



DEPARTMENT OF NATURAL RESOURCES

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MEMORANDUM

DATE: July 13, 2007

TO: LAND RECLAMATION COMMISSION

FROM: Larry P. Coen, R.G., Staff Director (*original signed by Larry P. Coen*)

SUBJECT: Director's Recommendation – Magruder Limestone Company, Inc., Permit Expansion Application, Lake Ozark Quarry, 205-acres; Miller County.

The following constitutes the Director's Recommendation, based on a review of the comments received and the required components of the recommendation.

Staff Director's Notice of Recommendation

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments when making the notice of recommendation. After consideration of issues provided in letters, it is my recommendation to issue the permit expansion application involving 205-acres in Miller County sought after by Magruder Limestone Company, Inc. My recommendation for approving this expansion application is based on the fact that the company has satisfied the requirements for application completeness.

Required Components of the Recommendation

The Land Reclamation Act requires that the director make a formal recommendation regarding the issuance or denial of an applicant's permit. Rules at 10CSR 40-10.040(2)(A) require that the Director's recommendation be based on several specific items as follows:

1. The application's compliance with section 444.772, RSMo;
2. The application's compliance with 10 CSR 40-10.020;
3. Consideration of any written comments received;
4. Whether the operator has had a permit revoked or a bond forfeited; and
5. If a petition is filed and a hearing is held, the commission shall make the decision.



Items 1 and 2: These are basically the same issue stating that the application must meet the criteria for application completeness in both the statute and the rules. After staff review of the permit expansion application from Magruder Limestone Company, Inc., the staff determines that the application document has met the standards of both the statutes and the rules.

Item 3: For the consideration of all written comments please refer to Attachment 1.

Item 4: The company has never had a permit revoked or a bond forfeited, in accordance with the full language of the rules at 10CSR 40-10.040(2)(A)4.

Item 5: There is record on file that Vicky & Larry Stockman, Mr. & Mrs. William Moore, Michael C. Atkisson, Jacqueline Atkisson, Honorable Mayor Penny Lyons, Johnnie Franzekos, Joseph M. Bax, Judy Taylor, Jerry Vincent, Robert Zawislak, Dennis & Linda Croxton, Clinton & Tamira Sheppard, Steve & Teresa Beeny, Donald R. Baker, Linda Weeks, Mary W. Denton, Steve Terviel, Carl Williams, Joyce Mace, John V. Williams, Jack & Barb Farris, Kevin & Judith Meyer, Todd & Rebecca Reinecke, Andrew Zawislac and John & Marline Zawislak requests that a hearing be held concerning the permit expansion application sought after by Magruder Limestone Company, Inc. Therefore we present a request for a hearing before the Commission.

Summary Comments

As the commissioners will understand in the following pages, there are a variety of concerns surrounding this proposed permit expansion application. The Land Reclamation Act addresses the issues of public notification requirements, permit expansion denial, a request for a public meeting, and requests for a hearing. The Missouri Department of Natural Resources does provide protection concerning sediment and run off in to the creek system, air pollution or excessive dust emissions that originate from within the property of the proposed mine site. The Department does not provide protection concerning the sewer plant easement, noise pollution, traffic, dust created outside the property boundary of the proposed mine site, blasting, property devaluation, potential impacts on businesses or mining in a residential area. However, note that 444.762 RSMO states "It is hereby declared to be the policy of this state to strike a balance between surface mining of minerals and reclamation of land (and) to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state. Regarding blasting, note that House Bill 298 this year did enact legislation to regulate blasting, which will become effective August 28th of this year, once it is signed by the Governor.

All of the issues did receive a response to the written concern and all comments are taken into consideration. As Staff Director I have recommended approval of the pending permit expansion application, because in fact the company has satisfied all the requirements of The Land Reclamation Act.

