

Board of Zoning Adjustment

Staff Report

July 24, 2017



Case No:	17CUP1049
Request:	Modified CUP for heavy equipment staging and storage
Project Name:	Terra View Trail
Location:	14105 Aiken Road
Owner:	Otte Family Limited Partnership
Applicant:	Otte Family Limited Partnership
Representative:	Bardenwerper, Talbott & Roberts, PLLC
Jurisdiction:	Louisville Metro
Council District:	19 – Julie Denton
Case Manager:	Laura Mattingly, AICP, Planner II

REQUEST

- Modified Conditional Use Permit to allow for heavy equipment staging and storage

CASE SUMMARY/ /SITE CONTEXT

This site was once an abandoned quarry where a Modified Conditional Use Permit was granted in 2015 to permit the quarry to be filled. The applicant currently is proposing to develop the site for heavy equipment staging and storage. Per Condition of Approval #1 (See attachment 6) the proposal is required to obtain a Modified CUP from the Board of Zoning Adjustment. This development proposal is scheduled to be heard on the July 19, 2017 Development Review Committee meeting under case number 17DEVPLAN1107.

The proposed development, for a heavy equipment staging and storage site, includes a 21,300 square foot shop building, a 6,000 square foot training building, and covered truck parking located at the southeast corner of the Old Henry Road/ I-265 exchange in eastern Jefferson County. The proposal includes 67 parking spaces and will be accessed from Terra View Trail and a proposed extension of Terra Crossing Blvd. The site is a rectangular shape and is currently vacant. It is surrounded by similar industrial vacant properties, the interstate and some industrial and commercial to the north along Old Henry Road.

- 9-62-82: Change in zoning from R-4 Single Family Residential to M-3 Industrial, Revised Detailed District Development Plan and Conditional Use Permit for quarry operation.
- B-15-84: Conditional Use Permit for a rock quarry.
- 15DEVPLAN1051: Revised Detailed District Development Plan associated with 15CUP1019 to fill existing quarry.
- 15CUP1019: Modified Conditional Use Permit to fill an existing quarry.
- 17CUP1012: Modified Conditional Use Permit to allow for heavy equipment staging and storage

STAFF FINDINGS

The proposal complies with the guidelines of Cornerstone 2020 and complies with the requirements of the Land Development Code.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a Conditional Use Permit established in the Land Development Code.

TECHNICAL REVIEW

- LOJIC identified a protected waterway on this site. The quarry has been approved for fill activities by the Army Corps of Engineers.
- 17MINORPLAT1004 is currently under review to create the proposed property boundaries and easements.

INTERESTED PARTY COMMENTS

Staff has not received any comments from interested parties.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal meets the comprehensive plan as the proposal is utilizing a vacant industrial site and adding a compatible use to an industrial area. The proposal is high intensity and is located along a minor arterial and is improving access to adjacent industrial properties by expanding a public right of way. There are no residential uses located adjacent that would be negatively affected by the proposed development.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The proposed heavy equipment staging and storage is at a scale appropriate with the surrounding mixed industrial area, and has very limited impact on residential development, as access is not shared. The proposal provides appropriate transitions to adjacent properties through the use of landscape buffer yards, setbacks and screening. Setbacks and building heights are compatible with nearby properties. Therefore, the proposal is compatible with surrounding uses and the general character of the area.

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: Improvements to the site and right-of-way made necessary by the proposed development, such as transportation and drainage, have been adequately provided to serve the proposed use.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

