construction on said sites. Any business office shall have a minimum 100-foot setback from the nearest property line, and from the nearest public right-of-way.
7. Screening shall be provided, prior to the commencement of operations, so that mineral extraction operations and the conveyor will not be visible from Millington-Arlington Road or from nearby residence. An eight-foot to twelve

## **SITE PLAN CONDITIONS**

**5**

### **Memphis Sand and Gravel – Duke II Mining Operation S.U.P. 09-217 CO**

**As Adopted by the Shelby County Board of Commissioners  
January 11, 2010**

foot berm as necessary, shall be installed and maintained in order to block these views. The berm placed on Millington-Arlington Road will be mowed on a regularly scheduled basis in order to maintain a neat appearance. Areas alongside the berm will be inspected for litter on at least a biweekly basis. The four large trees along Millington-Arlington Road shall remain undisturbed as shown in the final site plan.

8. Additional screening shall be provided and maintained as shown in the final site plan, to include preservation of existing tree cover and the planting of a screen of evergreen trees where existing tree cover is thin or non-existent.
9. No mining shall be conducted within 75 feet of the perimeter of the site or within 100 feet of any street right-of-way or within 250 feet of any building used for residential purposes. Excavation shall be allowed within the 75 foot area adjacent to the property approved under S.U.P. 04-213 CO.
10. Overburden shall be retained on a suitable portion of the site and shall be used for back fill.
11. All excavations shall be filled and the land restored, r and resloped as nearly as practicable to its original condition and grade within 90 days after the date sand, gravel, or other extraction operations cease provided, however, that any excavation made closer than 250 feet to a lot line of the property which is the site of the sand, gravel or other extraction operations shall be filled, and the land restored, regraded, and resloped within nine months from the date the excavation within 250 feet of such lot line is completed unless the owner of the property abutting or adjoining such lot line agrees, in writing, to an extension of completed. Such written agreement, and the compliance with the same, shall be in conformance with Section IX. D. 2. (4) of the Zoning Ordinance.
12. Land shall be restored, regraded, and resloped as nearly as practicable to its original condition and grade provided, however, that after such reclamation activities, no slope on such land shall be steeper than 3 feet horizontal to one foot vertical and no greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
13. Restoration of the land shall provide top soil capable of supporting the same species of vegetation that previously occurred naturally on site in comparable conditions and locations.

**SITE PLAN CONDITIONS**

**6**

**Memphis Sand and Gravel – Duke II Mining Operation**

**S.U.P. 09-217 CO**

**As Adopted by the Shelby County Board of Commissioners**

**January 11, 2010**

14. Prior to the commencement of sand, gravel, or other extractions operations, the applicant for the special permit shall submit to the Building Official a performance bond in the amount required by the Building Official per acre for each acre proposed to be used for sand, gravel, or other extraction operations to insure that the land shall be restored, regraded, and resloped as provided above when such mining or extraction operations cease. Such performance bond shall be released after reclamation activities are complete and the condition, grade, and drainage of the land are approved in writing by the Building Official and County Engineer provided, however, that a proportionate release of such bond may be authorized by the Building Official and/or County Engineer for phased or partial reclamation.
15. Equipment used in sand, gravel, or other extraction or processing operations shall be operated in such a manner that noise and vibration are prevented, to the extent possible, from emanating beyond the boundaries of the site.
16. A copy of the State Mining Permit application shall be submitted for review by the Office of Planning and Development upon submittal to the Tennessee Department of Environment and Conservation. Said application shall discuss the assessment of the environmental impact of the proposed sand, gravel, or other extractive operation and processing in addition to other requirements of said permit application.
17. A copy of the State approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan.
18. This special use permit shall be valid for ten years from the date when state approval is received. A request for extension will initiate a review and updating of the site plan and the site plan conditions as appropriate. An extension may be granted by the Land Use Control Board, subject to the right of appeal to the appropriate legislative bodies by any citizen who spoke at the public hearing, by the applicant or by the Office of Planning and Development.
19. On-site operations shall be permitted Monday through Saturday and shall be limited to the hours of 6:00 A.M. to 7:00 P.M., providing that no operations shall occur except during daylight.
20. Storm water discharge and Aquatic Resource Alteration Permit review shall be subject to the authority of the Tennessee Department of Environment and Conservation.

## **SITE PLAN CONDITIONS**

7

**Memphis Sand and Gravel – Duke II Mining Operation**

**S.U.P. 09-217 CO**

**As Adopted by the Shelby County Board of Commissioners**

**January 11, 2010**

21. No greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
22. Neither road construction, nor reclamation nor any other on-site activity shall create any obstruction of the natural flows of storm water draining onto the site.
23. Memphis Stone and Gravel Company shall have surveyed the property for any water production wells. Any such wells found on the site shall be properly sealed as outlined in Sections 9 of the Shelby County Well Construction Code, except as may be directed by Memphis and Shelby County Health Department for the purpose of monitoring water quality.
24. A deed restriction shall be imposed to disclose for future use of the land that the subject property has been mined for sand and gravel.
25. The applicant shall maintain public liability insurance with coverage of at least \$1,000,000.00 for personal injury to more than one person, \$300,000.00 for personal injury of only one person, and \$25,000.00 for damage to property. Insurance should be kept in effect at all times during mining operations.
26. The mining excavation shall not disturb the confining layer above the Memphis Sands aquifer.
27. Prior to the commencement of mining operations, a six foot chain link fence shall be constructed along the eastern side of the project area 1,500 feet and extending along the southeastern side of the project 250 feet. The fence shall be between the berm and the 50 foot undisturbed buffer zone as indicated on the site plan addendum. The fence shall be removed at the time of reclamation.
28. The rental house on the front of the property shall be allowed to remain until such time as it is necessary to be removed.
29. No permit to operate the excavation shall be issued until an impact analysis is performed by the Groundwater Institute of the University of Memphis and/or the US Geological Survey.

**TDEC PERMIT AND PLANS APPROVAL (RENEWAL)**



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
KNOXVILLE ENVIRONMENTAL FIELD OFFICE  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TENNESSEE 37921-6538  
PHONE (865) 594-6035      STATEWIDE 1-888-891-8332      FAX (865) 594-6105

January 15, 2019

Mr. Alan Parks, Vice President  
Memphis Stone and Gravel Company  
P.O. Box 1683  
Memphis, TN 38101

**RE: Transmittal of NPDES Permit and Plans Approval (Renewal)**  
Memphis Stone and Gravel Company  
F.M. Duke Estate – Area 7  
NPDES Permit TN0079375  
Mining Permit OM-79375-7  
Shelby County

Dear Mr. Parks:

In accordance with the provisions of *The Tennessee Water Quality Control Act (Tennessee Code Annotated, Sections 69-3-101 et seq.)* and regulations of the Tennessee Division of Water Resources the enclosed permit is hereby issued. The continuance and/or reissuance of this permit are contingent upon your meeting the conditions and requirements as stated therein.

Please be advised that a petition for permit appeal may be filed, pursuant to *T.C.A. Section 69-3-105, subsection (i)*, by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application.

Additionally, for those permits for which the Department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.

Any petition for permit appeal under this subsection (i) shall be filed with the technical secretary of the Board of Water Quality, Oil and Gas within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit. A copy of the filing should also be sent to TDEC's Office of General Counsel. The mailing addresses follow:

Mr. Alan Parks, Vice President  
Memphis Stone and Gravel Company  
F.M. Duke Estate – Area 7  
Page 2

Jennifer Dodd  
Acting Technical Secretary  
Board of Water Quality, Oil and Gas  
William R. Snodgrass TN Tower  
312 Rosa L. Parks Avenue, 12<sup>th</sup> Fl  
Nashville, TN 37243-1102

Jenny L. Howard, General Counsel  
Office of General Counsel  
William R. Snodgrass TN Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Fl  
Nashville, TN 37243-1102

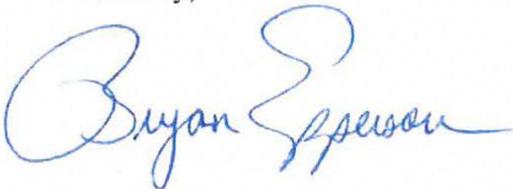
Enclosed is one copy of the supporting plans stamped "APPROVED." This copy of the approved plans must be kept on site during the hours of operation. If changes in the mining plan or procedure which affect wastewater treatment or runoff control are necessary, they must be approved in writing by this Division prior to the initiation of those changes. Failure of your company's strict adherence to these plans could jeopardize the continuation of your permit.

We are also enclosing your permit and approved application to conduct sand and gravel mining operations for area #7, Mining Permit No. OM-79375-7. The total bond available for your company is \$378,900.00 with \$378,900.00 being required for all permitted Tennessee mine sites.

Surface mining and reclamation authorized by this mining permit must be accomplished in accordance with the contents of the approved application and the provisions of the Tennessee Mineral Surface Mining Law of 1972 and the regulations for surface mining in Tennessee. Transfer, assignment or sale of these permit rights may not be completed without the written approval of the Commissioner.

If you have any questions concerning this correspondence, contact Dennis Conger at (865) 594-5555.

Sincerely,



for Jennifer Dodd  
Director  
Division of Water Resources

JPD:BWE:DC:LCK:BTR

Enclosures

Email: Cliff Caudle, TDEC Memphis EFO  
Bruce Ragon, TDEC Knoxville  
cc: NPDES Pending File

# STATE OF TENNESSEE



## NPDES PERMIT

### NPDES Permit TN0079375 Renewal

Authorization to discharge under the  
National Pollutant Discharge Elimination System

Issued By

**Tennessee Department of Environment and Conservation  
Division of Water Resources  
3711 Middlebrook Pike  
Knoxville, Tennessee 37921-6538**

Under authority of the *Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.)* and the delegation of authority from the United States Environmental Protection Agency under the *Federal Water Pollution Control Act*, as amended by the *Clean Water Act of 1977 (33 U.S.C. 1251, et seq.)*

Discharger: **Memphis Stone and Gravel Company**  
**F.M. Duke Estate – Area 7**

is authorized to discharge treated wastewater and storm water:

from a facility located in **Shelby County** at latitude **35° 20' 1.67"**, longitude **-89° 42' 40.01"**

consisting of **183 acres**

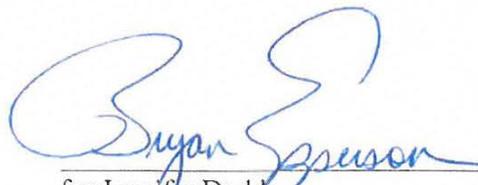
to receiving waters named: **Unnamed tributary to Beaver Creek Canal – 001, 002, & 003**  
**Unnamed tributary to Loosahatchie River - 004**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective on: February 1, 2019

This permit shall expire on: January 31, 2024

Issuance date: January 15, 2019

  
for Jennifer Dodd  
Director  
Division of Water Resources

DSM-5	<b>STATE OF TENNESSEE</b>			OM- 19-02
<b>DEPARTMENT OF ENVIRONMENT AND CONSERVATION</b>				
<b>DIVISION OF WATER RESOURCES, MINING SECTION</b>				
3711 Middlebrook Pike Knoxville, TN 37921 (865) 594-6035				
County	<u>Shelby</u>	Area	Permit No.	<i>Renewal</i> <u>OM-79375-7</u>
Type	<u>Surface</u>	<u>#7 Duke</u>	No. of Acres	<u>183</u>
Effective Date	<u>February 1, 2019</u>		Expiration Date	<u>January 31, 2024</u>



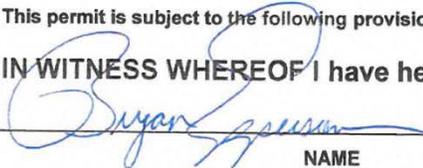
**Permit**  
**To Engage in the Surface Mining**  
of Sand and Gravel

**FOR: Memphis Stone and Gravel Co., P. O. Box 1683, Memphis, TN 38101**

Pursuant to T. C. A. §59-8-201 et seq., a permit is hereby granted to engage in surface mining in the State of Tennessee. This permit may be suspended or revoked upon violation of any or all of the conditions set forth in T. C. A. §59-8-201 et seq., or in such rules and regulations promulgated by the Commissioner of Environment and Conservation.

This permit is subject to the following provisions and/or conditions, to wit:

IN WITNESS WHEREOF I have hereunto set my hand this 15<sup>th</sup> day of January, 2019

 Environmental Program Manager

NAME TITLE

**Rationale**

**Memphis Stone and Gravel Co.  
MINING PERMIT NO. OM-79375-7  
DUKE ESTATE MINE  
SHELBY COUNTY, TENNESSEE  
*Permit Writer: B. Ragon***

**I. Mining Operator**

<b>Operator:</b>	<b>Memphis Stone and Gravel Co.</b>
<b>Location:</b>	<b>Shelby County, Tennessee</b>
<b>Contact:</b>	<b>Alan Parks 901-774-7874</b>
<b>Facility Address:</b>	<b>P.O. Box 1683, Memphis, TN 38101</b>
<b>Nature of Business:</b>	<b>Sand and Gravel Mining</b>

<b>SIC Code(s):</b>	<b>1442</b>
<b>Industrial Classification:</b>	<b>Secondary, Construction Sand and Gravel Mining and Processing</b>

**II. Permit Status -- §59-8-205 et. seq.**

<b>NPDES Permit No. TN0079375</b>	
<b>Issued:</b>	<b>1 February 19</b>
<b>Expires:</b>	<b>31 January 24</b>
<b>Mining Permit No. OM-79375-7</b>	
<b>Issued:</b>	<b>1 February 19</b>
<b>Expires:</b>	<b>31 January 24</b>

**III. Application and Plans Submittals -- §59-8-205**

The Division finds that the applicant has met all requirements, where applicable, in the application and plans submittals to qualify the applicant for a state mining permit as required by §59-8-205 of the Tennessee Surface Mining Law of 1972.

- The application includes information on the minerals to be mined.
- The application included the name and permanent address of the operator as well as any temporary address to be used by the operator in connection with the operation covered by the permit.
- The application included a map showing the general location of the affected area with relation to property lines, nearby towns, county lines, public roads, and streams.
- The application identifies any surface mining permit or permits which the operator holds or has previously held in Tennessee.
- The application includes a statement of whether or not any surface mine permit previously held by applicant operator or any person, partnership, or corporation now associated with, or in the past associated with, the applicant operator was suspended, revoked or terminated for failure to comply with the reclamation or revegetation requirements of such surface mining permit or permits.
- The application identifies the owner or owners of the surface of the area affected by the permit, and the identification of the owner or owners of all surface area within five hundred feet of any part of the area.
- The application identifies the owner or owners of the minerals to be mined; and the source of the operator's legal right to enter and mine the minerals on the land affected by the permit.
- The application was signed and dated by the appropriate corporate official.