Attachment

LC:bz

Attachment 1

Response to Public Comments Regarding the Proposed Permit Expansion Application for Magruder Limestone Company, Inc., Miller County, Missouri

The Staff Director of the Missouri Department of Natural Resources, Land Reclamation Program received letters providing comments, requesting a public meeting, and requesting a formal hearing concerning the proposed permit expansion application of the Lake Ozark Quarry sought after by Magruder Limestone Company, Inc. After the company respectfully declined to hold a public meeting we received more letters requesting a formal hearing. The names of people who requested a hearing are listed under the heading of Hearing Request. These issues have been grouped together for ease of written presentation. Listed below are the issues raised in the letters and responses of consideration.

Public Notification Requirements

Concerns: At the June 19th meeting of the Joint Sewer Board for Osage Beach and Lake Ozark, the Magruder application for an expanded mining permit was discussed. The joint sewer board comprised of the political leadership of Lake Ozark and Osage Beach found significant deficiencies in the application. They are as follows: Neither the City of Lake Ozark, nor the City of Osage Beach were notified of the application. While neither of our city limits extend into the area, or are adjacent, our corporate property (the sewer plant) does. A significant amount of our community citizens who are required by law to have been notified (directly adjacent property owners who border the proposed area), were not. Therefore, our board formally requests, with full backing of both the City of Lake Ozark, and the City of Osage Beach that this application be denied.

We have read the notice posted by Magruder Limestone Company, that they are requesting a permit to expand their mining operations in Miller County. It was only by chance that we saw it. It was posted in a small rural paper that we have never heard of. No one in this area even knows about the newspaper where this notice appeared.

We have 187+ acres that touch the proposed site and has been in our family for many years. If it hadn't been for a kind neighbor we would not have been notified of this matter. We are concerned also about the way we learned about this proposed quarry. We found out through a friend on Monday June 18, 2007 that there was a permit application notice published in a newspaper on the opposite side of the county with very limited circulation. Along with this they used a loophole in the regulation which may be legal, but to me not ethical not to have notified the adjacent landowners. This is compliance to the letter of the law instead of the spirit of the law, which we think was originally intended, and we feel it should be changed.

Response:

The Land Reclamation Act requires that the operator publish a notice of intent to operate a surface mine, once a week for four consecutive weeks in a newspaper qualified to publish public notices pursuant to Section 493.050 RSMo in the county of the proposed mine site. Magruder Limestone Company, Inc., did in fact publish a notice of intent to operate a surface mine in the Miller County Autogram – Sentinel, a newspaper qualified to publish public notices in accordance with 493.050 RSMo., in Miller County on May 17, 24, 30 and June 7, 2007. Magruder Limestone Company, Inc., did satisfy the requirements of publishing a notice of intent to operate a surface mine for the Lake Ozark Quarry in Miller County; whether or not people surrounding the proposed mine site receive the newspaper or consider it a small rural paper on the other side of the county.

The Land Reclamation Act, also requires proper certified mail notification of an intent to operate a surface mine to governing bodies and landowners adjacent to the proposed mine plan area as required by Section 444.772.10 RSMo. and reads

“...The operator shall also send notice of intent to operate a surface mine by certified mail to the governing body of the counties or cities in which the proposed area is located, and to the last known addresses of all record landowners of contiguous real property or real property located adjacent to the proposed mine plan area...”

The Magruder Limestone Company, Inc., proposed expansion application is not the first time the issue of proper certified mail notification came up. Discussion of this issue also took place at the March 27, 2003 meeting of the Land Reclamation Commission. Some key excerpts from that meeting include the following sentences in this paragraph. Notification of intent to operate a surface mine is the original reason why legislation was signed into law in 2001. There was discussion during the legislative process about the notification issue and the mine plan language at 444.772.10 RSMo, as reads in bold print above. The mine plan area has always been understood as the boundary limits of a proposed mine site as identified on the detail map. When the work group discussed this issue, a distance notification was discussed – should it be within 500-feet, 1,000-feet, etc. The consensus at that time was that it was limited by the statute. Contiguous was considered as property that abutted up to and was contiguous to, connected with in some fashion. The adjacent verbiage was interpreted to be the inclusion of land that might not be contiguous, but might be separated by another right-of-way, road, highway, stream, river, in some cases where it might not be contiguous to because of that other deeded property, but it was public access. An inclusion of distance would go well beyond the statute and might not meet the test of Chapter 536 on administrative rules. During this same Land Reclamation Commission meeting there was a decision to proceed with the rule making process. The Commission at that time decided to proceed with a rulemaking process to promulgate a rule that reads “regardless of the mine plan area, anyone who has property around that property to be mined is then being considered to be an adjacent property owner.”