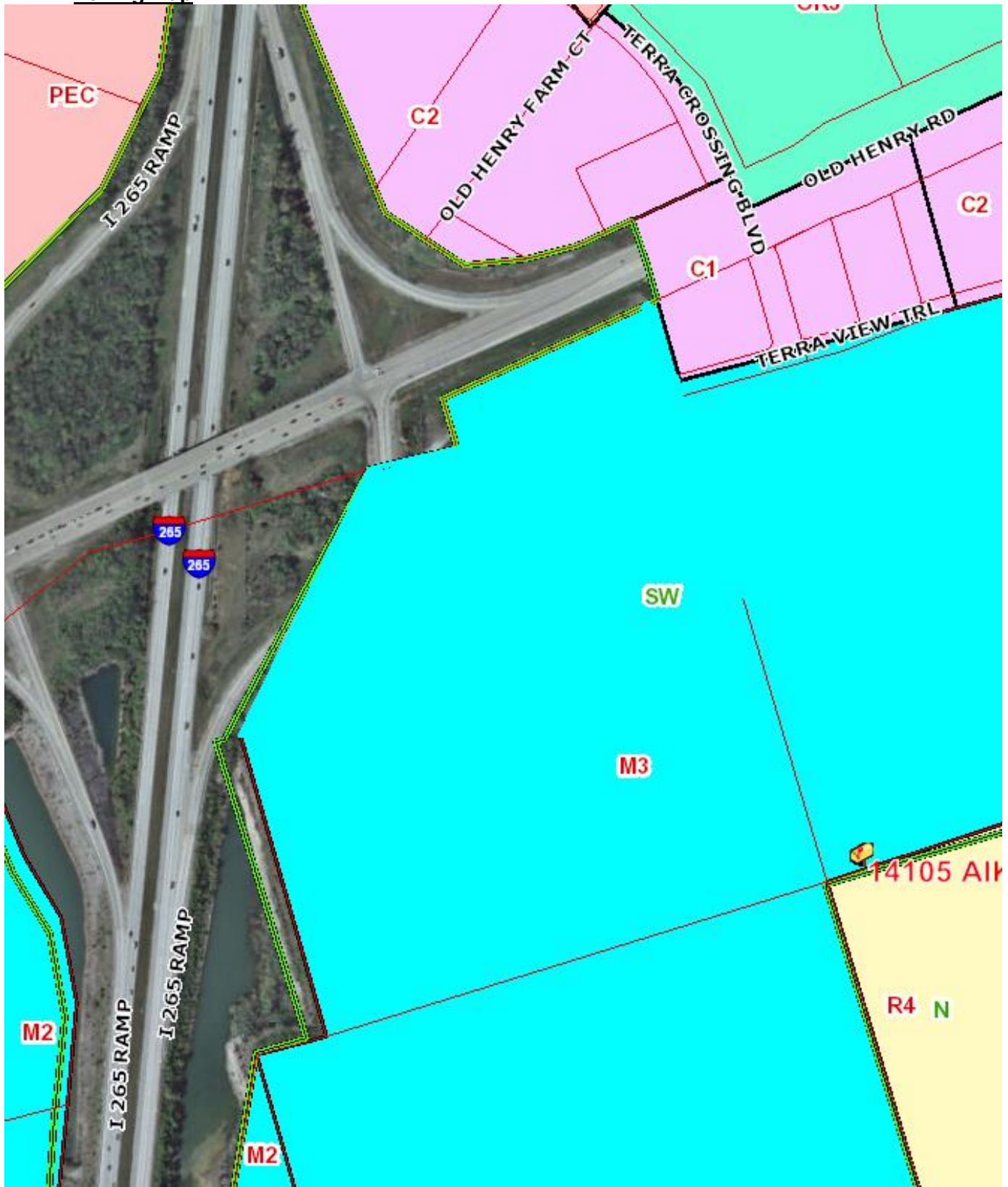
STAFF: See Attachment 4 for all standards for major filling operations. As the proposed use is unrelated to the filling of the quarry and this modification of the Conditional Use Permit is being reviewed only as a condition of the original CUP, none of the standards apply.