**IV. Site Visit - §59-8-205 (G)(3)**

A site visit was conducted by Division personnel on **17-Dec-18**.

**V. Public Notice -- §59-8-205 (G)(8)**

The applicant shall give public notice at least one day prior to filing the application in a newspaper of general circulation covering the county where the proposed surface mine is to be located of his intent to operate a surface mine, and its proposed location. The applicant submitted proof of public notice with the application.

**VI. Fees -- §59-8-206**

The permit shall consist of a basic fee of \$250 for each year of the permit, plus an additional acreage fee of \$25.00 for each acre or fraction thereof of the land affected by the operation, not to exceed \$2,500 for such acreage fee.

The supplemental basic fee for an amendment of a permit shall be \$50.00 plus any additional acreage fee that may be incurred. Memphis Stone and Gravel Co. has paid the required fees to cover **183.0** acres as outlined below:

Previous acreage: 183.0  
Additional acres this amendment: 0.0  
Total acres: 183.0 (fee cap at 100.0 acres).

Acreage fee:	\$0.00
Permit fee	\$1250.00
Modification fee:	\$0.00
Total fee:	\$1250.00

**VII. Performance Bond -- §59-8-207**

A performance bond shall be filed with the Division and be payable to the state of Tennessee. The bond value shall not be less than \$600.00 per acre. Liability under such bond shall be continuous until the reclamation provisions have been fulfilled. The amount of bond shall be increased or decreased to take account of any change in the acreage. Bond for this company was found to be complete with **\$378,900.00** available and **\$378,900.00** needed for all permitted **Memphis Stone and Gravel Co.** Tennessee mine sites.

**VIII. Mining, Reclamation Plan, and Revegetation Plan -- §59-8-208 - 209**

A mining and reclamation plan for the area affected by the mining operation was submitted with the application. The applicant also provided a revegetation plan showing the current and future use of the site. After the initial planting of the vegetative cover, the bond may be reduced by \$300.00 per acre.

**IX. Annual Report -- §59-8-210**

The operator shall file an annual report stating the number of acres of land affected by the operation, the extent of reclamation and revegetation accomplished by him. The report shall be confirmed by an inspection made by Division personnel. The annual reports are up to date.

**X. Rules Sand and Gravel -- Chapter 400-3-9**

In addition to fulfilling all requirements of *T. C. A. §59-8-200 et. seq.* and all requirements of *Chapter 400-3-1 et. seq.* the following section provisions contained in *Chapter 400-3-9 et. seq.* shall be adhered to by all operators of sand and gravel mines.

---

**STATE OF TENNESSEE -- POLICY OF NON-DISCRIMINATION**

*Pursuant to the State of Tennessee's policy of non-discrimination, the Tennessee Department of Environment and Conservation does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in its programs, services or activities. You may direct any Equal Employment Opportunity/Affirmative Action inquiries or complaints to the EEO/AA Coordinator, Office of General Counsel, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue, Nashville, TN 37243-1102 or telephone 1-888-867-7455. Direct any Americans with Disabilities Act (ADA) inquiries or complaints to the ADA Coordinator, Human Resources Division, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue, Nashville, TN 37243-1102 or telephone 1-866-253-5827. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).*

**BOND**

Permit No. SUP 09-217 CO

Bond No. 106910368

KNOW ALL MEN BY THESE PRESENTS:

That we, **Memphis Stone and Gravel Company** as Principal, and **Travelers Casualty and Surety Company of America**, as Surety, are hereby held and firmly bound unto Shelby County, Tennessee, in the sum of **One Hundred Twenty Two Thousand, Five Hundred and No/100 (\$122,500.00) Dollars** for the payment of which sum the said Principal and Surety do jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns, and each and every one of them firmly by these presents as hereinafter set out:

WHEREAS, Shelby County, Tennessee has granted or is about to grant permission to the Principal for the excavation or processing, or both, of sand and gravel at **the south side of Millington-Arlington Road – the Rosenburg Property**, containing approximately **35** acres within said Shelby County, Tennessee, subject to the Principal filing with Shelby County Commissioners a bond guaranteeing compliance with Shelby County Zoning Regulations Beyond City – County 5-Mile Zone, adopted March 6, 1961, as amended, covering reclamation of the area shown on the certified survey attached hereto and made a part hereof.

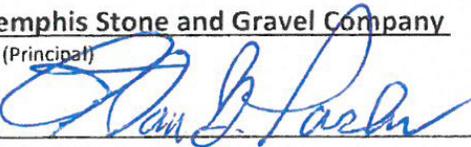
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall indemnify and save harmless said Shelby County, Tennessee from and against any direct loss or damage by reason of the Principal's failure to comply with the aforesaid Shelby County Zoning Regulations Beyond City-County 5-Mile Zone, adopted March 6, 1961, as amended, as to reclaiming the parcel contained in the above certified survey, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED that the Surety may at any time terminate its liability by giving thirty days written notice to Shelby County Commissioners, and the Surety shall not be liable for any loss after the expiration of thirty days, except for any losses occurring while this bond was in full force and effect.

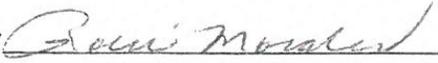
THIS BOND shall remain in force and be binding upon the Surety from the date hereof, unless cancelled prior thereto, and until the above mentioned reclamation is complete.

SIGNED, SEALED, AND DATED AT MEMPHIS, TENNESSEE, THIS 2<sup>nd</sup> Day of May, 2018.

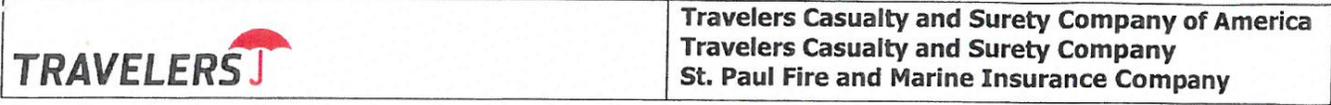
Memphis Stone and Gravel Company  
(Principal)

By 

Travelers Casualty and Surety Company of America  
(Surety)

By 

Robbi Morales, Attorney-in-fact  
Tennessee Non-Resident Agent License No. 2259422



**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Robbi Morales** of Dallas Texas their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law. **IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By: *Robert L. Raney*  
Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021



*Marie C. Tetreault*  
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

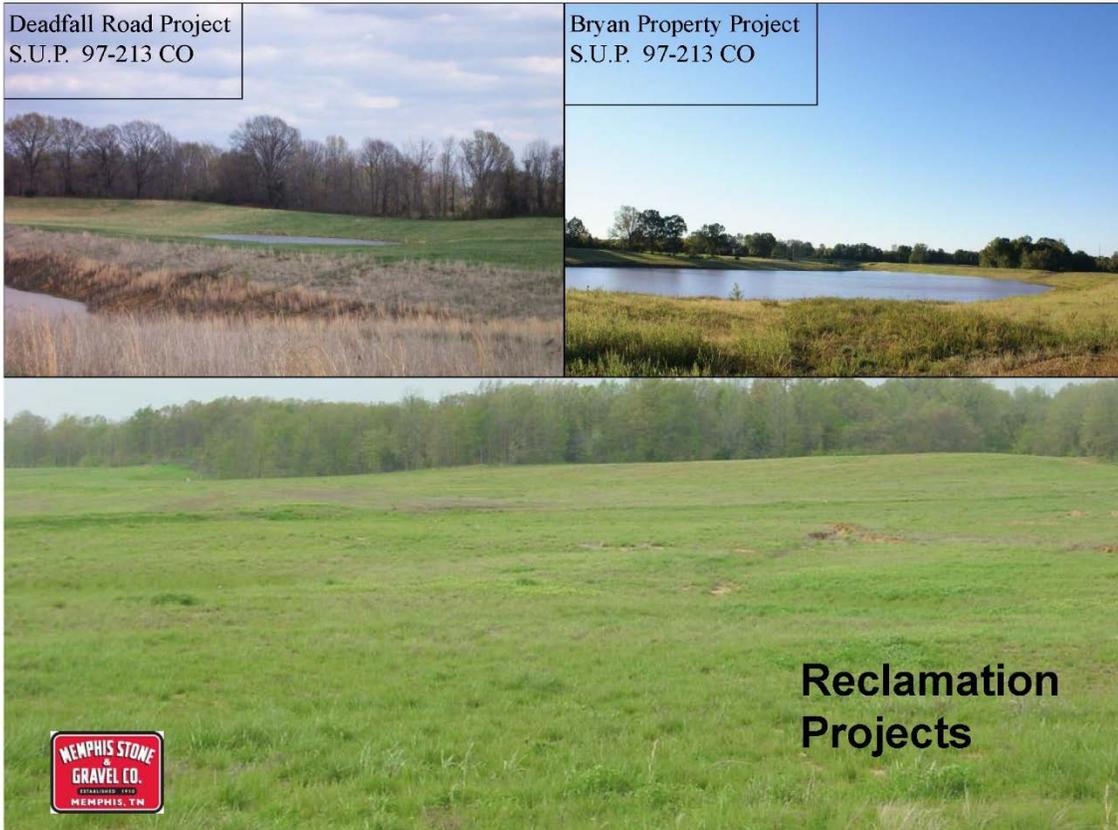
Dated this 2nd day of May, 2018



*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

**MEMPHIS STONE AND GRAVEL RECLAMATION EXAMPLES**



**CARTWRIGHT PROPERTY, SHELBY COUNTY, TN.**



**HWY 64, SAM'S (WOLFCHASE MALL)**



**SANGA ROAD/WALNUT GROVE, SHELBY COUNTY, TN.**



**BARTLETT, SHELBY COUNTY, TN.**



**COLLIERVILLE, SHELBY COUNTY, TN.**



**TDEC SUMMARY INFORMATION**

**TN0079693-BRADLEY ESTATE  
TN0079375-DUKE ESTATE WITH ROSENBERG, CRENSHAW ADDITIONS  
SUMMARY OF PERMITTING AND ASSOCIATED ACTIVITIES**

TN0079693 – Bradley Estate

<u>Milestone</u>	<u>Date</u>
-Initial permit issuance	April 13, 2007
-Reissuance	May 11, 2012
-Compliance Inspection – Confirmation - Mining Activity Complete; Reclamation Underway	November 21, 2016
-Reissuance to continue reclamation	May 1, 2017
-Compliance Inspection – Reclamation Complete	August 29, 2018
-Permit Terminated	April 15, 2019

TN0079375 – Duke Estate; Rosenberg, Crenshaw Additions

<u>Milestone</u>	<u>Date</u>
-Original mining operation under Tennessee Surface Mining Law Pre-NPDES program - closed, reclaimed by 1980's	1970's - 1980's
-Initial NPDES Permit Issuance (77 acres) (SUP04-233co)	+/- March 9, 2005
-Renewal and Modification (77+60 acres-Rosenberg Addition) Total of 137 acres under permit	August 10, 2010
-Renewal and Modification (137+46 acres-Crenshaw Addition) Total of 183 acres under permit	January 31, 2014
-Renewal with no changes (183 acres under permit)	February 1, 2019

***NOTE: Each issuance/renewal listed above includes the issuance/renewal of the NPDES permit as well as the Surface Mining Permit for each site.***

**EMAIL CHAIN RELATED TO THIS SITE**

7/2/2020

Mail - Penzes, Jeffrey - Outlook

**From:** Whitehead, Josh <Josh.Whitehead@memphistn.gov>  
**Sent:** Friday, April 24, 2020 10:57 AM  
**To:** Britton White <bwhite@technologyprocesses.com>; Saliba, Norman <Norman.Saliba@memphistn.gov>  
**Cc:** Amber.Mills@shelbycountyttn.gov <Amber.Mills@shelbycountyttn.gov>; rnbwilliams@earthlink.net <rnbwilliams@earthlink.net>; Trip Jones <wjones17157@aol.com>; chris.simmons@shelbycountyttn.gov <chris.simmons@shelbycountyttn.gov>; Robert.Rolwing@shelbycountyttn.gov <Robert.Rolwing@shelbycountyttn.gov>; Alan Parks <alan.parks@msgravel.com>; Zeanah, John <John.Zeanah@memphistn.gov>  
**Subject:** Re: Memphis Stone and Gravel and OPD

Mr. White:

I believe Mr. Rolwing is also preparing a response but I wanted to share with you the findings of my colleague, Chip Saliba, who has been in contact with Cliff Caudle with the Memphis Environmental Field Office of the Tennessee Department of Environment and Conservation. Below is his summary on each of the Special Use Permits you have cited.

\*\*\*beginning of Chip's findings with regard to alleged expirations\*\*\*

**Bradley Estate - (OPD Case # SUP 06-212 CO) 8339 Deadfall Road**

County Commission Approval: 08/14/06

State Approval: 04/13/07

Mining Activity Completed on 11/21/16

Reclamation: Completed on 08/29/18

Comments: Condition #22 of the approved County Commission Resolution states the special use permit shall be valid for ten years from the date when State approval is received. Mining activity was complete on 11/21/16. Condition #20 states that a copy of the State approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan. Mr. Caudle states that the reclamation is complete and he will send OPD the reclamation plan.

**Rosenburg Addition - (OPD Case #SUP 09-217 CO) 10577 Millington-Arlington Road**

County Commission Approval: 01/11/10

State Approval: 08/10/10

Mining Activity: Still Continuing

Reclamation Plan: Not applicable - Still Mining

Comments: Condition #18 of the approved County Commission Resolution states that the special use permit shall be valid for ten years from the date when State approval is received. Based on this, the special permit will expire on 08/10/20 unless a time extension is applied for. Condition #17 states that a copy of the State approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan.

**Crenshaw Addition abutting Rosenburg Addition- (OPD Case #SUP 13-206 CO) 10577 Millington-Arlington Road**

County Commission Approval: 05/06/13

State Approval: 01/31/14

Mining Activity: Still Continuing

Reclamation Plan: Not Applicable - Still Mining

Comments: Condition #17 of the approved County Commission Resolution states that the special use permit shall be valid for ten years from the date when State approval is received. Based on this, the special use permit will expire on 01/31/24 unless a time extension is applied for. Condition #16 states that a copy of the State

7/2/2020

Mail - Penzes, Jeffrey - Outlook

approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan.