A notice of proposed rule making was published in the *Missouri Register* (29 MoReg 1303 – 1304) on September 1, 2004, with wording consistent with what the Land Reclamation Commission ordered during the March 27, 2003 meeting. During the public comment period awarded by the printing of the *Missouri Register*, the Land Reclamation Commission received two comments. During the December 17, 2004, Land Reclamation Commission Telephone Conference Meeting, the Land Reclamation Commission decided to revert the rules back to what the statutes read due to comments received, which expressed that the proposed rule was inconsistent with the statute. Therefore the rules to this day read the same as what the statutes read.

The key words to focus on is “adjacent to the proposed mine plan area”. After a review of the mine plan boundary illustrated on the detail map it is determined that the proposed mine plan boundary remains within and does not touch the property boundary. Since the proposed mine plan boundary remains within and does not touch the property boundary, the only requirement of a notice of intent to operate a surface mine sent by certified mail is to the governing body of Miller County. Magruder Limestone did in fact send proper notification to the Presiding Commissioner of Miller County. In this case Magruder Limestone Company, Inc., is not required to notify any other owners of real property adjacent to the mine plan area. The sewer treatment plant is also not considered an adjacent property owner. Also, easements that may be within the mine plan area do not constitute “owners of real property”. Magruder Limestone Company, Inc., did properly satisfy the certified mail notification requirements as directed by the Land Reclamation Commission.

Sewer Plant Easement

Concern: The proposed area encroaches upon the main outfall line of the City of Osage Beach to the Joint Sewer Plant. The aforementioned line and easement is right in the middle of the proposed expansion area, and would not allow for any blasting or grade alteration adjacent to it. There are two major sewer lines, which run through the proposed quarry site. Should these lines be damaged, it would result in a catastrophic economic impact to both cities, as well as the State of Missouri which depends heavily on the taxes paid by tourists every year. It is evident that the “livelihood” of both cities would be unduly impaired should this permit be issued and Magruder allowed to blast in the area.

Response: Magruder Limestone Company, Inc., is aware of the sewer easement and location of the force main sewer lines. There are two force main sewer lines, one is 18-inches and the other is 24-inches in diameter. The depth of the force mains ranges between six to twelve feet below the surface. During summer time peak season the force mains carry 1.8 million gallons per day and drops off to about half that amount during the winter. The easement is 30-feet wide and the force mains may be as close as three to five feet from the edge of the easement in places.

The force mains may require maintenance or possible replacement at some time in the future of the proposed quarry operation. The sewer plant’s concern is that if there is a highwall located within a few feet of the easement boundary line that could possible cause a serious maintenance conflict as some operator of heavy machinery would have to work precariously close to a

dangerous situation. Another factor Magruder may want to consider if planning to locate a highwall within a few feet of the easement is that weathering of rock could cause portions of the highwall to break off and encroach back toward the easement or location of the force mains. We encourage Magruder Limestone Company to prevent any possible economic or environmental damage associated with the force mains or easement. We are aware that Magruder Limestone does not have any plans to mine through the easement and there will be no grade alteration. At this time we are only aware that Magruder Limestone will drive equipment over easement, if the commission grants approval of the application. Magruder will need to work out this concern with the Sewer Plant.

Noise Pollution

Concerns: This quarry would adversely affect the residents living near the area. The noise would be a nuisance as well as a health concern. The quarry will cause excessive noise due to trucks going in and out, blasting and drilling of rock and machinery noise. One of the main attractions of this park, is the quiet peaceful atmosphere we offer. Our campers come here to rest and relax. This comfort and enjoyment is our main concern. The noise and dust will make our park unattractive to potential customers.