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Staff Checklist

4. Specific Standards for Conditional Use Permit
5. Existing Binding Elements
6. Existing Conditions of Approval

1. **Zoning Map**



2. Aerial Photograph



3. Cornerstone 2020 Staff Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Suburban Workplace: Non-Residential

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
1	Community Form/Land Use Guideline 1: Community Form	B.10: The proposal integrates into the pattern of development, which features buildings set back from the street in a landscaped setting.	✓	The proposal has met all setbacks and landscaping requirements.
2	Community Form/Land Use Guideline 1: Community Form	B.10: The proposal integrates into a planned development that features a mixture of related uses, and that may contain either a single major use or a cluster of uses.	✓	The proposal is located in an area of mixed industrial and industrially vacant land.
3	Community Form/Land Use Guideline 1: Community Form	B.10: The proposal incorporates connected roads, encourages access to public transportation, and provides for pedestrians.	✓	The applicant is located on an existing public roadway, expanding Terra Crossing Blvd, and providing new sidewalks where those do not exist, as well as pedestrian connections throughout the site.
4	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	+/-	Staff has not received elevations for review.
5	Community Form/Land Use Guideline 3: Compatibility	A.4/5/6/7: The proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	NA	This proposal is not a non-residential expansion into a residential area.
6	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	✓	APCD has approved this plan.
7	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	The proposal is using existing roadways and expanding one public Right-of-Way to better serve the development.
8	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	Note 6 states that site lighting shall be not cause a nuisance and will be in accordance with the Land Development Code.
9	Community Form/Land Use Guideline 3: Compatibility	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	✓	The proposal is located near similar activities and just southeast of the Old Henry Rd/I-265

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
10	Community Form/Land Use Guideline 3: Compatibility	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	✓	The proposal is located near similar, compatible uses and has provided for all required setbacks and buffer areas.
11	Community Form/Land Use Guideline 3: Compatibility	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	✓	The proposal is located near similar, compatible uses and has provided for all required setbacks and buffer areas.
12	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	The proposed buildings and setbacks are small in scale and setback off of the Old Henry Road, which is compatible to nearby uses.
13	Community Form/Land Use Guideline 3: Compatibility	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	NA	There are no parking or loading areas adjacent to residential development.
14	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	✓	All Vehicle Use Area Landscape Buffer Areas are being provided.
15	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	There is no parking garage proposed.
16	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	+/-	Staff has not reviewed any proposed signage.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
17	Community Form/Land Use Guideline 4: Open Space	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	NA	There is no open space requirement for this proposal.
18	Community Form/Land Use Guideline 4: Open Space	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	NA	There is no open space requirement for this proposal.
19	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.	-	No trees currently on site are being preserved.
20	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.1: The proposal respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	-	No trees currently on site are being preserved.
21	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA	There has not been any historical or architectural value found on site.
22	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	✓	LOJIC has not identified any of these features on site.
23	Marketplace Guideline 6: Economic Growth and Sustainability	A.1: Limit land uses in workplace districts to those land uses necessary to meet the needs of the industrial subdivision or workplace district and their employees.	✓	This use is needed to serve the Louisville Paving Company, located nearby.
24	Marketplace Guideline 6: Economic Growth and Sustainability	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	NA	This proposal is not located downtown.
25	Marketplace Guideline 6: Economic Growth and Sustainability	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	✓	This proposal is locating near other industrial sites and building upon existing infrastructure.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
26	Marketplace Guideline 6: Economic Growth and Sustainability	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	NA	This proposal is not for retail commercial.
27	Marketplace Guideline 6: Economic Growth and Sustainability	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	✓	This proposal will have less than 100 employees and is located near Old Henry Road, a minor arterial.
28	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	✓	The proposal includes the expansion of Terra Cross Blvd that will be later dedicated to public use.
29	Mobility/Transportation Guideline 7: Circulation	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	Public sidewalks and pedestrian connections throughout site are provided.
30	Mobility/Transportation Guideline 7: Circulation	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	✓	The proposal is located on an existing roadway capable to handle the capacity of the new use.
31	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	✓	The proposal includes the expansion of Terra Cross Blvd that will be later dedicated to public use.
32	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	✓	The Land Development Parking requirements are being met.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
33	Mobility/Transportation Guideline 7: Circulation	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	NA	Crossover access is not required in the Suburban Workplace form.
34	Mobility/Transportation Guideline 8: Transportation Facility Design	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	✓	The proposed Terra Crossing Blvd ends in a stub that supports later expansion.
35	Mobility/Transportation Guideline 8: Transportation Facility Design	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	✓	Access is off an existing and proposed public ROW among other industrial uses.
36	Mobility/Transportation Guideline 8: Transportation Facility Design	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	✓	The Terra Crossing Blvd extension allows for better access to adjacent sites.
37	Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit	A.1/2: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	✓	Public sidewalks and pedestrian connections throughout site are provided.
38	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	✓	MSD has approved the plan.
39	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	APCD has approved the plan.
40	Livability/Environment Guideline 13: Landscape Character	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	+/-	There does not appear to be a system of natural corridors in this area.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
41	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	The proposal is connecting to existing utilities.
42	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	Middletown Fire had no issues with the plan.
43	Community Facilities Guideline 14: Infrastructure	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	✓	MSD has approved the plan and the Health Department had no issues with the plan.