**SUMMARY**

Section 9.6.14B of the Memphis and Shelby County Unified Development Code states the following: "*Excluding planned developments, special use permits shall be implemented within 24 months of final approval or such permits shall be void, unless conditioned otherwise.*" The above-referenced special use permits were all "**conditioned otherwise**" to allow for ten-year mining activity to begin effective with State approval. Further, each special use permit is conditioned to include that OPD may accept the State-approved reclamation plan to satisfy the reclamation requirement.

\*\*\*end of Chip's findings\*\*\*

As for alleged landscaping and fencing violations, I have contacted Alan Parks with Memphis Stone and Gravel (copied here) and he has stated they will ameliorate any violations of those conditions of approval. I will ask that Chris Simmons send an inspector to the site to ensure this work has been performed.

Therefore, if and once the improvements cited immediately above are completed, there will be no citations pursued in Environmental Court on these sites.

Thank you,

Josh Whitehead  
Administrator  
Memphis and Shelby County Office of Planning and Development

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**From:** Britton White <bwhite@technologyprocesses.com>

**Sent:** Friday, March 27, 2020 11:40 AM

**To:** Saliba, Norman <Norman.Saliba@memphistn.gov>

**Cc:** Whitehead, Josh <Josh.Whitehead@memphistn.gov>; Amber.Mills@shelbycountytg.gov <Amber.Mills@shelbycountytg.gov>; rose.hill@shelbycountytg.gov <rose.hill@shelbycountytg.gov>; rmbwilliams@earthlink.net <rmbwilliams@earthlink.net>; Trip Jones <wjones17157@aol.com>; chris.simmons@shelbycountytg.gov <chris.simmons@shelbycountytg.gov>; Robert.Rolwing@shelbycountytg.gov <Robert.Rolwing@shelbycountytg.gov>

**Subject:** RE: Memphis Stone and Gravel and OPD

**CAUTION:** This email originated outside of the City of Memphis organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Hi Mr. Saliba and Mr. Rolwing,

Circling back on the below email since I never saw a reply. I understand that this is a challenging time for many, so please know that I'm aware response times may be delayed especially given OPD's office move. Has there been any conversation on how these apparent violations by MSG will be presented to environmental court? Any discussion on how OPD, the LUCB, and The Shelby County Commission might address the overall lack of enforcement of these Special Use Permits (SUPs)/UDC/2007 Code of Ordinances, how SUP applications will be managed, how SUPs will be reviewed, enforced, performance bonds received, etc.?

7/2/2020

Mail - Penzes, Jeffrey - Outlook

I see that OPD business is continuing remotely, so I hope these issues are being worked through as well.

Happy to have a conference call to discuss if you'd like.

Sincerely,

Britton

*Sent from my Verizon Motorola Smartphone*

On Mar 18, 2020 13:39, Britton White <bwhite@technologyprocesses.com> wrote:

Thank you Mr. Saliba.

Based on Chapter 16-32 section 4 (application procedure) in the 2007 Code of Ordinances, and in section 9.6.12 of the Unified Development Code, it seems clear that time extensions are required.

Am I missing something?

Thanks,

Britton

*Sent from my Verizon Motorola Smartphone*

On Mar 18, 2020 13:14, "Saliba, Norman" <Norman.Saliba@memphistn.gov> wrote:

Mr. White:

I have looked at the files for both Rosenberg and Crenshaw and find no time extensions have been previously asked for, but do not take this response at this time as an official ruling that the time extensions were required. I am currently investigating why such extensions may have not been applied for and if any are needed. You will receive a response to this in the next seven to ten days once we have completed our investigation.

Chip Saliba  
Deputy Administrator  
Development Services  
OPD

-----Original Message-----

From: Britton White [<mailto:bwhite@technologyprocesses.com>]

Sent: Wednesday, March 18, 2020 12:53 PM

To: Robert.Rolwing@shelbycountytn.gov; rose.hill@shelbycountytn.gov;  
chris.simmons@shelbycountytn.gov; Saliba, Norman <Norman.Saliba@memphistn.gov>

Cc: Mills, Amber <Amber.Mills@shelbycountytn.gov>; rnbwilliams@earthlink.net; wjones17157@aol.com

Subject: RE: Memphis Stone and Gravel and OPD

7/2/2020

Mail - Penzes, Jeffrey - Outlook

CAUTION: This email originated outside of the City of Memphis organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Hi Mr. Rolwing,

I was able to make it out to the Rosenberg site this past weekend, and would like to provide an update to the group here on aerial shots created from a drone video that was taken. Since the last satellite photos I'm able to gather are back from March 2018 (4th attached), I thought it would be beneficial to get updated pictures. This site (Rosenberg near Lubov Rd and Osborntown) is the one where the length of the fence is in question especially since it stops right where Lubov Rd dead-ends, which allows easy access to the site. The SUP for this site (09-217) also called for evergreens to be planted where the tree-line was either thin or non-existent. This was never done, and is in addition to the other apparent violations we've already reviewed.

From the picture labeled Rosenberg 4, you can see a black truck in the top-left corner, which is where Lubov Rd dead-ends. If you zoom in just a bit, you can clearly see the fence in question, and where it ends.

Mr. Saliba, have you had an opportunity to look into whether or not MSG requested three time extensions for the Rosenberg SUP, and two time extensions for the Crenshaw SUP?

Thanks,

Britton

---

From: Britton White  
Sent: Friday, March 13, 2020 5:49 PM  
To: Robert.Rolwing@shelbycountytn.gov  
Cc: Mills, Amber; Saliba, Norman  
Subject: RE: Memphis Stone and Gravel and OPD

Thank you Mr. Rolwing. I can meet them Tuesday as well.

Britton

Sent from my Verizon Motorola Smartphone On Mar 13, 2020 15:24, "Rolwing, Robert"

<Robert.Rolwing@shelbycountytn.gov> wrote:

I will see if Rose is in today, and if so remind her to respond to your e-mail. I would not count on them being able to come out Monday, unless you hear otherwise from Rose, as that is her department's day in Environmental Court. Robert.

From: Britton White <bwhite@technologyprocesses.com>  
Sent: Friday, March 13, 2020 3:11 PM  
To: Rolwing, Robert <Robert.Rolwing@shelbycountytn.gov>  
Cc: Saliba, Norman <norman.saliba@memphistn.gov>; Mills, Amber <Amber.Mills@shelbycountytn.gov>  
Subject: RE: Memphis Stone and Gravel and OPD

7/2/2020

Mail - Penzes, Jeffrey - Outlook

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

I am requesting a moratorium on mining at Rosenberg and Crenshaw, which was included in the original letter to Ms. Rose at Code Enforcement in late January.

This is due to the fact that both permits are void per the Code of Ordinances.

Please let me know about Code Enforcement being able to meet me at the Rosenberg site this Monday as I've not received a response to my offer from this morning.

Thank you Mr. Rolwing.

Britton

Sent from my Verizon Motorola Smartphone On Mar 13, 2020 15:04, "Rolwing, Robert" <Robert.Rolwing@shelbycountyttn.gov<mailto:Robert.Rolwing@shelbycountyttn.gov>> wrote: Mr White: Thank you again as well for gathering the material you did and presenting it to us.

For clarification, when you speak of moratorium, are you speaking of halting production:

- a) at the Rosenberg and Crenshaw properties only;
- b) at all Memphis Stone & Gravel locations in Shelby County; or
- c) all future gravel extraction in Shelby County.

I don't believe any of them changes the answer I gave yesterday, but I do want to make certain that we are speaking about the same thing. Thank you,

Robert B. Rolwing  
Assistant Shelby County Attorney  
Tele. (901) 222-2100

From: Britton White <bwhite@technologyprocesses.com<mailto:bwhite@technologyprocesses.com>>  
Sent: Friday, March 13, 2020 8:11 AM  
To: Rolwing, Robert <Robert.Rolwing@shelbycountyttn.gov<mailto:Robert.Rolwing@shelbycountyttn.gov>>; Hill, Rose <Rose.Hill@shelbycountyttn.gov<mailto:Rose.Hill@shelbycountyttn.gov>>; Simmons, Chris <Chris.Simmons@shelbycountyttn.gov<mailto:Chris.Simmons@shelbycountyttn.gov>>  
Cc: jdmarks1@comcast.net<mailto:jdmarks1@comcast.net>; Saliba, Norman <norman.saliba@memphistn.gov<mailto:norman.saliba@memphistn.gov>>; Mills, Amber <Amber.Mills@shelbycountyttn.gov<mailto:Amber.Mills@shelbycountyttn.gov>>; Trip Jones

7/2/2020

Mail - Penzes, Jeffrey - Outlook

<wjones17157@aol.com<mailto:wjones17157@aol.com>>  
Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

First, I greatly appreciate you all taking the time to walk through all the details and documents yesterday.

Ms. Hill and Mr. Simmons, I would be happy to meet you this Monday at the Rosenberg property to review the site and take pictures. What time Monday is best for you?

Thanks,

Britton

Sent from my Verizon Motorola Smartphone On Mar 5, 2020 13:50, Britton White  
<bwhite@technologyprocesses.com<mailto:bwhite@technologyprocesses.com>> wrote:  
I appreciate your help in coordinating this meeting Mr. Rolwing, and thank you for your comments.

Given the number of apparent violations while operating under voided permits, I would say this falls outside of any normal procedures, so I would ask that this case be treated differently than other cases.

Section 9.6.14 of the UDC, and Chapter 16-32-4 (Application procedure) Section A of the 2007 Code of Ordinances clearly state permits shall be implemented within 24 months of final approval or such permits shall be void.

Maybe the challenge here is no one has ever brought a case like this before the County/Environmental Court, and there's concern over the potential fallout?

Have you had a chance to review the packet in its entirety?

Thanks,

Britton

Sent from my Verizon Motorola Smartphone On Mar 5, 2020 12:35, "Rolwing, Robert"  
<Robert.Rolwing@shelbycountytg.gov<mailto:Robert.Rolwing@shelbycountytg.gov>> wrote:  
Mr White: Rose Hill, Inspector Chris Simmons, and I, are available on Thursday, March 12, 9:30 - 10:15 a.m., for a meeting regarding Memphis Stone & Gravel, at the Code Enforcement Office, 6465 Mullins Station Road at Shelby Farms. Joining us for OPD will be Chip Saliba, Deputy Administrator of OPD for Land Use Controls, who will be sitting in lieu of Messrs. Zeanah and Whitehead who have schedule conflicts, and are therefore unable to attend.

Regarding a moratorium, Code Enforcement's normal procedure is to cite an offender to Environmental Court, where the District Attorney and judge both attempt to bring the offender into compliance. I can tell you now that I do not expect that the D.A. would request an injunction to stop an existing business from operating.

7/2/2020

Mail - Penzes, Jeffrey - Outlook

Robert B. Rolwing  
Assistant Shelby County Attorney  
Tele. (901) 222-2100

From: Britton White <bwhite@technologyprocesses.com<mailto:bwhite@technologyprocesses.com>>  
Sent: Thursday, March 5, 2020 11:00 AM  
To: Hill, Rose <Rose.Hill@shelbycountyttn.gov<mailto:Rose.Hill@shelbycountyttn.gov>>; Rolwing, Robert  
<Robert.Rolwing@shelbycountyttn.gov<mailto:Robert.Rolwing@shelbycountyttn.gov>>  
Cc: jdmarks1@comcast.net<mailto:jdmarks1@comcast.net>; Simmons, Chris  
<Chris.Simmons@shelbycountyttn.gov<mailto:Chris.Simmons@shelbycountyttn.gov>>; Trip Jones  
<wjones17157@aol.com<mailto:wjones17157@aol.com>>  
Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Good morning to everyone. Checking to see if the below email was received yesterday.

Also, I have been in touch with Commissioner Mills, and asked if she was able to make our meeting next Thursday morning, which she said yes.

So that I can give her a firm time, does 9:30 a.m. work?

Thank you,

Britton

Sent from my Verizon Motorola Smartphone On Mar 4, 2020 07:01, Britton White  
<bwhite@technologyprocesses.com<mailto:bwhite@technologyprocesses.com>> wrote:  
Thanks Mr. Rolwing.

Ms. Hill, since it appears MSG is operating the Crenshaw and Rosenberg pits under voided permits, which is why I've asked for a moratorium on mining activity for those two properties, are you able to make that call on your own as Code Enforcement, or no?

Again, given all the documentation provided, there are serious permit, UDC, and 2007 Code of Ordinances violations that I believe warrant the moratorium.

If Code Enforcement is unable to make the call on the moratorium, I would suggest the case be moved up in Environmental Court since destruction of Shelby County land is apparent.

As for next Thursday's meeting, I would appreciate Code Enforcement's presence, Mr. Rolwing, and Josh Whitehead and John Zeanah from OPD.

Please advise if 0930 works. Likely need two hours set aside to talk through everything.

Thank you all for your help here.

7/2/2020

Mail - Penzes, Jeffrey - Outlook

Britton

Sent from my Verizon Motorola Smartphone On Mar 3, 2020 17:27, "Rolwing, Robert"  
<Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>> wrote:

Mr White,

Code Enf is looking at the problem and we will know more after they have checked it out fully.

FYI I have attached the most recent Code Enforcement docket in Environmental Court for context -- 33 cases yesterday. They will have at least that many cases next Monday, and again the Monday after that, etc. Addressing your complaint is simply a matter of getting to it.

Thursday morning the 12th is good with me. I have not yet heard back from the other county employees, although not sure my presence is needed anyway. We will contact you again tomorrow or one day this week, but I wanted to respond to your e-mail today.

Robert B. Rolwing

Assistant Shelby County Attorney

Tele. (901) 222-2100

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>  
Sent: Monday, March 2, 2020 8:25 PM  
To: Rolwing, Robert <Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>>  
Cc: Hill, Rose <Rose.Hill@shelbycountyttn.gov <mailto:Rose.Hill@shelbycountyttn.gov>>; Simmons, Chris <Chris.Simmons@shelbycountyttn.gov <mailto:Chris.Simmons@shelbycountyttn.gov>>; Trip Jones <wjones17157@aol.com <mailto:wjones17157@aol.com>>  
Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Thank you Mr. Rolwing.

Code Enforcement mentioned they were waiting on you for guidance before moving forward with anything.

I have to be very frank here. I feel like I'm getting the run-around since there are still no answers regarding where this complaint stands.

Am I missing something? I believe I've provided plenty of details for some sort of initial response. Have you reviewed the packet? If so, do you have any comments?

s

7/2/2020

Mail - Penzes, Jeffrey - Outlook

And are you all able to meet next Thursday morning at 9:30?

Thanks,

Britton

Sent from my Verizon Motorola Smartphone

On Mar 2, 2020 16:18, "Rolwing, Robert"

<Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>> wrote:

Mr White:

If there are violations, MSG will most likely be cited to Environmental Court.