Response: We believe that Magruder Limestone Company, Inc., will generate a variety of noises and noise levels when they operate the quarry, if the permit expansion application receives approval. If noise levels generated from the quarry operation become problematic then voice that concern to Magruder Limestone Company, Inc.. Our contact person with Magruder Limestone is Mr. Dean McDonald who can be reached by telephone at (636) 528-4180 or you can contact him in writing at 255 Watson Road, Troy, Missouri 63379.

Another option is to contact the Mine Safety and Health Administration (MSHA) at their field office in Rolla by telephone at (573) 364-8282 or in writing at 901 Pine Street, Room 202, Rolla, Missouri 65401. Although MSHA only regulates a miner's-safety and well being; most likely if people outside of the quarry area are experiencing problems with noise pollution from the mine site, possibly the mineworkers are too.

Besides contacting the company, MSHA or filing a civil action law suit to provide some relief from the noise, there is no other option we are aware of. There are no environmental provisions that allow the Missouri Department of Natural Resources to administer protection against noise pollution.

Mining and the Environment / Surface Water Runoff

Concern: More damage to creeks and streams that run through this area, into the Osage River.

Response: Strip mining is a temporary harsh activity on the land affected by mining. We understand that strip mining does appear like environmental destruction. The strip mining

process involves the clearing and grubbing of vegetation, removal of overlaying material to access the mineral commodity and blasting to fracture the rock mass. Due to the lack of environmental concern by some mine operators prior to 1970, there are now various safeguard requirements to protect the surrounding environment from a mining operation. Some of the safeguard requirements include keeping sediment from reaching a stream, keeping dust and other pollution from affecting areas outside the mined property and timely reclamation of land affected by mining. Laws enforced by the Missouri Department of Natural Resources require these environmental protection safeguards. The Land Reclamation Act requires that the affected land be reclaimed to a land use of wildlife, agriculture, development or a water impoundment. The mine-plan for this site involves the reclamation of 205-acres for a development land use.

The land use of development is often achieved by leaving a hard rock floor that does not allow water to pool and does not require topsoil replacement or establishment of vegetation for the majority of the mined out area. Wherever topsoil is replaced, vegetation will be established sufficient enough to control erosion. The Code of State Regulations at 10 CSR 40-10.050(5)(B)8., specifically exempts an operator from reducing a highwall if there is an inadequate amount of material for backfill. At some mining operations, the company will leave a stair-step effect of benches, rather than leaving a straight vertical wall, for safety reasons.

The Missouri Department of Natural Resources is also concerned about surface water runoff and how it may affect the water quality of creeks and Osage River. Magruder Limestone will need a permit and plan that minimizes possible runoff contaminants from entering the waterway system. Some of the requirements in the Water Protection permit requires: sediment catch basins, vegetative filters and a water quality monitoring plan. If by chance someone notices sediment or pollutants in the water as a result of Magruder Limestone, if this certificate is issued, we do recommend that the concerned individuals contact Magruder Limestone by telephone at (636) 528-4180 to take corrective actions. If by chance Magruder Limestone does not take corrective actions, it will prove beneficial to contact the department's Lake of the Ozarks Satellite Office, by telephone at (573) 348-2442 for what we believe will result in Magruder Limestone taking corrective actions if there is in fact pollutants contaminating waters of the State.

Restoring land to a viable land use, that was mined on or after January 1, 1972, is what The Land Reclamation Act is all about. The Act's declaration is to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by mining, as contemporaneous as possible, and for the conservation of land, and thereby to preserve, and aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, and to protect and promote the health, safety and general welfare of the people of this state. There are various safeguards that the Department of Natural Resources requires from operators to prevent pollution from leaving the boundaries of the property where a mine is proposed or active. We have no doubt that the Act and reclamation plan proposed by Magruder Limestone Company, Inc., provides locomotion to return the mine site to a land use recognized by The Land Reclamation Act. A certificate to mine limestone issued by the Missouri Land Reclamation Commission does not allow an operator to destroy the environment. We have confidence that Magruder Limestone will not be able to legally destroy the environment outside of the permit area without consequences, if this permit application is approved for issuance.

Traffic

Concerns: This quarry would adversely affect the residents living near the area. The traffic would be a nuisance as well as a health concern. Safety and health of our children. There are a multitude of children living on this road as well as a drop off point for the local school bus. There is a school on Wood River Road that would be affected by the large truck traffic, as well as the blasting. Increased road traffic caused by quarry.