4. **Specific Standards for Conditional Use Permit**

4.2.22 Earth Excavation, Filling, and Refuse Disposal Operations, Major

Excavation, Filling, and Refuse Disposal Operations, Major may be allowed in R-R, R-1, M-2 and M-3 Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. Defined - Any operation which involves a change in the existing ground surface, except (1) grading and shaping of land around a building or structure and except (2) minor earth excavations not constituting a quarry, borrow pit, or commercial operation and/or filling of land with non-combustible, inorganic materials (See Section 04-02-21) shall be subject to the following regulations. Such uses include but are not limited to the following:

1. Extraction and development of earth products, mineral and other natural resources, including sand, gravel pits, quarries, and borrow pits.
2. Landfills for non-combustible materials.
3. Incinerators, public/private.
4. Any other landfills (except for hazardous material).
5. Commercial composting.

B. Other Standards - The proposed operation shall meet all requirements of the adopted Environmental Performance Standards.

C. Neighborhood Protection - The operation shall be conducted in such a manner as to offer protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationship to surrounding properties and access to the site including any nearby local (residential) streets

D. Information to be Filed:

1. Drawings - A plan drawn at a scale of not less than 100 feet to the inch showing the following:
 - a. Boundaries - The exact boundaries of the site and access to public ways.
 - b. Use of Land - Present and proposed use of land, the arrangement, fully dimensioned, of all existing and proposed buildings, structures, roads, drives, parking areas, loading spaces, water, sewer, power, and other utility lines, sanitary facilities, surface drainage, landscaping, fencing, and all other features and facilities to be installed or used in connection with the proposed operation.
 - c. Contours - Show by contours of not less than 2 foot intervals (except on extremely steep slopes):
 - i. The present surface of the site and the surrounding properties within 50 feet from its boundaries by the use of dashed contours.
 - ii. The ultimate depth elevations of the area to be excavated or filled by the use of dot and dash contours.
 - iii. The ultimate finished surface of the site after all excavation and filling operations are completed by the use of solid line contours.
 - iv. If the ultimate finished surface elevation is exactly the same as the ultimate depth elevation, solid line contours alone may be used, but must be so labeled in the plan legend.

- d. Excavation Methods Cross sections at critical points to illustrate the methods to be employed in the process of excavation and fill.
- e. Sequence of Operations - Locations where excavation and filling operations will commence and the procedural sequence of operations.
- f. Surface Drainage - Methods to be employed for the management of quantity and quality of surface drainage during and after completion of operations.
- g. Volumes - The volumes of materials to be excavated and filled for each location on the site where operations are to take place.
- h. Off-Site Improvements - Improvements such as new roads and pavement to be installed off the site to enable the operation to be carried out.
- i. Adjoining Property Owners The plan shall show the names and addresses of the owners of the site and all adjoining properties, the name and address of the engineer who prepared the plan, scale, north point, the geographical relationship of the site to existing public ways and major or minor arterials as designated in the Comprehensive Plan for all of Jefferson County, Kentucky.