OPD tells me that they not been in communication with MSG.

Robert B. Rolwing

Assistant Shelby County Attorney

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>

Sent: Monday, March 2, 2020 3:18 PM

To: Hill, Rose <Rose.Hill@shelbycountyttn.gov <mailto:Rose.Hill@shelbycountyttn.gov>>

Cc: Simmons, Chris <Chris.Simmons@shelbycountyttn.gov <mailto:Chris.Simmons@shelbycountyttn.gov>>;

Rolwing, Robert <Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>>;

Trip Jones <wjones17157@aol.com <mailto:wjones17157@aol.com>>

Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Thank you Ms. Hill.

I guess the one question I have for the group here is where things stand regarding my request for a 30 day moratorium on mining at the Roseburg and Crenshaw sites.

Based on all the evidence gathered, it appears MSG shouldn't be mining those two sites due to voided permits. And that's just the beginning.

Has OPD been in touch with Memphis Stone and Gravel?

Thanks,

Britton

Sent from my Verizon Motorola Smartphone

On Mar 2, 2020 14:48, "Hill, Rose"

7/2/2020

Mail - Penzes, Jeffrey - Outlook

<Rose.Hill@shelbycountytn.gov<mailto:Rose.Hill@shelbycountytn.gov>> wrote:

Forwarding to Chris Simmons as senior inspector, he will assign an inspector to check or he himself with check, thanks

Chris-Please respond, thanks

[cid:image001.png@01D5F0A1.94DE1180]

Rose Hill

Sign, Zone and Special Events Manager

Memphis and Shelby County

Office of Construction Code Enforcement

6465 Mullins Station Road

Memphis, Tennessee 38135

901-222-8374

From: Rolwing, Robert  
Sent: Monday, March 02, 2020 2:19 PM  
To: 'Britton White'  
Cc: Hill, Rose; Trip Jones  
Subject: RE: Memphis Stone and Gravel and OPD

I will speak with Rose Hill about next Thursday.

OPD and Code Enforcement are both aware of your complaint. No I have had no communication with Memphis Stone & Gravel since their last application.

RBR.

From: Britton White <bwhite@technologyprocesses.com<mailto:bwhite@technologyprocesses.com>>  
Sent: Monday, March 2, 2020 1:56 PM  
To: Rolwing, Robert <Robert.Rolwing@shelbycountytn.gov<mailto:Robert.Rolwing@shelbycountytn.gov>>  
Cc: Hill, Rose <Rose.Hill@shelbycountytn.gov<mailto:Rose.Hill@shelbycountytn.gov>>; Trip Jones <wjones17157@aol.com<mailto:wjones17157@aol.com>>  
Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Thanks Mr. Rolwing. How about 0930 next Thursday?

Also, have you spoken with OPD about this? Is MSG aware, or are you holding back all communication with

7/2/2020

Mail - Penzes, Jeffrey - Outlook

OPD and/or MSG on the documentation?

Thanks,

Britton

Sent from my Verizon Motorola Smartphone

On Mar 2, 2020 13:45, "Rolwing, Robert"

<Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>> wrote:

Mr White:

Thank you for your e-mail. I understand that Code Enforcement has recently been at the Arlington gravel pit, or will soon be there. Unfortunately I cannot meet this week as I am covered up. Late next week would be much better for me.

Robert B. Rolwing

Assistant Shelby County Attorney

Tele. (901) 222-2100

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>

Sent: Monday, March 2, 2020 12:41 PM

To: Rolwing, Robert <Robert.Rolwing@shelbycountyttn.gov <mailto:Robert.Rolwing@shelbycountyttn.gov>>

Cc: Hill, Rose <Rose.Hill@shelbycountyttn.gov <mailto:Rose.Hill@shelbycountyttn.gov>>; Trip Jones

<wjones17157@aol.com <mailto:wjones17157@aol.com>>

Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Hi Mr. Rolwing,

To follow up on my voice message from this morning, I would appreciate a meeting this Thursday or Friday morning with you, Ms. Hill, and Mr. Simmons to discuss where things stand related to the documentation provided a month ago on Memphis Stone and Gravel where they appear to be operating without a valid permit at two current mining sites.

There are additional, potential violations, which are also clearly outlined and backed by the same documentation in the packet submitted to you and Ms. Hill back in late January.

I understand from Ms. Hill that you have asked if Code Enforcement has been on site looking for any current violations. Based on my research, it seems the main issues lie more so with a lack of compliance with the 2007 Code of Ordinances, the Shelby County UDC, and the Special Use Permit requirements. Any potential violations found at any site would be in addition to the documented findings already provided.

During my initial meeting with Code Enforcement on Friday January 24, 2020, additional concerns and

7/2/2020

Mail - Penzes, Jeffrey - Outlook

questions were raised by Mr. Burk Renner regarding a requirement that MSG submit a performance bond in the amount of \$3,500 per acre to the building official prior to the commencement of sand, gravel, or other extraction operations. If I recall correctly, he was unsure if that ever took place due to a variety of reasons.

Given what Mr. Renner raised, it might be good to walk through the special use permit requirements for each permit currently in question to determine if all requirements were met.

Please let me know if/when we might be able to meet this week.

Sincerely,

Britton

Sent from my Verizon Motorola Smartphone

On Jan 27, 2020 09:27, "Rolwing, Robert"

<Robert.Rolwing@shelbycountytn.gov <mailto:Robert.Rolwing@shelbycountytn.gov>> wrote:

Good morning, this will confirm that Rose Hill and I received your packets Friday. We will review it and be in contact with you.

Robert B. Rolwing

Assistant Shelby County Attorney

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>

Sent: Monday, January 13, 2020 1:38 PM

To: Rolwing, Robert <Robert.Rolwing@shelbycountytn.gov <mailto:Robert.Rolwing@shelbycountytn.gov>>

Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

It's just an audio conference, no video. Thanks Mr. Rolwing.

Britton

Sent from my Verizon Motorola Smartphone

On Jan 13, 2020 13:12, "Rolwing, Robert"

<Robert.Rolwing@shelbycountytn.gov <mailto:Robert.Rolwing@shelbycountytn.gov>> wrote:

Mr White: We have not used webex before. Is this a video conference? Pls be advised that we have no video hook-up capabilities. RBR.

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>

Sent: Saturday, January 11, 2020 9:51 AM

To: Rolwing, Robert <Robert.Rolwing@shelbycountytn.gov <mailto:Robert.Rolwing@shelbycountytn.gov>>

7/2/2020

Mail - Penzes, Jeffrey - Outlook

Subject: RE: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Thank you Mr. Rolwing. Would Monday at 1400 work? My cell is 901-233-2536.

If we need to adjust for any reason, no worries.

Thanks,

Britton

Sent from my Verizon Motorola Smartphone

On Jan 10, 2020 16:50, "Rolwing, Robert"

<Robert.Rolwing@shelbycountytg.gov <mailto:Robert.Rolwing@shelbycountytg.gov>> wrote:

Mr White: Yes I will be happy to speak with you about Stone & Gravel. I should be available all day Monday; Tuesday after about 10; Wednesday; and Thursday afternoon. Or send me your number and let me know when a good time to speak with you would be.

Robert B. Rolwing

Assistant Shelby County Attorney

160 N. Main Street, Suite 950

Memphis, Tennessee 38103

Tele. (901) 222-2100 DIRECT: 222-2136

From: Britton White <bwhite@technologyprocesses.com <mailto:bwhite@technologyprocesses.com>>

Sent: Friday, January 10, 2020 8:30 AM

To: Rolwing, Robert <Robert.Rolwing@shelbycountytg.gov <mailto:Robert.Rolwing@shelbycountytg.gov>>

Cc: Trip Jones <wjones17157@aol.com <mailto:wjones17157@aol.com>>

Subject: Memphis Stone and Gravel and OPD

[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]

Mr. Rolwing,

My name is Britton White, and I live in the Rosemark community. If you have 15 minutes in the next week or so, I'd appreciate the opportunity to run a few questions by you via phone.

From there, Trip Jones and I would like to schedule a meeting with you, Josh Whitehead, and John Zeanah in the next few weeks, please.

7/2/2020

Mail - Penzes, Jeffrey - Outlook

Thank you in advance for your time.

Sincerely,

Britton

Sent from my Verizon Motorola Smartphone

**LETTERS RECEIVED**

Two letters of support and two letters of opposition were received at the time of completion of this report and have subsequently been attached.

## Memphis Stone and Gravel time extension for an existing gravel mining operation

GARY W TAYLOR <gary\_w\_taylor@bellsouth.net>

Wed 7/1/2020 9:04 AM

To: Penzes, Jeffrey <jeffrey.penzes@memphistn.gov>; GARY W TAYLOR <gary\_w\_taylor@bellsouth.net>

**CAUTION:** This email originated outside of the **City of Memphis** organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

---

Jeff

My name is Gary Taylor and I own property next to and around the Memphis Stone and Gravel operation on Millington Arlington Road.

I support their application for a time extension to complete the extraction of sand and gravel from their land.

I trust that this is an acceptable means of communicating my opinion on this matter. If not please contact me at the above email address or call me at 901 338 9686.

Thank you.

Gary Taylor

**CLARIFICATION---Land Use Control Board cases for July 9, 2020**

William 'Trip' Jones III &lt;wjones17157@aol.com&gt;

Thu 7/2/2020 2:44 PM

To: Penzes, Jeffrey &lt;jeffrey.penzes@memphistn.gov&gt;; Whitehead, Josh &lt;Josh.Whitehead@memphistn.gov&gt;

Cc: hbranan@farris-law.com &lt;hbranan@farris-law.com&gt;; robert.rolwing@shelbycountyttn.gov &lt;robert.rolwing@shelbycountyttn.gov&gt;; amber.mills@shelbycountyttn.gov &lt;amber.mills@shelbycountyttn.gov&gt;; wbw0517@gmail.com &lt;wbw0517@gmail.com&gt;

**CAUTION:** This email originated outside of the **City of Memphis** organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jeffrey:

I left a voicemail for you earlier, and am hopeful that you can append this email to the one I sent in last night (below) re SUP-09-217, extension of the SUP for the Rosenberg property. .

I received a call this morning from Homer Branan regarding my comments. Homer has been one of the Attorney's of record for Memphis Stone and Gravel for many years. He asked if I could clarify if I was opposed or in favor of the SUP approval.

In my original email I stated that

"....since this is just a request to let MSG finish mining property they received a 10 year permit on in 2010... I feel sure it will be approved."

Let me be more direct....

**FACT I AM IN FAVOR OF APPROVAL FOR THE EXTENSION OF SUP-09-217 and believe that most residents in our area would be as well.**

The county needs aggregate and as I stated, the Bolton-Arlington area has been a mining area for decades. My questions centered more along the lines of the SUP **process and the UDC** (pre-UDC and UDC) and enforcement of SUP conditions.

**My single focus is to prevent mining from coming to the Atoka/Rosemark area and interrupting the tremendous progress and growth that have happened. The more we understand about the SUP process... the better equipped we are in the event MSG makes another permit application in our area in the future.**

It was quite unsettling to learn that near the end of 2019 MSG purchased another 175 acres of land in Atoka, that borders Rosemark Estates leading one to believe that they may still have long range plans for the Atoka-Rosemark mining operation.

Conversely, it is interesting to note that as a matter of public record (register's office) they have canceled mineral lease rights on some of the subject properties they do not own.

In any case, it behooves us, for now, to stay in tune with the process.

**I have requested that my Shelby County Commissioner, Amber Mills vote in favor of this extension.**

Sincerely,

William 'Trip' Jones III  
9215 Mulberry Rd.  
Atoka/Rosemark TN. 38004

-----Original Message-----

From: William 'Trip' Jones III <wjones17157@aol.com>

To: josh.whitehead@memphistn.gov <josh.whitehead@memphistn.gov>; jeffrey.penzes@memphistn.gov <jeffrey.penzes@memphistn.gov>

Sent: Wed, Jul 1, 2020 11:25 pm

Subject: Fwd: Land Use Control Board cases for July 9, 2020

July 1, 2020

To:

OPD Staff Planner Jeffrey Penzes

Per the OPD notice I received of June 2, which came out from Josh Whitehead, find my comments below regarding one of the 7 cases set for review by the Land Use Control Board on July 9. The case that I have comments on is Case #3 SUP-09-217 Bolton: time extension for gravel mining operation at 10577 Millington-Arlington Road for Memphis Stone and Gravel.

I DO NOT wish to speak at the meeting/conference call on July 9 but would like my written comments to be included with the packet as it moves through the process.

First let me say that I am speaking as a concerned Shelby County citizen and not as President of the Rosemark Civic Club. With the COVID issue we have not attempted to have a public meeting and address this SUP or any other issue for several months.

I have been a part of the Rosemark and Atoka United Group and the Rosemark Civic Club who have banded together and resisted MSG's attempts to put a gravel mining operation in the Atoka and Rosemark communities by combining land and haul routes in several variations. This campaign has now stretched out over a decade and includes one fight in Shelby, then in Atoka, then the latest in Shelby County within the last few years. Many thanks to the governing bodies in both Shelby County and Atoka for turning down these Special Use Permits for our fast growing area based on sound issues such as land values, community development, taxes, safety, nearby school traffic, and incompatibility with the character of our communities. I believe most on the Land Use Control Board and the Shelby County Commission will be familiar with our history.

I write today to say that I am friends with many of the residents who live in the Bolton-Arlington area where not only Memphis Stone and Gravel but also Standard Gravel and Construction have been mining hundreds if not thousands of acres for 40-50 years. They have endured a lifetime of dusty roads, broken windshields, stagnant property values, and low economic development. I know a developer who has had lots available in this area for over 30 years that he can't sell. Want to build your dream home in this area where mining is the name of the game? These lots would be a steal.

So the question today of whether to grant an extension to the Rosenberg property is just representative of many other properties in this area over the years. **And, since this is just a request to let MSG finish mining property they received a 10 year permit on in 2010... I feel sure it will be approved.** This seems to be typical of mining operations where once they start operations in an area, they search for other adjacent or nearby properties that they might buy or lease mineral rights and strip the sand and gravel until there is no more or they must stop for environmental reasons. Before you know it 40-50 short years have gone by. This is exactly what Atoka and Rosemark is trying to avoid and instead bring in new homes and businesses which bring in more taxes.