Response: The Missouri Department of Natural Resources has no authority to regulate traffic on public roads in Missouri. It would be best to contact your local authorities about nuisance traffic from the mining operation if this permit is granted.

Air Pollution/Dust Control

Concerns: The dust would be a nuisance as well as a health concern for anyone with breathing disorders. Also since the entrance to the quarry is a gravel road, excessive dust will have an effect. The dust will make our park unattractive to potential customers. Woodriver is a highly traveled gravel road. The dust on Woodriver Road is unbearable. Trucks would make this problem worse. Also, Woodriver is used as a Highway 54 by-pass, this makes the dust a big problem. The sewer treatment trucks are bad enough on our dusty, gravel. I am one that has breathing problems. Please no more heavy duty, large wheeled trucks on Woodriver. I have chronic asthma & severe breathing difficulties! I would be forced to relocate which I do not want to do! I have Chronic Obstructive Pulmonary Disease (COPD) because of limestone dust! We are definitely opposed to this project being located close to our home as it will have ill effects on Jacks health, due to his lung problems and well as my chronic sinus condition, which I have surgery for. This is a very low maintained gravel road and unable to support much activity. Dust from vehicles as well as the effects from the blasting fallout would be hazardous to our health and homes.

Response: Un-paved roads are a source of dust emission. Typically, when most any vehicle travels on a dry unpaved road, there is a dust cloud generated by this action. We recognize that there are people who have health problems and dust only exasperates the problem further. The Missouri Department of Natural Resources, Air Pollution Control Program can not take actions against an operator concerning road dust on a public travel way. Therefore there is no relief that the Missouri Department of Natural Resources can provide concerning dust on public roadways. Magruder Limestone Company, Inc., is aware of road dust concerns and we request that Magruder Limestone please keep dust to a minimum.

The generation of dust at limestone mining and processing operations comes from a variety of sources. Some of those sources involve stockpiles, crushing operations, on route traffic, and blasting. Physical irritant effects caused by exposure to excessive amounts of dusts and particulates can cause irritation; such irritation involves the skin, eyes, nose, upper respiratory tract and mucous membranes. Missouri air quality laws do not tolerate visible dust emissions migrating off the property boundary. Dust must be contained within the property boundary of

Magruder Limestone, if the permit is issued. If dust is seen escaping the confines of the property boundary or if there are excessive amounts of dust noticed during normal operation then Magruder Limestone will need to take immediate corrective actions. Our contact person for Magruder Limestone is Mr. Dean A. McDonald who may be contacted by telephone at (636) 528-4180 or in writing at 255 Watson Road, Troy, Missouri 63379.

If Magruder Limestone fails to take corrective actions concerning fugitive dust migrating onto adjacent properties, then do not hesitate to contact the Department's Air Pollution Control Program for what we believe will result in Magruder Limestone taking corrective actions to stop dust from migrating onto adjacent properties or becoming problematic within the confines of the quarry. A contact number for people to report a dust complaint can be made to the department's Lake of the Ozarks Satellite Office, 5570 Hwy 54 Osage Beach, MO 65065 at telephone number (573) 348-2442, or the department's Southwest Regional Office by telephone at (417) 891-4300 or in writing at 2040 West Woodland, Springfield, Missouri 65807-5912. It will prove best to ask to speak with someone in Air Pollution Control. Only the Department's air laws help regulate dust generated at a mine site.

Blasting Related Issues / Affect on Water Wells / Sewer Treatment Plant

Concerns: I am concerned that the blasting will cause foundations of our home to crack. Possible damage to our homes and their foundation caused by the blasting. There are approximately seventy-five homes and seven businesses that that could be affected by the blasting. Damaged wells and foundations in our homes and the businesses. Also, most of us have wells for our water source. All of these homes have water wells which would be affected by the blasting. The blasting could also damage these wells. The water treatment plant, which serves two cities, would be next to the proposed quarry. I am also concerned about the City of Lake Ozarks' sewer treatment plant. The blasting could cause damage to that. Considering how close it is to the Osage River, this could be a serious issue. Continuous blasting could also damage much of the treatment plant's underground tanks and create serious problems for the future of this plant. Large power line towers run along one side of proposed quarry. My personal home has damage from the quarry that was across the river.