E. General Standards:

1. No excavation nor filling shall be made within 50 feet of any boundary of the site.
2. Side slopes of excavation and fills in earth, sand or gravel shall not exceed one foot vertical to two feet horizontal and shall be blended into undisturbed existing surfaces.
3. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of excavated areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.
4. Additional landscaping is required in the buffer areas between excavation and fill areas and buildings and structures.
5. Provisions shall be made for the disposal of surface water falling on or crossing the site at all times during and after completion of the operations. The operations shall not obstruct the normal flow of any public drain, or abrogate the riparian rights of any other party to a stream or drain. No operation shall begin until construction approval has been approved from the agency responsible for surface water drainage.
6. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply, quality, or purity of ground water or wells. In no case shall an excavation be carried to a depth below an elevation of 410 feet above mean sea level.
7. A layer of clean earth at least two feet thick shall be deposited and thoroughly compacted over all fill to bring the surface to the finished surface grade as shown on the topographic plan filed with the application.
8. The finished surface of the site shall bear the proper relationship to that of adjoining properties.
9. The installation of roads, parking areas, buildings, structures, and operational facilities and equipment shall be located on the site so that adjoining properties will not be adversely affected.
10. Excavation and fill materials shall be moved off and onto the site in vehicles approved by the appropriate Director of Works.
11. All filling operations and final approval shall be in strict conformity with the regulations of the Louisville and Jefferson County Board of Health; Air Pollution Control District; Kentucky Department for Environmental Protection and the appropriate Director of Works. Letters or Certificates of Approval of the plans by the above agencies indicating prior review shall be filed prior to the issuance of any Conditional Use Permit. Uses shall not begin until final approval has been obtained and filed in the Board of Zoning Adjustment docket file.
12. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or other method that meets current state standards. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.
13. In no event will the premises be used for salvage operations of any kind. No separation or picking of waste materials will be permitted. All unacceptable fill materials as noted elsewhere in this section shall be removed from the premises immediately after delivery.
14. Except for protective fences, no building or structure erected in connection with the operation shall be located in any required yard or closer than 30 feet from any property line.
15. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway shall be reviewed and approved by the appropriate Director of Works before public hearing.
16. No materials defined as hazardous by these regulations, by the Kentucky

Cabinet for Natural Resources and Environmental Protection or Federal Environmental Protection Agency will be allowed as fill.

F. Standards for Specific Operations:

1. In addition to the general standards listed above, the following additional standards shall apply to:

a. Land-fills for non-combustible material:

- i. Fill material shall be limited to inorganic materials and other substances not subject to decomposition, combustion, or the production of odors.
- ii. Materials shall be spread and thoroughly compacted as they are deposited.

b. Incinerators, public and private:

- i. No incinerator building or structure shall be located closer than 200 feet from any site boundary line, and no other building or structure used in connection with the operation shall be located closer than 30 feet from any site boundary line.
- ii. The entire site shall be enclosed with fencing and gates as required by this Section.
- iii. All materials delivered to the site which are organic or of organic origin or other combustible materials such as paper, cardboard, rubber, plastic, wood fiber, sawdust, floor sweepings, plaster board, framing, lumber, laths, tree stumps, trunks, branches, foliage, furniture, rags, garbage, and industrial wastes and including metal and glass containers shall be burned in the incinerator.
- iv. All residue resulting from the burning operations and other fill materials which are inorganic or substances which are not subject to decomposition, combustion, or the production of odors shall be disposed of properly.
- v. All materials which are to be burned shall be placed on or in a concrete slab or hopper enclosed by a building, masonry walls, or chain link type fencing at least 6 feet high provided with doors or gates which shall be securely locked when the incinerator is not in operation. The materials shall be transferred from the slab or hopper into the incinerator and shall be burned as soon as practicable. The slab or hopper shall be kept clear of all materials when not in active use.
- vi. There shall be no separation or picking of materials or storage for salvage thereof on the site (scavenging).
- vii. All deliveries of materials to the site, shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only, except otherwise necessitated by extraordinary circumstances.
- viii. A watchman shall be stationed at the site at all times for whom a suitable shelter or living quarters shall be provided.
- ix. Sanitary toilet facilities shall be provided on the site in accordance with the requirements of the Department of Health.

c. Any other landfills (except hazardous materials):