One of our local residents, Britton White, has had an interesting exchange with OPD over the last few months regarding Rosenberg and other properties in the area which were permitted about the same time. He has done hours of research on this and I have been copied in on much of that correspondence. I will not go into all the detailed questions that he has asked, nor the detailed answers provided by the county. I believe he intends to provide a summary of that to you. As the citizen review board for the residents of the county, I would however, pose a few questions that the LUCB may want to discuss or get clarification on. As simply as I know how to state it.....

1. 1. In a case like Rosenberg, that was approved in a pre-UDC time frame, is an extension like this approved using the conditions as set forth pre-UDC or would today's extension request fall under current UDC regulations? (It matters because I believe time frames for extensions are different.)
2. 2. If a SUP is issued for a 10 year period, and considered "conditioned otherwise" why even have a UDC provision that says if there is no activity within a 2 year period of being issued, the SUP permit is void. I'll rely on OPD to quote you all the regulations, but seems as if the UDC is being interpreted to say if you are given a permit for a certain period, then the "no activity" regulation is null and void. Just asking.
3. 3. If a SUP is issued with glowing conditions that require a miner to return the land as nearly as practicable to the same condition, slope, grade, etc. as it was before mining, ....but in the end local authorities will forget all that in lieu of a state approved reclamation plan which includes a couple of big rusty lakes (impoundments) why not just say that on the front end very clearly so residents know what to expect? Need a footnote to make it clear that the state approved plan may vary quite a bit from the conditions in the SUP.
4. 4. If you get a permit to build a house, you can bet Code Enforcement will be out several times during the building process to ensure the electrical, plumbing, etc. are up to code standards. Apparently Code Enforcement is also the enforcement arm for

things like SUP's that go through the 4 step approval process, i.e. OPD, LUCB, SCCLandUse Committee, SCC. Apparently from what I have read, the conditions in s Special Use Permit are seldom checked unless there is some type of citizen complaint. It would seem that someone at Code Enforcement could occasionally check the SUP's and do a cursory inspection for things like distances, set backs, landscaping, fences, appropriate bonds have been submitted, and other regulatory conditions ?

I want to thank the LUCB especially for the volunteer job they do to deal with some very complex issues. I have provided my contact information below if needed.

Sincerely,

William "Trip" Jones III  
901-461-4260  
[Wjones17157@aol.com](mailto:Wjones17157@aol.com)

Cc: Josh Whitehead, Robert Rolwing, Amber Mills, Britton White,

---

**From:** Whitehead, Josh [mailto:Josh.Whitehead@memphistn.gov]

**Sent:** Tuesday, June 2, 2020 11:07 AM

**To:** Whitehead, Josh

**Cc:** Penzes, Jeffrey; Bacchus, Brian; Thomas, Seth; Smith, Somer; Davis, Brett; Bradley Keith Thomas (bthmas19)

**Subject:** Land Use Control Board cases for July 9, 2020

All:

The **7** cases listed at the bottom of this email have been filed with the Office of Planning and Development for consideration by the Memphis and Shelby County Land Use Control Board (the "LUCB") during its regular meeting on **Thursday, July 9, 2020, at 9:30AM.**

**Government Agencies:** Please provide any technical comments you may have on the cases indicated below with an asterisk ("\*") to the staff planner listed below by **Thursday, June 25**. Although the Technical Review Committee scheduled for that date is cancelled, we will continue to forward your comments to the applicants no later than two weeks prior to the Board meeting. Please provide comments on all other cases by **8AM, Thursday, July 2. The Office of Planning and Development is closed Friday, July 3.**

**Neighbors and Neighborhood Associations:** Please provide any comments you may have to the staff planner listed below by **8AM, Thursday, July 2** so they can be included in the staff report. Comments received after this time will not be disseminated to the Board members.

The staff planners are copied to this email; full applications for these cases may be accessed from this website:

<https://www.shelbycountyttn.gov/Archive.aspx?AMID=92&Type=&ADID>

Unless a determination is made to the contrary by the time mailed notices are delivered on these cases, this meeting will be conducted as a conference call; if you would like to provide testimony during the meeting, please contact the staff planner and provide your name, phone number from which you will be calling and the case number of agenda item on which you would like to speak no later than **8AM Wednesday, July 8, 2020**. Any requests received after this deadline will not be honored. The meeting will also be streamed live on [this YouTube link](#).

Thank you

*Josh Whitehead, AICP  
Planning Director/Administrator  
Memphis and Shelby County  
Office of Planning and Development  
City Hall, 125 N. Main St., Ste. 476  
Memphis, TN 38103  
p: (901)636-6601; f: (901)636-9403  
Visit our [website](#).*

1. S 20-14: CAPLEVILLE: 2-lot industrial subdivision at SW corner of Shelby and Malone (companion case to Z 20-06). Staff Planner: Brian Bacchus\*
2. PD 20-06: EADS: vehicle storage on the south side of US 64, east of Washington. Staff Planner: Somer Smith\*
3. SUP 09-217 CO: BOLTON: time extension for gravel mining operation at 10577 Millington-Arlington Road. Staff Planner: Jeffrey Penzes
4. SUP 19-19: RALEIGH: time extension for a cell tower at northern terminus of Oaks Royal Drive. Staff Planner: Brett Davis
5. SUP 20-07: WHITEHAVEN: car sales at 590 E. Raines. Staff Planner: Brett Davis
6. Z 20-06: CAPLEVILLE: rezoning of 36 acres at SW corner of Shelby and Malone from CMU-1, Commercial and CA, Agricultural, to EMP, Light Industrial (companion case to S 20-14). Staff Planner: Brian Bacchus
7. Z 20-07: UPTOWN: rezoning of 0.1 acres at SW corner of Chelsea and Fourth from MU, Mixed Use, to MDR, Residential. Staff Planner: Seth Thomas

**Fwd: Memphis Stone and Gravel Modification to S.U.P 09-217 (Rosenberg)**

Whitehead, Josh &lt;Josh.Whitehead@memphistn.gov&gt;

Wed 7/1/2020 10:41 PM

To: Penzes, Jeffrey &lt;jeffrey.penzes@memphistn.gov&gt;

 14 attachments (9 MB)

Memphis Stone and Gravel Rosenberg SUP 09-217 Timeline 6.8.2020-1.docx; ATT00001.htm; Compliance Notice TN0079375-NCRM-01042019\_Final.pdf; ATT00002.htm; Compliance Notice Photos TN0079375-NCRM Photos-12172018\_Final-1.pdf; ATT00003.htm; OldZoningCodeSecs8-9.pdf; ATT00004.htm; SUP09-217CO Commission Resolution Final.pdf; ATT00005.htm; MSG Rosenberg Affidavit.pdf; ATT00006.htm; MSG Rosenberg Major Mod App 2020.docx; ATT00007.htm;

For the staff report.

Josh Whitehead

Begin forwarded message:

**From:** Britton White <bwhite@technologyprocesses.com>**Date:** July 1, 2020 at 10:26:47 PM CDT**To:** "jmccreery@cmconstruct.com" <jmccreery@cmconstruct.com>, "mwsharp@bellsouth.net" <mwsharp@bellsouth.net>, "dlyleswallace@comcast.net" <dlyleswallace@comcast.net>, "tolesassoc@aol.com" <tolesassoc@aol.com>, "lisa@etheridgeenterprises.com" <lisa@etheridgeenterprises.com>, "rnorcross@lrk.com" <rnorcross@lrk.com>, "sfleming@flemingarchitects.com" <sfleming@flemingarchitects.com>, "jenniferbethoconnell@gmail.com" <jenniferbethoconnell@gmail.com>, "alfred@topnotchsecurityinc.com" <alfred@topnotchsecurityinc.com>, "amber.mills@shelbycountytn.gov" <amber.mills@shelbycountytn.gov>, "brandon.morrison@shelbycountytn.gov" <brandon.morrison@shelbycountytn.gov>, "david.bedford@shelbycountytn.gov" <david.bedford@shelbycountytn.gov>, "eddie.s.jones@shelbycountytn.gov" <eddie.s.jones@shelbycountytn.gov>, "edmund.ford@shelbycountytn.gov" <edmund.ford@shelbycountytn.gov>, "mark.billingsley@shelbycountytn.gov" <mark.billingsley@shelbycountytn.gov>, "michael.whaley@shelbycountytn.gov" <michael.whaley@shelbycountytn.gov>, "mick.wright@shelbycountytn.gov" <mick.wright@shelbycountytn.gov>, "mickell.lowery@shelbycountytn.gov" <mickell.lowery@shelbycountytn.gov>, "reginald.milton@shelbycountytn.gov" <reginald.milton@shelbycountytn.gov>, "tami.sawyer@shelbycountytn.gov" <tami.sawyer@shelbycountytn.gov>, "van.turner@shelbycountytn.gov" <van.turner@shelbycountytn.gov>, "willie.brooks@shelbycountytn.gov" <willie.brooks@shelbycountytn.gov>**Cc:** "Whitehead, Josh" <Josh.Whitehead@memphistn.gov>, "Zeanah, John" <John.Zeanah@memphistn.gov>, "robert.rolwing@memphistn.gov" <robert.rolwing@memphistn.gov>, "wjones17157@aol.com" <wjones17157@aol.com>**Subject: Memphis Stone and Gravel Modification to S.U.P 09-217 (Rosenberg)**

CAUTION: This email originated outside of the City of Memphis organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Dear Ladies and Gentlemen of the Land Use Control Board and Shelby County Commission,

My name is Britton White, and I'm writing to you today regarding Memphis Stone and Gravel's request

for a 5-year extension for the Rosenberg SUP 09-217. After an extensive amount of research coupled with communications between Josh Whitehead, Robert Rolwing (Assistant Shelby County Attorney), and myself, I have put together the attached Memphis Stone and Gravel Rosenberg Pit summary for your review along with additional, supporting documentation. This is quite a complicated matter with many twists and turns, so I ask that you closely review the documentation provided, and dig into not only the current SUP provisions but the Shelby County Code this SUP falls under.

The MSG Rosenberg Affidavit attachment is an Affidavit signed by Memphis Stone and Gravel stating that, "it will operate in accordance with any and all such local, state, or federal environmental laws or regulations." On January 8, 2019 the Tennessee Department of Environment and Conservation (TDEC) submitted a compliance notice to Memphis Stone and Gravel regarding issues with the Rosenberg pit. The violations were serious enough for TDEC to schedule a Compliance Review Meeting for January 18, 2019. The TDEC report and supporting photo evidence is attached herein as well.

If you look at the MSG Rosenberg Major Mod attachment, you'll see the time extension is being requested under UDC 9.6.14B, however, if you look at Section 1.13.3B(2) of the UDC (also noted in the MSG Summary document), it states, "When the use was granted for a specific period of time, the applicable provisions of this development code shall be applied upon the expiration of that time." Technically speaking, the current SUP 09-217 doesn't expire until August 2020, thus the original code still applies. Another interesting point is if MSG is filing this as a Major Modification under the current UDC, where in the current UDC or anywhere else does it permit a 5-year extension? I can answer that for you.....it doesn't. Under the current UDC, only one (1) 24-month time extension is permitted. That being the case, why is Shelby County Office of Planning and Development moving this application forward in its current form, and in light of all of these issues?

I will be in attendance for the July 9th virtual meeting, so I'm happy to answer questions during that meeting or at any other time. Thank you for your time here, and please feel free to reach out.

Sincerely,

W. Britton White

Attachments:

- 1) Memphis Stone and Gravel Rosenberg SUP 09-217 Timeline 6.8.2020.docx
- 2) Compliance Notice TN0079375-NCRM-01042019\_Final.pdf
- 3) Compliance Notice Photos TN0079375-NCRM Photos-12172018\_Final-1
- 4) OldZoningCodeSecs8-9.pdf
- 5) SUP09-217CO Commission Resolution Final.pdf
- 6) MSG Rosenberg Affidavit.pdf
- 7) MSG Rosenberg Major Mod App 2020.docx



BEFORE THE MEMPHIS AND SHELBY COUNTY  
LAND USE CONTROL BOARD  
MEMPHIS, TENNESSEE

MEMPHIS STONE AND GRAVEL COMPANY

SUP: 09-217 CO

AFFIDAVIT

Comes now, Memphis Stone and Gravel Company, first duly sworn, and makes oath as the applicant for a special permit for gravel extraction and processing on an approximate 74.29 acre parcel of property located on Millington-Arlington Road, and known as 10769 Millington-Arlington Road, that it will or has secured all permits and approvals required by local, state and federal environmental laws or regulations including but not limited to water and air pollution laws and regulations. That further, it will operate in accordance with any and all such local, state or federal environmental laws or regulations.

Date: 5-29-2020

MEMPHIS STONE AND GRAVEL COMPANY

By: Stan G. Parks

Title: V.P.

STATE OF MISSISSIPPI  
COUNTY OF TATE

Before me, the undersigned Notary Public, for the State and County aforesaid, personally appeared Alan Parks, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President, of **MEMPHIS STONE AND GRAVEL COMPANY**, the within said corporation, and that he as such Vice President, being authorized so to do, executed the foregoing affidavit for the purposes herein contained, by signing the name of the corporation by himself as Vice President.

Witness my hand and seal this 29 day of MAY, 2020.

[Signature]  
Notary Public

My Commission Expires 5<sup>th</sup> day of January, <sup>2024</sup>2020.





**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER RESOURCES  
MEMPHIS ENVIRONMENTAL FIELD OFFICE  
8383 WOLF LAKE DRIVE  
BARTLETT, TN 38133-4119  
PHONE (901) 371-3000 STATEWIDE 1-800-891-8332 FAX (901) 371-3170**

January 8, 2019

Mr. Alan Parks  
Vice President  
Memphis Stone and Gravel Company  
1111 Wilson Street  
Memphis, TN 38106

CERTIFIED MAIL: 91 7108 2133 3932 2020 5731  
RETURN RECEIPT REQUESTED

Subject: Notice of Compliance Review Meeting  
NPDES Tracking Number TN0079375  
Duke Estate/Rosenburg Addition/Crenshaw Addition – Area 7  
Permittee: Memphis Stone and Gravel Company  
Arlington, Shelby County, Tennessee

Dear Mr. Parks:

Cliff Caudle and Lindsey Bidder from the Tennessee Division of Water Resources (Division) – Memphis Environmental Field Office (MEFO) conducted a compliance inspection of the above site on December 17, 2018. The purpose of the inspection was to determine compliance with your National Pollutant Discharge Elimination System Permit (TN0079375), the Tennessee Mineral Surface Mining Law of 1972, and the Tennessee Water Quality Control Act of 1977. An inspection report and photos from the inspection are attached.