Response: There is already a 15-acre limestone mining operation approved adjacent to the sewer treatment plant. This 15-acre site called Hudson Hollow was approved to APAC of Missouri in 2002 which would have an equal if not more damaging impact to the treatment plant or main force lines as another quarry would.

No one has the right to cause damage to anyone's property. If a concerned person experiences damage to their property due to the operation of the proposed neighboring quarry then those individuals have every right to take civil litigation actions to formally resolve those issues.

Detonation of explosives always triggers ground vibrations at specific frequencies that do leave the blast area and resonates structures nearby. Blast vibrations can also be perceptible, but not necessarily damaging, in a home at great distances from a blast. Structures respond to very low frequency levels of ground vibration. Some companies are able to safely detonate explosives

within 150 feet of a structure with no damaging impact to the structure since quarry and construction blasting typically produces high-frequency vibrations.

It may prove beneficial for concerned individuals to have a blasting survey taken of their house and property if they live near a mine site. A blasting survey done before the initiation of a blasting program, is of the most value, but a survey can be performed at any time. The blasting survey usually involves an independent party documenting all of the walls and other parts of the house for cracks or the lack of cracks. If a large blast does put a crack in a wall where there once was none or if an existing crack becomes larger, the survey will provide such documentation.

Another option to consider is having an independent blasting consultant set up a seismograph to monitor the vibrations a residence experiences. If the seismograph measures damaging ground movement at a damaging frequency, during the detonation of explosives, then there is better evidence that the damage caused to a residence is, in fact related to blasting. A review of past blasting records or logs will also provide insights to how explosives have been used.

Although civil litigation is an option, we recommend that concerned individuals request the company to provide assistance with a blasting survey, seismograph monitoring or any damage claim, although we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so. However, any concerned person has every right to ask the mining company to resolve these issues and pay the costs to do so. Again, our contact person with Magruder Limestone Company, Inc., is Mr. Dean McDonald who can be reached by telephone at (636) 528-4180 or you can contact him in writing at 255 Watson Road, Troy, Missouri 63379.

We do suggest that Magruder Limestone should encourage their blaster to take all necessary precautions when detonating explosives to lessen the neighbor's concerns. We further suggest that Magruder Limestone, provide a blasting schedule to each person who lives or works within a half-mile from the point of explosive detonations. The blasting schedule should advise people of the typical times when explosives are detonated. Another precaution for Magruder to consider is making people aware of a detonation with a warning siren, at least one-minute prior to the detonation, that is audible for a half-mile distance from the point of detonation; although there is no environmental requirement for the company to do so. The Department of Natural Resources does not regulate blasting related activities at limestone quarries in anyway whatsoever and we have no jurisdictional authority to do so.

House Bill 298 regulates various blasting and excavation activities and was approved by the legislatures during the 2007 session, which will come into effect once it is signed by the Governor. This legislative bill will create the Missouri Blasting Safety Act. The act requires individuals who use explosives to have a blaster's license or be supervised by a person with a blaster's license, with some exceptions. The act directs the Division of Fire Safety to create a blaster's licensing program. The act lays out qualifications for license applicants, which include completing an approved blaster's training course and passing a licensing examination. Licenses are valid for three years and may be renewed upon the applicant meeting renewal requirements as specified in the act. Blaster's licenses shall be required within 180 days of the division

promulgating licensing rules. We encourage you to contact the Division of Fire Safety (573) 751-2930 to learn more about this bill when it comes into effect.

We do believe that people who live near this quarry operation will experience vibrations from the detonations of explosives if the permit expansion is granted. However, the vibrations may not be intense enough to cause damage to nearby structures. We have no ability at this time to provide aid or relief for anyone concerning the detonation of explosives based on the current wording of The Land Reclamation Act. It is our hope that a positive resolution will take place between concerned individuals and Magruder Limestone Company, Inc., in order to address blasting related issues.