- i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet to any site boundary line.
- ii. All plans shall show all pipelines used for gas collection, migration, etc. as well as the location of vents, flares, etc.
- iii. The entire site shall be enclosed with fencing and gates as required by this Section.
- iv. All materials delivered to the site which are organic in origin and all paper, cardboard, plastic, metal and glass containers, wood fiber, sawdust, floor sweepings, plaster board, framing lumber, laths, tree stumps, trunks, branches, foliage, furniture, rags, garbage, and industrial wastes shall be deposited and thoroughly compacted in layers not to exceed two feet in depth. Rubber tires, dead animals, and by-product wastes of a gaseous, liquid, or semi-liquid nature such as tar, paints, solvents, sludge, rubber, and plastics and other flame or fume producers may be permitted as fill material after the Kentucky Natural Resources and Environmental Protection Cabinet issues permission, unless specifically prohibited by the Board of Zoning Adjustment. Each day's deposit, after compaction, shall be covered with a layer of earth at least 6 inches in thickness after compaction. The face of the fill as well as the horizontal surface shall be covered with a layer of earth to prevent any movement of fill by wind or water erosion. Alternative methods may be allowed if approved by the Kentucky Natural Resources and Environmental Protection Cabinet and the Board.
- v. There shall be no separation or picking of materials or storage for the salvage thereof (scavenging) on the site. All unacceptable fill materials as noted above shall be removed from the premises immediately after delivery.
- vi. Water lines shall be installed, connected to a public water supply, or to some other source, which by use of pumps will provide water in sufficient quantity to combat fires or settle dust.
- vii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health.

- viii. No fires shall be permitted. Any smoldering flame or spontaneous combustion in the fill shall be immediately extinguished.
- ix. A watchman shall be stationed at the site at all times for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.
- x. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or some other method that meets current state standards.
- xi. All deliveries of materials to the site, filling, spreading, compacting, and grading shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only.
- xii. Filling operations shall begin immediately upon the issuance of a permit. All areas shall be refilled to finish grades as shown on the topographic map filed with the application within a period of five years after commencement of operations. The Board may extend such time limit after a public hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.
- xiii. No filling activities shall occur within 200 feet of a residential structure existing at the time of issuance of the Conditional Use Permit.

d. Borrow pits and Earth Excavations:

- i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet from any site boundary line.
- ii. Areas where excavations have been made and are taking place shall be enclosed with fencing as required above.
- iii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health.
- iv. A watchman shall be stationed at the site at all times when active operations are taking place for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.
- v. No excavation, screening, stockpiling, filling or hauling shall be done except between the hours of 7:00 A.M. and 6:00 P.M. on weekdays.
- vi. Re-filling operations as required shall begin immediately on areas when excavations have been made to the ultimate depth and such areas shall be refilled to finish grade as shown on the topographic map filed with the application within a period of five years after commencement of excavation operations. The Board may extend such time limit after a hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.

G Guarantee:

To insure the strict compliance with all of the above conditions and requirements, the applicant shall deposit with the Board a bond through a an instrument satisfactory to the Board. The amount of the instrument shall be 150% of the estimate for remediation obtained from a qualified engineer licensed in the Commonwealth of Kentucky.

5. **Existing Binding Elements**

All binding elements from the approved General Development Plan (9-62-82) are applicable to this site, in addition to the following:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding elements shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Use of the subject site shall be limited to nursery, earth fill, recycling yard, environmental processing, and other uses permitted in the M-3 district. There shall be no other use of the property unless prior approval is obtained from the (Planning Commission / LD&T Committee). Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The (Planning Commission/LD&T Committee) may require a public hearing on the request to amend this binding element.

3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The appropriate modified conditional use permit shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
 - c. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. The property owner/developer must obtain approval of a detailed plan for screening, buffering, landscaping as described in chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - f. Building elevations must be submitted to Planning & Design Services staff for approval prior to building permit issuance.
5. A berm shall be erected, where needed, to contain all organic materials used for the recycling operations within the site, which will be inspected and monitored by the Metropolitan Sewer District as a condition of approval for recycling operations occurring on the development site.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. Owner shall dedicate Terra Crossing Blvd to public use, the area shown as an 80' private access easement on the proposed minor plat, within 60 days of request by Louisville Metro Public Works Director.

6. Existing Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (Including all notes thereon), the listed requirements for a fill operation, and any conditions imposed or waived by the Board. No further development shall occur on the site without prior review and approval by the Board.
2. Required agency approvals shall be filed, before transmittal occurs.

3. The owner/operator of the reclamation area will be monitored at the entry and exit point which will be gated and locked after hours.