During the inspection, Division personnel observed that on the Rosenburg Addition (east of the original Duke Estate portion of Area 7) approximately 35-40 acres had been cleared in preparation for mining. Topsoil and overburden were being removed from the southeast pit, and the large earthen berm had been constructed along the eastern perimeter. However, the berm out slopes had not been stabilized with vegetation, providing potential for off-site sediment discharge. In addition, the lack of Erosion Prevention and Sediment Controls (EPSCs) had caused an unpermitted stormwater discharge point approximately 250 ft. south of the northeast site corner where off-site discharge of sediment-laden water was observed.

Along the Rosenburg Addition northern perimeter, the area had been cleared and excavation begun for the proposed basin up-gradient of DMP-003. However, the basin had not been completed. In addition, no Erosion Prevention or Sediment Controls (EPSCs) had been installed above the outfall, allowing runoff from the disturbed north-central portions of the site to flow to the riparian buffer and possibly into the Beaver Creek Tributary that transects the site west-to-east north of DMP-003.

Part I, Section C of NPDES Permit TN0079375 states that, prior to receiving drainage from disturbance of the permitted mine area, wastewater treatment structures shall be constructed.

Part II, Section 8 of the Permit states that “the permittee shall utilize Best Management Practices (BMPs) to prevent or minimize erosion and the contribution of suspended solids and sediment to surface waters and/or adjacent properties . . . to reduce the impacts caused by disturbances created by . . . the construction of haul roads, access roads, spoil storage, and stockpile areas, and other related activities.”

Tennessee Code Annotated (TCA) § 69-3-114(a) states, in part, that it is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

Because of the issues noted above, the Division has deemed that a Compliance Review Meeting is warranted. The Compliance Review Meeting has been scheduled for **Friday, January 18, 2019, at 9:00 a.m.** at the Memphis Environmental Field Office located at 8383 Wolf Lake Drive, Bartlett, TN 38133. The purpose of the Compliance Review Meeting is to present you with the facts and problems pertaining to the situation, discuss solutions and facilitate resolution without further enforcement. You may bring any persons, representation, or documents relating to these matters with you to this meeting. If you are not available during this date/time and need to reschedule, please let us know.

In addition, please complete the following required actions:

- Modify (as appropriate), repair (as needed), and install and maintain appropriate erosion prevention and sediment controls so that sediment and sediment-laden storm water are not discharged off-site and/or to waters of the state;
- Stabilize all *at-grade areas* with potential to discharge sediment or sediment-laden water off-site, with either temporary or permanent stabilization measures;

DWR personnel are available to discuss any aspect of the items mentioned above. Thank you for your prompt attention and cooperation in this matter. If you have any questions, please contact Mr. Cliff Caudle at (901) 371-3028 or by email at [Cliff.Caudle@tn.gov](mailto:Cliff.Caudle@tn.gov).

Sincerely,



Joellyn Brazile  
Environmental Program Manager  
Division of Water Resources  
Memphis Environmental Field Office

Enclosures: Surface Mining Inspection Report and photographs

cc: TDEC/DWR/MEFO: file  
TDEC/NCO/Compliance and Enforcement  
TDEC/DWR/KEFO/Mining Section

# MEMPHIS STONE & GRAVEL – AREA 7 – ROSENBERG ADDITION

Permit No.:	Site Location:	Permittee:	Date:
TN0079375	Rosenburg Addition, Millington-Arlington Rd, Shelby Co., Tennessee	Memphis Stone and Gravel Company	December 17, 2018
Photo No.	Photographer		
1	Cliff Caudle		
Description			
<p>View northeast across the southeast pit. Topsoil and overburden were being removed from the southeast pit, and the large earthen berm had been constructed along the eastern perimeter (arrow).</p>			

Photo No.	Photographer		
2	Cliff Caudle		
Description			
<p>View south showing an unpermitted stormwater discharge point (red arrow) approximately 250 ft. south of the northeast site corner where off-site discharge of sediment-laden water was observed. The out slopes of the eastern perimeter berm (green arrow) shown in Photo 1 had not been stabilized.</p>			

# MEMPHIS STONE & GRAVEL – AREA 7 – ROSENBERG ADDITION

Site No.:	Site Location:	Owner:	Date:
TN0079375	Millington-Arlington Road, Shelby County, Tennessee	Memphis Stone and Gravel Company	December 17, 2018
Photo No.	Photographer		
3	Cliff Caudle		
Description			
<p>Close-up view showing the unpermitted stormwater discharge point approx. 250 ft. south of the northeast site corner. Several rows of silt fence, some reinforced with hay bales, were observed at this location.</p>		<span style="color: orange;">12.17.2018</span>	

Photo No.	Photographer		
4	Cliff Caudle		
Description			
<p>View east across the southern perimeter toward the southeast site corner. There was a good natural, wooded buffer and internally draining slopes along the southern perimeter. Silt fencing had been installed at the southeast corner (arrow). The actual site corner was inaccessible at the time of the inspection because of extremely muddy conditions due to recent rains. Therefore, site conditions at the southeast corner could not be fully determined.</p>		<span style="color: orange;">12.17.2018</span>	

# MEMPHIS STONE & GRAVEL – AREA 7 – ROSENBURG ADDITION

<b>Site No.:</b>	<b>Site Location:</b>	<b>Owner:</b>	<b>Date:</b>
TN0079375	Millington-Arlington Road, Shelby County, Tennessee	Memphis Stone and Gravel Company	December 17, 2018
<b>Photo No.</b>	<b>Photographer</b>		
5	Cliff Caudle		
<b>Description</b>			
<p>View northeast toward the northern perimeter. The area had been cleared and excavation begun for the proposed basin up-gradient of DMP-003. However, the basin had not been completed, leaving disturbed ground up-gradient of Outfall DMP-003 with no Erosion Prevention or Sediment Controls (EPSCs) in place above the outfall.</p>			

<b>Photo No.</b>	<b>Photographer</b>		
6	Cliff Caudle		
<b>Description</b>			
<p>View north toward DMP-003 (red arrow). No EPSCs were installed above the DMP. Recent rains, saturated slopes, and brush piles prevented Division personnel from accessing the DMP. The teal line depicts the existing swale/channel from the site toward the Beaver Creek tributary that transects the property in the forested area beyond DMP-003.</p>			

**CODE OF  
SHELBY COUNTY, TENNESSEE**

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Published by Order of the County Mayor

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Adopted April 16, 1992  
Effective May 1, 1992



MUNICIPAL CODE CORPORATION

Tallahassee, Florida

1992

Supp. No. 1

maximum floor area ratio or gross dwelling-unit density per acre, as regulated in chart 2 for the zoning district in which the subject property for which an administrative site plan has been submitted is not exceeded;

- b. A less than ten percent decrease in parking spaces, open space or livability space;
- c. The relocation of any structure, dedicated street, easement or landscape screen in any direction from the location shown on the site plan for the distances specified below based on the size of the development:
  - (1) Less than 25 feet for site plans of two or less acres;
  - (2) Less than 50 feet for site plans of more than two but less than eight acres;
  - (3) Less than 100 feet for site plans of [more than] eight acres but less than 20 acres; and
  - (4) Less than 150 feet for site plans of 20 acres or more.
- d. The correction of drafting errors on the approved site plan;
- e. The addition of an amenity incentive.

**Cross references**—Building codes, ch. 6; subdivisions, app. B.

### **Section 8. Procedure for special permit uses.**

A. *Authority.* The legislative body shall have the authority to grant special use permits for specified uses set forth on chart 1 of this article [appendix] in accordance with the provisions of this article [appendix].

B. *Purpose.* Special use permits are required for specified uses which must satisfy standards in addition to those generally applicable in a zoning district to eliminate or minimize the potentially harmful characteristics or impact of such special uses on the character of the zoning district in which they will be located.

C. *Initiation.* The owner or other person having a contractual interest in the property which is the site of the proposed special use, the legislative body or the office of planning and development may initiate a request for a special use permit.

D. *Application procedure.*

1. The owner or other person having a contractual interest in the property which is the site of the proposed special use shall file an application for a special use permit with the office of planning and development, which application shall be accompanied by a fee established from time to time by the legislative body and shall contain the following information:
  - a. Excluding planned developments as described in section 14, special use permits shall be implemented (use and occupancy permit) within two (2) years of final approval or such permits shall be void. The land use control board, however, upon application, may grant extensions in increments not exceeding two (2) years upon a finding that the character of the neighborhood has not substantially changed since approval of the original special use that would require a public hearing as in the case of the original granting of the special use.
  - b. Excluding planned developments as described in section 14, if a special use permit has not been in use for any two (2) consecutive year period, the permit shall be void. The applicant, at the time of a request for a use and occupancy permit, shall be responsible for providing proof to the building official of such continued use.
  - c. Name, address and telephone number of the applicant.
  - d. Nature of and extent of the applicant's ownership interest in the property which is the site of the proposed special use.
  - e. A plot plan with dimensions indicated and a legal description of the site of the proposed special use.

- f. A vicinity map shall be submitted to the office of planning and development showing the location of the subject property and parcels of property in the surrounding area. Unless otherwise modified by the office of planning and development, the vicinity map shall show all parcels of property labeled with the property owners names using the following guidelines:

Within the City of Memphis—a 500-foot radius of the subject property.

A 500-foot radius of the subject property in the unincorporated area of Shelby County within five miles of the city limits with notice being required to no less than 25 property owners.

In the unincorporated areas of Shelby County beyond five miles of the Memphis city limits—a 1,500-foot radius of the subject property unless this area includes less than 25 property owners in which case the radius shall be extended to reach a minimum of 25 property owners provided, however, that the maximum additional radius is 1,000 feet. Properties owned by the applicant shall not be included in the distance measurement for public notice.

Such vicinity map shall show any and all streets, roads, or alleys and shall indicate the owner's name and dimensions of each parcel of property shown thereon.

- (1) Applications for family day care homes shall be accompanied by a vicinity map showing the property which is the site of the proposed special use and all parcels of property within a 100-foot radius.
- (2) Applications for group day care homes shall be accompanied by a vicinity map showing the property which is the site of the proposed special use, all abutting parcels of property and all parcels of property located within 500 feet on both sides of the same street.

- g. A list of the names and addresses of the owners of property shown on the vicinity map.
- h. Zoning classification of the property which is the site of the proposed special use.
- i. The proposed special use to be located on such property.
- j. Site plans will be drawn at a scale to allow adequate review. Site plans for developments of less than 150 acres will be at a scale of not less than 100 feet to the inch. For developments between 150 and 1,000 acres site plans will be at least 200 feet to the inch. For developments in excess of 1,000 acres the scale shall be determined by the office of planning and development, but not less than 300 feet to the inch. Site plans shall include the following:
  - (1) Property boundary lines and dimensions; available utilities; and easements, roadways, rail lines and public rights-of-way crossing and adjacent to the subject property;
  - (2) The proposed height, dimensions and arrangement of buildings on a site;
  - (3) The type and location of landscaping proposed for the site;
  - (4) The location of points of ingress to and egress from the site;
  - (5) The location of driveways, parking lots and loading areas on the site;
  - (6) Any proposed substantial regrading of the site and any significant topographical or physical features of the site including at least water-courses.

E. *Public hearing and notification procedure.*

- 1. Not less than 35 or more than 75 days after an application for a special use permit is filed, the land use control board shall hold a public hearing thereon. Written notice of such public hearing shall be published or shall be mailed to the persons at the addresses set forth on the list provided by

the applicant under subsection D.1.g. of this section. The land use control board shall recommend to the legislative body approval, disapproval, or approval of the proposed special use subject to conditions after deliberation. The land use control board may, prior to the close of the public hearing, take the matter under advisement or defer decision until the next regular meeting of the board. The land use control board shall act upon the following special permit use applications and recommend to the legislative bodies within a maximum of 75 days after said application is filed, without exception:

1. Clearing and grading.
2. The subject property of the proposed special use permit shall be posted with a sign(s) in accordance with the following specifications:
  - a. *Sign size and type:* Each sign shall be two feet by three feet in size made to the standards and specifications provided by the office of planning and development. A sample sign with letter style and sizes is attached as an addendum to this ordinance. All signs will include language stating that defacing or removal of the sign by anyone other than the owner or his agent is an illegal act and the person who defaces or removes the sign without permission of the owner will be penalized. Signs required by these regulations are not subject to any Memphis and Shelby County sign permit fees.
  - b. *Location:* Signs shall be posted at the nearest right-of-ways with the largest traffic volumes as determined by the office of planning and development. Each sign shall be placed no closer than five feet from the right-of-way visible from each public street on which the subject property has frontage and placed outside the sight distance triangle. Additional signs may be required to be posted at each major roadway entrance to the development or as otherwise determined to be needed by the office of planning and development.

- c. *Responsibility for installation and removal:*
- (1) The applicant shall be solely responsible for the construction, installation and removal of the sign(s) and associated costs.
  - (2) The sign(s) shall be erected at least ten days prior to any public hearings. Applicants may temporarily remove the sign(s) after each public hearing, provided they reinstall the sign(s) at least ten days prior to the next public hearing. The applicant shall sign an affidavit stating that the sign(s) were installed and the date and posting of the property.
  - (3) The sign(s) shall be removed immediately following final action by the city council or the county commission.
3. Any applicant or owner of property may appeal to the legislative body from any recommendation of the land use control board or from any conditions the board imposes or fails to impose in its recommendations, by filing a written notice of appeal with the office of planning and development within 60 days after the date of the close of the public hearing on the requested special use permit.
  4. An applicant shall submit a site plan incorporating any and all conditions imposed by the land use control board or, if the applicant files a notice of appeal, a site plan incorporating any and all conditions not appealed, to the office of planning and development, within 90 days after the date of the close of the public hearing on the requested special use permit, or the application shall be deemed withdrawn.
  5. The office of planning and development shall forward the recommendations of the land use control board and any notices of appeal to the legislative body within ten days of the date of the close of the public hearing or within ten days of the date the applicant submits a plan incorporating required conditions, whichever date occurs later.
  6. If an appeal is filed, or if opposition to the proposed special use permit was voiced at the public hearing before

the land use control board by any owner of property within the required notification area, the legislative body shall hold a public hearing on the application for the proposed special use permit after receipt of recommendations from the land use control board and such notice of appeal. Such public hearing may be held before both legislative bodies meeting in joint session when the application of a special use permit involves property located in an unincorporated area of Shelby County within five miles of the Memphis corporate limits. Written notice of such hearing shall be published in some daily newspaper of general circulation stating the date, time and place of the hearing, and shall be mailed to owners of property using the following guidelines:

Within the City of Memphis—a 500-foot radius of the subject property.

A 500-foot radius of the subject property if located in the unincorporated area of Shelby County within five miles of the city limits with notice being required to no less than 25 property owners.