Concerns about water wells becoming contaminated or a drop in the static ground water levels due to a nearby mining operation are understandable, although this does not happen often. Currently, the Missouri Department of Natural Resources does not regulate private water well issues, but there are steps that can be taken to determine whether or not a private water well is negatively impacted in the future. In order to legally document that there has been a change in the water quality of a private well there will first need to be a water quality analysis that provides baseline data. A baseline water sample should be from a concerned individual's well. If there is a detected change in the water quality another water quality sample should be taken. The baseline analysis is then used to compare future water analysis to see if there is a change in the water quality. If a future water sample identifies that there is a negative change from the baseline analysis then there is proof that the concerned individual's well water quality is affected (although this may not necessarily mean that the mining operation caused this change). If anyone elects to have their well water tested, we recommend that they use the services of a qualified individual who will follow accepted methods to sample the water and transport it to a laboratory for analysis. The Missouri Department of Health is responsible for testing water samples from privately owned wells. For assistance to sample a private well contact local County Department of Health office. People who use a private well may make a request to Magruder Limestone to help with the cost of obtaining a water sample, although we must emphasize that this would be strictly voluntary for the company, there are no environmental laws that would require them to do so.

We have also spoken with people representing the Department's Water Protection Program to further understand what someone can do to protect their supply of water. From those conversations we learned that there are no laws in Missouri that provides protection for maintaining a viable groundwater supply to recharge a well. For more information concerning water wells, contact the department's Public Drinking Water Branch at (573) 751-5331.

Concerned individuals and Magruder Limestone Company, Inc., might be able to reach some type of an agreement for implementing a water quality monitoring plan. We recommend that concerned individuals discuss with the company a plan to complete this work and to pay the cost of a water monitoring plan. However we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so.

Property Devaluation

Concern: Who pays the difference when my real estate property goes down.

Response: The concern involving property devaluation is a real issue among residents who live near a mining operation. The mere presence of a mining operation may potentially decrease property values during mining and cause concerns among prospective homebuyers. It is not always true that mining causes property devaluation. There are some instances, where in fact, that the presence of quarry did not affect the value of a property.

Anyone has every right to seek restitution for damage that Magruder Limestone, Company, Inc., is responsible for. No one has the right to cause devaluation of someone else's property without proper reimbursement or settlement for those damages. This is based on laws governing property rights not laws that govern mining.

The Land Reclamation Act does not provide guidance for property devaluation that neighbors a mine site. Rather, the declaration of The Land Reclamation Act identifies the need to protect and perpetuate the taxable value of property while allowing for the responsible mining of mineral resources.

Impacts on Business

Concern: My wife & I are owners of the property referred to as MCJK Properties that borders the proposed quarry site property for nearly one-half mile along their east boundary. We have been actively developing this property for the last two years in a quality planned community.

We feel a quarry on this property would adversely affect our ability to continue the successful development as we know it now. We have spent a large amount of money to do this project according to MO DNR Specifications. We have a large state approved well to accommodate this community and also a state approved sewer treatment plant. In addition to these we are providing many up-grades to make this the first class community that it is. It is necessary for us to be able to continue this development to pay for these improvements. We would not have considered purchasing this property to develop in this manner and spent the time and money if there had been a quarry proposed or operating on the adjoining property. As the word is spreading in the community the people are finding out where the quarry is wanting to locate, some of the builders in our subdivision are concerned and don't know if they will continue to buy and build under these conditions.

As you can tell we are very concerned about a quarry being located adjacent to our property and feel it will adversely affect our ability to continue our development and meet our obligations we are already committed to.

As far as livelihood is concerned, Mike Atkisson's housing development would be impacted as well as be Boar's future restaurant and the River Campground. All of this impacts property values in an adverse way.

A rehabilitation center for the mentally ill is also located on Wood River Road. Also a church as well as a multi-dwelling complex.

The property where the quarry will be located is near our property. Our property is a RV Park & Campground and is our sole source of income. We are convinced that another location of the quarry this close to the RV Park will severely affect our business and in turn, our source of income.