In the unincorporated areas of Shelby County beyond five miles of the Memphis City limits—a 1,500-foot radius of the subject property unless this area includes less than 25 property owners in which case the radius shall be extended to reach a minimum of 25 property owners provided, however, that the maximum additional radius is 1,000 feet. Properties owned by the applicant shall not be included in the distance measurement for public notice.

The legislative body shall render a decision on such appeal and shall approve, disapprove, or approve the proposed special use subject to conditions, and if approved, shall authorize the special use permit, which permit shall set forth the conditions imposed, if any.

7. If no appeal is filed, or if no opposition to the proposed special use permit was voiced at the public hearing before the land use control board by an owner of property within the required notification area, the legislative body may, without a public hearing and after receipt of the land use

control board's recommendations, approve or disapprove the proposed special use permit, which permit shall set forth the conditions imposed, if any.

F. *Required vote.* The legislative body shall approve, approve with conditions or reject a requested special use permit by a majority vote, except a two-thirds vote of the Shelby County board of commissioners shall be required to approve a special use permit for property located within an unincorporated area of Shelby County beyond five miles of the Memphis corporate limits when the land use control board recommends disapproval of the requested special use permit.

G. *Conditions on special uses.* In accordance with the provisions of section 8D.2 of this article [appendix], the land use control board may recommend, and the legislative body may require, the special use to comply with any conditions required to meet the general and particular standards specified in section 9C and D of this article [appendix] for such special use, which conditions shall be set forth in the special use permit, when issued.

H. *Effect of issuance of special use permit.* The issuance of a special permit shall not allow the development of the site for the special use, but shall merely authorize the filing of applications for required permits and approvals, including, but not limited to, building permits and certificates of occupancy.

I. *Assurance of compliance with conditions.* The building official shall not issue a certificate of occupancy for a special use if any of the conditions, imposed by the legislative body in approving the special use permit has [have] not been met.

J. *Amendments to special permits.* A special use permit may be amended pursuant to the same procedure and in accordance with the same standards which governed its grant.

K. *Reapplication if denied.* If an application for a special use permit is denied by the legislative body, a reapplication pertaining to the same property and requesting the same special use permit may not be filed within 18 months of the date final action

was taken on the previous application unless such reapplication is initiated by the office of planning and development or authorized by the legislative body.

(Ord. of 6-2-86, § 9; Joint Ord. No. 11, § 1, 6-15-87; Joint Ord. No. 34, 9-26-88; Ord. No. 228, § 1, 9-25-00; Joint Ord. No. 255, §§ 1, 2, 12-3-01)

**Section 9. Standards for special permit uses.**

A. *Authority.* The legislative body is authorized to grant special use permits for the uses specified on chart 1 in accordance with the procedure for the issuance of such permits set forth in section 8 of this article [appendix].

B. *Conditions on special uses.* The land use control board may recommend and the legislative body may impose such conditions upon the premises benefited by a permit for a special permit use as may be necessary to prevent or minimize any adverse effects of such special use upon and to insure the compatibility of the special use with other property in the vicinity of such special use. Such conditions shall be set forth in the resolution authorizing such special permit use and in the special permit. A violation of such conditions shall be a violation of this article [appendix]. The legislative body is authorized to revoke a permit for a special permit use when the conditions imposed upon the premises benefited by a permit for a special permit use have been violated or have not been met.

C. *Standards of general applicability.* An applicant for a special permit shall present evidence at the public hearing on such special permit, which evidence must establish:

1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.
2. That the proposed building or use will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.
3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.
4. That the proposed building or use will not result in the destruction, loss or damage of any feature determined by the legislative body to be of significant natural, scenic or historic importance.
5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

D. *Authorized special uses and additional standards.*

1. The special permit uses specified on chart 1 of this article [appendix] shall be allowed in the districts indicated on said chart 1 subject to the issuance of special permits therefor.
2. The following special permit uses shall be allowed in the districts indicated on chart 1 of this article [appendix] subject to the issuance of special permits therefor and subject to the following minimum standards which shall

apply in addition to the general standards applicable to special permit uses set forth in subsection C of this section:

*Ord. 163 94-005CC  
5-28-95  
166 min distance 10-23-95*

a. The legislative body finds that **hourly rate motels** and hotels have a deleterious effect on both the commercial and residential segments of a neighborhood, causing blight and the downgrading of property values. Special use permits for hotel/motel (hourly rate) are subject to the following additional standards to regulate serious objectionable operational characteristics. Hotels and motels not classified as hourly rate are required to meet only standards 2, 3 and 4.

- (1) Such use will not be located within 1,500 feet of any school, park, church, library, coliseum, convention center, residential use or residential zoning district as measured between property lines or applicable zoning district boundaries.
- (2) Any change in ownership will require the approval of a new special use permit application.
- (3) Such use should have direct access to a major road as shown on the adopted major road plan.
- (4) Perimeter fencing and screening will be required in accordance with the landscape ordinance.
- (5) Any such use will be located within 1,500 feet of any other hourly rate motel/hotel or any sexually oriented business.

b. **Cemeteries** and mausoleums subject to the following additional standards:

- (1) Cemeteries shall be located on sites of at least ten acres.
- (2) A mausoleum which is not located in a cemetery shall be located on a site of at least two acres.
- (3) All structures located in a cemetery of six feet in height or over including, but not limited to mausoleums, monuments and buildings, and all mausoleums not located in a cemetery and regardless of height shall be set back at least 100 feet from each lot line and street right-of-way.

alized basis in five-year increments. Such primary reclamation performance bond shall be released after primary reclamation activities are complete and the condition, grade, and drainage of the land are approved in writing by the building official, and city or county engineer provided, however, that a proportionate release of not to exceed 60 percent of said primary reclamation bond may be authorized by the building official, and city or county engineer for phased or partial reclamation. A final reclamation performance bond in an amount not less than 40 percent of the primary reclamation performance bond on deposit at the time of closure shall be submitted to the building official and retained for a period of five years after release of the primary reclamation bond to ensure restoration of reclaimed areas effected by settling and subsidence of filled land. Such final reclamation performance bond shall be released at the end of said five-year period and after final reclamation activities are completed and the condition, grade, and drainage of the land are approved in writing by the building official, and the city or county engineer.

- m. Sand, gravel and other extraction and processing subject to the following additional standards:
- (1) Over-burden shall be retained on a suitable portion of the site of the sand or gravel or other extraction operations and shall be used for back fill.
  - (2) Adequate supports shall be provided to prevent caving and backsliding into an excavated area.
  - (3) No excavation shall be made within 75 feet of the perimeter of the site of the sand, gravel or other extraction operations; within 100 feet of any street right-of-way or within 250 feet of any building used for residential purposes, provided, however, that if the owner of the property adjoining, abutting or adjacent to the property which is the site of the sand, gravel or other extraction and processing

operations agrees, in writing, such excavation may be closer to such property owner's lot line than provided in this subsection D2.1(3), provided that in no case shall an excavation be made within 30 feet of the lot line of any other property. Such notarized written agreement shall be submitted with the application for a special permit.

- (4) All excavations shall be filled, and the land restored, regraded and resloped as nearly as practicable to its original condition and grade within 90 days after the date sand, gravel or other extraction operations cease, provided, however, that any excavation made closer than 250 feet to a lot line of the property which is the site of the sand, gravel or other extraction operations shall be filled, and the land restored, regraded and resloped within nine months from the date the excavation within 250 feet of such lot line is completed unless the owner of property abutting or adjoining such lot line agrees, in writing, to an extension of time within which such reclamation activities shall be completed. Such written agreement shall be notarized and shall be submitted with the application for a special permit or to the building official at any time prior to the expiration of the nine-month period within which excavations within 250 feet of the lot line of property which is the site of the sand, gravel or other extraction operations must be filled, restored, regraded and resloped. Such agreement shall set forth the date when such reclamation activities shall be completed, which date shall, in no event, be later than 90 days after the date sand, gravel or other extraction operations on the property cease. Failure to complete reclamation activities by the date set forth in such agreement shall be deemed a violation of this article [appendix]. If at any time such agreement is modified, rescinded or becomes null and void, the owner of the property which is the site of the sand, gravel or other extraction operation shall within ten days

thereafter notify the building official thereof in writing stating whether such agreement is revoked, null and void or modified, and if modified, the provision of such agreement which has been modified along with a copy of the modified agreement. If the agreement is revoked or becomes null and void, excavations within 250 feet of the property line of the property shall cease immediately and the area which was the subject of such agreement shall be filled, restored, regraded or resloped within 90 days after the date of such revocation or within 90 days after the date such agreement became null and void. If the date upon which reclamation activities shall be completed is revised in a modified agreement, reclamation activities shall be completed by such date.

- (5) Land shall be restored, regraded and resloped as nearly as practicable to its original condition and grade, provided, however, that after such reclamation activities, no slope on such land shall be steeper than three feet horizontal to one foot vertical and no greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel or other extraction or processing activities on the land reclaimed.
- (6) Prior to the commencement of sand, gravel or other extraction operations, the applicant for the special permit shall submit to the building official a performance bond in the amount of \$3,500.00 per acre, increasing \$100.00 per acre per year from the date of adoption of this article [appendix], for each acre proposed to be used for sand, gravel or other extraction operations to insure that the land shall be restored, regraded and resloped as provided in this subsection D2.1 of this section when such mining or extraction operations cease. Such performance bond shall be released after reclamation activities are complete and the condition, grade and drainage

of the land are approved in writing by the building official and city or county engineer provided, however, that a proportionate release of such bond may be authorized by the building official and city or county engineer for phased or partial reclamation.

- (7) Equipment used in sand, gravel or other extraction or processing operations shall be operated in such a manner that noise and vibration are prevented, to the extent possible, from emanating beyond the boundaries of the site of the mining, extraction or processing operations.
  - (8) A statement setting forth the type, location and conditions of such processing operations shall be submitted for the review and approval of the legislative body. The legislative body may require a written assessment of the environmental impact of the proposed sand, gravel, or extractive operation and processing.
  - (9) The location and surfacing of driveways providing access to and egress from the site are subject to the review and approval of the legislative body.
- n. **Home occupations** subject to the following additional standards:
- (1) No person who is not a member of the immediate family occupying such dwelling unit shall be employed in connection with the occupation.
  - (2) One attached business sign, not exceeding three square feet, shall be permitted on each zoning lot.
  - (3) No wholesale or retail establishment shall be permitted unless it is conducted entirely by mail or telephone and does not involve the receipt, sale, shipment, delivery or storage of merchandise on or from the premises, provided, however, that articles produced by members of the immediate family residing on the premises may be sold from and stored upon the premises.
  - (4) There shall be no alteration of the principal residential building which changes the character thereof as a dwelling.

Item #: 29

Moved by: BUNKER

Prepared by: Dave Adams, OPD

Seconded by: MULROY

Approved by: Robert Rolwing

**RESOLUTION PURSUANT TO SECTION 8 OF THE ZONING ORDINANCE-RESOLUTION OF THE COUNTY OF SHELBY AND THE CITY OF MEMPHIS, TENNESSEE, GRANTING A USE VARIATION FOR LAND LOCATED ON THE SOUTH SIDE OF MILLINGTON-ARLINGTON ROAD, ±1,400 FEET WEST OF OSBORTOWN ROAD, KNOWN AS CASE NO. S.U.P. 09-217 CO.**

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**WHEREAS**, Sections 8 and 9 of the Zoning Ordinance-Regulations of the City of Memphis and Shelby County, being a section of the Joint Ordinance-Resolution No. 3064 dated October 6, 1980, as amended, authorized the Shelby County Board of Commissioners and the Memphis City Council to grant a special use permit for certain stated purposes subject to standards of general applicability in the various zoning districts beyond five miles from the Memphis City limits; and

**WHEREAS**, Application has been made by Memphis Stone and Gravel Company for a special use permit with respect to the property located on the south side of Millington-Arlington Road, ±1,400 feet west of Osborntown Road within the Agricultural (AG) District for the purpose of conducting sand and gravel mining operations, beyond the five-mile limit; and

**WHEREAS**, The Office of Planning and Development has reviewed the application in accordance with the special use permit provisions of the Zoning Ordinance-Regulations and reported its findings and recommendations to the Land Use Control Board; and

**WHEREAS**, A public hearing in relation thereto was held before the Memphis and Shelby County Land Use Control Board on November 12, 2009, and said board has

studied and reported its recommendation to the Board of Commissioners regarding the following potential effects of granting the use variation on:

- A. The character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public safety and general welfare;
- B. The compatibility of the proposed building or use with the immediate vicinity and the potential interference of said building or use on the development or use of adjacent property;
- C. The adequacy of public facilities including existing streets, parking, drainage, refuse disposal, fire protection, water and sewer or that such facilities will be provided;
- D. The destruction, loss or damage to features of significant natural, scenic or historic importance from the proposed building or use; and

**WHEREAS**, The Memphis and Shelby County Land Use Control Board and/or the Memphis and Shelby County Office of Planning and Development has recommended certain conditions be attached to the use variation to reduce any potential adverse impacts of the proposed building or use on the neighborhood, adjacent property owners, public facilities and significant natural, scenic or historic features;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That a special use permit is granted for the purpose of conducting sand and gravel mining in accordance with the site plan incorporated in the application, and subject to the attached conditions, all within the above mentioned Agricultural (AG) District.

**BE IT FURTHER RESOLVED**, That this permit merely authorizes the filing of applications to acquire a Certificate of Use and Occupancy, or a Building Permit, and other required permits and approvals, provided that no such Certificate of Use and Occupancy shall be granted until all conditions imposed by the Board of Commissioners have been

met.

BE IT FURTHER RESOLVED, That this Resolution take effect from and after the date it shall have been passed by this Board of County Commissioners, and become effective as otherwise provided by law, and thereafter shall be treated as in full force and effect by virtue of the passage thereof by the Board of Commissioners of Shelby County, Tennessee.



  
\_\_\_\_\_  
Joe Ford, Interim County Mayor

Date: 1/19/10

ATTEST:

  
\_\_\_\_\_  
Pamela Duff  
Clerk of County Commission

ADOPTED: JANUARY 11, 2010

## **SITE PLAN CONDITIONS**

4

**Memphis Sand and Gravel – Duke II Mining Operation**

**S.U.P. 09-217 CO**

**As Adopted by the Shelby County Board of Commissioners**

**January 11, 2010**

A Special Use Permit is hereby granted to the Memphis Stone and Gravel Company to allow sand and gravel mining on the 74.29 acre Natalie L. Rosenberg and Raymelle Williams tract (Instrument No. 04046204, Shelby County Register's Office), located at 10769 Millington-Arlington Road, in accordance with a site plan approved by the Office of Planning and Development with the following conditions:

1. Ancillary uses shall be limited to business office functions relating to the mine operation. Processing on-site shall include digging, loading, screening and mixing.
2. Any uses permitted by this Special Use Permit shall comply with all other applicable Federal, State and Local laws and ordinances. The applicant shall secure all environmental permits necessary for regulatory compliance including permits related to water and air pollution controls, wetlands and aquatic resources as needed.
3. Applicant has constructed and operates a conveyor system to transport material mined from this site across Millington-Arlington Road to the Memphis Stone and Gravel Company plant site, subject to the review and approval of the Shelby County Division of Public Works and the execution of any agreements deemed necessary by the Shelby county Attorney as approved in S.U.P. 04-213 CO.
4. Road access to the property shall be limited to a single entrance onto Millington Arlington Road as approved in S.U.P. 04-213 CO.
5. In order to minimize the deposit of materials from the site onto the public road, the wheels of vehicles exiting from the site shall be kept free of gravel, dirt and debris. Wheel washing equipment shall be installed for the cleaning of vehicles exiting the site.
6. The owner of the operation shall maintain all ways and roads within the site in a dust-free condition, provided that the treatment produces no potential pollution hazards to the ground and surface waters of the area. The plant site and each active extraction site shall be accessible by way of an all-weather road not less than 22 feet wide, prior to the beginning of construction on said sites. Any business office shall have a minimum 100-foot setback from the nearest property line, and from the nearest public right-of-way.
7. Screening shall be provided, prior to the commencement of operations, so that mineral extraction operations and the conveyor will not be visible from Millington-Arlington Road or from nearby residence. An eight-foot to twelve

## SITE PLAN CONDITIONS

Memphis Sand and Gravel – Duke II Mining Operation  
S.U.P. 09-217 CO

As Adopted by the Shelby County Board of Commissioners  
January 11, 2010

5

foot berm as necessary, shall be installed and maintained in order to block these views. The berm placed on Millington-Arlington Road will be mowed on a regularly scheduled basis in order to maintain a neat appearance. Areas alongside the berm will be inspected for litter on at least a biweekly basis. The four large trees along Millington-Arlington Road shall remain undisturbed as shown in the final site plan.

8. Additional screening shall be provided and maintained as shown in the final site plan, to include preservation of existing tree cover and the planting of a screen of evergreen trees where existing tree cover is thin or non-existent.
9. No mining shall be conducted within 75 feet of the perimeter of the site or within 100 feet of any street right-of-way or within 250 feet of any building used for residential purposes. Excavation shall be allowed within the 75 foot area adjacent to the property approved under S.U.P. 04-213 CO.
10. Overburden shall be retained on a suitable portion of the site and shall be used for back fill.
11. All excavations shall be filled and the land restored, r and resloped as nearly as practicable to its original condition and grade within 90 days after the date sand, gravel, or other extraction operations cease provided, however, that any excavation made closer than 250 feet to a lot line of the property which is the site of the sand, gravel or other extraction operations shall be filled, and the land restored, regraded, and resloped within nine months from the date the excavation within 250 feet of such lot line is completed unless the owner of the property abutting or adjoining such lot line agrees, in writing, to an extension of completed. Such written agreement, and the compliance with the same, shall be in conformance with Section IX. D. 2. (4) of the Zoning Ordinance.
12. Land shall be restored, regraded, and resloped as nearly as practicable to its original condition and grade provided, however, that after such reclamation activities, no slope on such land shall be steeper than 3 feet horizontal to one foot vertical and no greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
13. Restoration of the land shall provide top soil capable of supporting the same species of vegetation that previously occurred naturally on site in comparable conditions and locations.

## SITE PLAN CONDITIONS

6

Memphis Sand and Gravel – Duke II Mining Operation

S.U.P. 09-217 CO

As Adopted by the Shelby County Board of Commissioners

January 11, 2010

14. Prior to the commencement of sand, gravel, or other extractions operations, the applicant for the special permit shall submit to the Building Official a performance bond in the amount required by the Building Official per acre for each acre proposed to be used for sand, gravel, or other extraction operations to insure that the land shall be restored, regraded, and resloped as provided above when such mining or extraction operations cease. Such performance bond shall be released after reclamation activities are complete and the condition, grade, and drainage of the land are approved in writing by the Building Official and County Engineer provided, however, that a proportionate release of such bond may be authorized by the Building Official and/or County Engineer for phased or partial reclamation.
15. Equipment used in sand, gravel, or other extraction or processing operations shall be operated in such a manner that noise and vibration are prevented, to the extent possible, from emanating beyond the boundaries of the site.
16. A copy of the State Mining Permit application shall be submitted for review by the Office of Planning and Development upon submittal to the Tennessee Department of Environment and Conservation. Said application shall discuss the assessment of the environmental impact of the proposed sand, gravel, or other extractive operation and processing in addition to other requirements of said permit application.
17. A copy of the State approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan.
18. This special use permit shall be valid for ten years from the date when state approval is received. A request for extension will initiate a review and updating of the site plan and the site plan conditions as appropriate. An extension may be granted by the Land Use Control Board, subject to the right of appeal to the appropriate legislative bodies by any citizen who spoke at the public hearing, by the applicant or by the Office of Planning and Development.
19. On-site operations shall be permitted Monday through Saturday and shall be limited to the hours of 6:00 A.M. to 7:00 P.M., providing that no operations shall occur except during daylight.
20. Storm water discharge and Aquatic Resource Alteration Permit review shall be subject to the authority of the Tennessee Department of Environment and Conservation.

## **SITE PLAN CONDITIONS**

7

**Memphis Sand and Gravel – Duke II Mining Operation**

**S.U.P. 09-217 CO**

**As Adopted by the Shelby County Board of Commissioners**

**January 11, 2010**

21. No greater quantities of drainage water shall flow onto adjoining properties or shall flow at a faster rate onto adjoining properties than such drainage water flowed prior to the commencement of sand, gravel, or other extraction or processing activities on the land reclaimed.
22. Neither road construction, nor reclamation nor any other on-site activity shall create any obstruction of the natural flows of storm water draining onto the site.
23. Memphis Stone and Gravel Company shall have surveyed the property for any water production wells. Any such wells found on the site shall be properly sealed as outlined in Sections 9 of the Shelby County Well Construction Code, except as may be directed by Memphis and Shelby County Health Department for the purpose of monitoring water quality.
24. A deed restriction shall be imposed to disclose for future use of the land that the subject property has been mined for sand and gravel.
25. The applicant shall maintain public liability insurance with coverage of at least \$1,000,000.00 for personal injury to more than one person, \$300,000.00 for personal injury of only one person, and \$25,000.00 for damage to property. Insurance should be kept in effect at all times during mining operations.
26. The mining excavation shall not disturb the confining layer above the Memphis Sands aquifer.
27. Prior to the commencement of mining operations, a six foot chain link fence shall be constructed along the eastern side of the project area 1,500 feet and extending along the southeastern side of the project 250 feet. The fence shall be between the berm and the 50 foot undisturbed buffer zone as indicated on the site plan addendum. The fence shall be removed at the time of reclamation.
28. The rental house on the front of the property shall be allowed to remain until such time as it is necessary to be removed.
29. No permit to operate the excavation shall be issued until an impact analysis is performed by the Groundwater Institute of the University of Memphis and/or the US Geological Survey.



*Memphis and Shelby County  
Office of Planning and Development*

CITY HALL, 125 NORTH MAIN STREET-SUITE 468 MEMPHIS, TENNESSEE 38103-2084 (901) 576-6601

**APPLICATION FOR SPECIAL USE PERMIT  
MAJOR MODIFICATION APPROVAL  
(CORRESPONDENCE CASE)**

Date: May 21, 2010

Case #: SUP 09-217 CO

PLEASE TYPE OR PRINT

Property Owner of Record: Madison-Moore TN Investments LLC Phone #: 901-774-4000

Mailing Address: P.O. Box 1603 City/State: Memphis, TN Zip 38101

Property Owner E-Mail Address: jmadison@lehmanroberts.com

Applicant: Memphis Stone & Gravel Company Phone # 901-947-5730

Mailing Address: P.O. Box 1683 City/State: Memphis, TN Zip 38101

Applicant E- Mail Address: alan.parks@msg gravel.com

Representative: Same as Applicant Phone #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip \_\_\_\_\_

Representative E-Mail Address: \_\_\_\_\_

Engineer/Surveyor: Same as Applicant Phone # \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip \_\_\_\_\_

Engineer/Surveyor E-Mail Address: \_\_\_\_\_

Street Address Location: 10577 Millington-Arlington Road

Distance to nearest intersecting street: ~1200 ft. to the east of Gratitude Church Road & Millington-Arlington Road

	Parcel 1	Parcel 2	Parcel 3
Area in Acres:	<u>74.29 Acres</u>	_____	_____
Existing Zoning:	<u>Agriculture</u>	_____	_____
Existing Use of Property	<u>sand and gravel mining</u>	_____	_____
Requested Use of Property	<u>same</u>	_____	_____

**Major Modification(s):** Time extensions (see Subsection 9.6.14B of the UDC) to and requests to exceed the 24-month limitation on discontinuance (see subsection 9.6.14C) of approved special use permits shall be processed as a major modification, subject to the provisions of Chapter 9.16. Yes  No

**SIGN POSTING** – A sign or signs shall be erected on-site no more than 30 days or less than 10 days prior to the date of the Land Use Control Board hearing. See Sub-Section 9.3.4C of the UDC for further details on sign posting.

# Memphis Stone & Gravel: Rosenberg Site Summary

## Special Use Permit (SUP) 09-217

- Shelby County OPD Staff Report presented at the L.U.C.B Meeting dated November 12, 2009.
- Shelby County Commission approval dated January 19, 2010.
- State/Tennessee Department of Environment and Conservation (TDEC) approval dated August 2010.
- Per Section 18 of the SUP approval, the special use permit became valid when State approval was received, thus SUP 09-217 began in August 2010.
- No mining activity between August 2010 and at least until August 2018 based on satellite imagery and TDEC notes dated December 17, 2018. TDEC comments here (Rosenburg – majority of acreage cleared – all trees down; large brush piles to be moved; have begun moving topsoil and overburden from southeast pit – also internally draining; no active mining to date).
  - Based on Shelby County Code governing this SUP, Sections 8(D)(1)(A) states the following, “Excluding planned developments as described in section 14, special use permits shall be implemented (use and occupancy permit) within two (2) years of final approval or such permits shall be void. The land use control board, however, up on application, may grant extensions in increments not exceeding two (2) years upon finding that the character of the neighborhood has not substantially changed since approval of the original special use that would require a public hearing as in the case of the original granting of the special use.”
  - Section 8(D)(1)(b) states, “Excluding planned developments as described in section 14, if a special use permit has not been in use for any two (2) consecutive year period, the permit shall be void.”
  - In an e-mail exchange dated May 4, 2020 Robert Rolwing asserts the SUP was not void due to “unless conditioned otherwise” language in UDC 9.6.14(B), however, the UDC does not govern this particular SUP as the effective date for the UDC was January 1, 2011. Further, the “unless conditioned otherwise” language was not formally approved until ZTA 13-002 around July 2013.
  - Regardless of his assertion, this current SUP for Rosenberg is currently void based on Section 8(D)(1)(b) of the Shelby County Code that governs this SUP.
- SUP requirements:
  - Performance bond was to be submitted to the Building Official prior to the commencement of sand, gravel, or other extraction operations, however, this did not occur. Robert Rolwing, Assistant Shelby County Attorney, concurred with this finding.
  - Shelby County Code nor the SUP allow for bodies of water (impoundments) to be left behind. Based on a letter dated October 4, 2018 from Alan Parks, MSG VP, to Logan Kennedy of TDEC, Mr. Parks “requests impoundments to remain as permanent features of the final reclamation plan of the subject property”.
  - Robert Rolwing asserts a performance bond was not required due to Shelby County accepting the State-approved reclamation plan, which Mr. Rolwing states is stricter than what is required by Shelby County. Per Section 17 of the SUP, “A copy of the State

approved Reclamation Plan shall be filed with the Office of Planning and Development for post-development evaluation purposes in lieu of preparing a locally reviewed mitigation and reclamation plan". The challenge with this is Shelby County Code, again, doesn't allow for impoundments to be left behind. The land is to be resloped/regraded nearly as practicable per sections 11, 12, and 13 of the SUP.

- Item 8 of the SUP states, "Additional screening shall be provided and maintained as shown in the final site plan, to include preservation of existing tree cover and the planting of a screen of evergreen trees where the tree cover is this or non-existent". The planting of a screen of evergreen trees never occurred.

For clarification, the current UDC version ZTA 19-1 states in Section 1.13.3B(2) under Variance, Special Use Permits, Use Variance, "Where no limitation as to the duration of the variance or use was imposed at the time of authorization, the use may be continued. When the use was granted for a specific period of time, the applicable provisions of this development code shall be applied upon expiration of that time."

Summary: The current Rosenberg permit is void. Further, MSG did not fulfill all of the SUP requirements, and Shelby County failed to enforce not only the SUP requirements but Shelby County Code as well. Now, MSG, with the help of OPD, is attempting to extend the time limit by 5 years when it's clear the old Shelby County Code states an extension not to exceed 2 years may be granted. If MSG had waited until September of 2020, the current UDC would have governed their application, which is why they're attempting to run it through now. Other than the 5-year extension request, this wouldn't necessarily be a problem if the current permit weren't void and all SUP requirements had been met.

Memphis & Shelby County  
Office of Planning and Development  
City Hall  
125 N. Main Street Suite 468  
Memphis, TN 38103  
Atten: [Jeffery.penzes@memphistn.gov](mailto:Jeffery.penzes@memphistn.gov)

July 1, 2020

Lynette Faure  
7329 Surina Dr.  
Arlington, TN 38002

Re: Case number: SUP 09-217 CO ( correspondence)

Dear Sir:

This letter is to notify you that I a resident of Shelby county oppose a time extension be granted for the existing gravel mining operation. My husband and I purchased the above referenced property just two years ago. We wanted to enjoy the quiet country life. Unfortunately, we have not been able to do so. The Gravel mining company pretty much operates 7 days a week. I can't even enjoy a cup of coffer or tea on my back patio, because they are out there early making racket that can be heard all the way across this subdivision. The gravel company, seems to be a greedy corporation that wants to strip the land of its resources and has no regard for the people who live in this community. **I therefore oppose any time extension!**

Sincerely,

Lynette Faure