Response: Although we believe that there may in fact be some impact to the development of the adjacent property we do not have sufficient evidence that the development will be unduly impaired by the issuance of the proposed quarry expansion application. There may in fact be some concern of prospective homebuilders or homebuyers knowing that a quarry may be located nearby their property; however, we have not seen evidence of where a quarry has decreased the property value of a surrounding community. We have also not seen evidence of a decrease in the taxable value of the property or any other property surrounding a mining operation.

The majority of the proposed Magruder site is further South of the RV Park than what was previously permitted with APAC of Missouri at the Sewer Treatment Plant. There was no contest of the permit issuance decision at the Sewer Treatment Plant to APAC of Missouri. There is no reason to believe that there would be any additional undue impairment to the RV Park since the site is just about the same distance or further away as a currently permitted site. Although the RV Park may have some clients who may have concerns about a quarry in the nearby area it would not be any closer than the quarry that was permitted and is now being reclaimed on the other side of Osage River. We have no reason to believe that the business of the RV Park will be unduly impaired by the issuance of the permit expansion to Magruder Limestone Company, Inc.

We have all reasons to believe that Magruder Limestone Company, Inc., will attempt to work out problematic situations in an attempt to be a good neighbor. No one has the right to cause damaging losses to a business. If damaging losses or additional expenses are incurred by the actions of Magruder Limestone Company, Inc., the business experiencing the loss has every right to seek restitution for those losses. We would even encourage the business owner, who experienced the losses to speak with Magruder Limestone Company, Inc. We would hope that Magruder Limestone and the aggrieved party would find an appropriate compromise. If not, similar to other loss claims that are not regulated by the Missouri Department of Natural Resources, it is best to address those issues in a civil action lawsuit.

Permit Denial

Concerns: We are strongly opposed to Magruder beginning a quarry in Miller County on Woodriver Road. Please be advised that we will take any measures necessary to stop the issuance of the permit. Our neighbors on Woodriver Road are also in opposition to this permit being issued. As a resident on Woodriver Road, I am opposed to the permit that is being requested by Magruder Limestone Company to begin a quarry operation on Woodriver Road in

Miller County. I am opposed to the permit that is being requested by Magruder Limestone Company to begin a quarry operation on Woodriver Road in Miller County. Please be advised that I am strongly opposed to a quarry site on Woodriver Road. As property owners next to the proposed quarry, we are very opposed to the permit that has been requested by Magruder Limestone Company. Please understand that we are very much opposed to the quarry site. Thank you for your attention to this matter. Therefore, our Board formally requests, with the full backing of both the City of Lake Ozark, and the City of Osage Beach that this application be denied. Unhappy face, don't do it!

Response: Respectfully, there are requests that the permit expansion application not be issued. The statutes that regulate mining, 444.760 to 444.790 do not provide an opportunity for the agency to simply deny an application. Rather, the law spells out that if an application is in full compliance with the provisions of The Land Reclamation Act, then the permit must be issued with one exception. If a hearing is requested by someone who believes that their health, safety or livelihood will be unduly impaired by the issuance of the permit, then the Land Reclamation Commission may order a hearing to determine whether to issue or deny the permit. Only the Land Reclamation Commission has the authority to order the hearing, and to make the final decision.

Residential Area

Concern: This is a residential area with approximately 40 homes located on Wood River Road.

Response: Concerns involving mining in a residential area are understood. When people retire to their homes at night they do so to remove themselves from the bustle of workaday life. It is understandable that people do not want to experience noises, smells and potential community conflicts associated with a limestone quarry. We are concerned with the fragility of the elderly and empathize with people who need to rest during the normal workday. The growth rate this area is experiencing is one of the main reasons this site attracts a limestone mining operation.

Now, mining operators who conduct mining operations in a heavy residential area are practicing new problem solving techniques to address concerns of the community. The current problems being faced by mine operators who operate in close proximity to a residential area require community input to tailor projects and possibly help monitor decisions. Open decision management relies on the sum of the efforts by many individuals, thus adding to the cohesiveness of the community. One of the ways that mine operators involve the public to aid in decision-making processes is by recognizing a citizens advisory committee. We believe that Magruder Limestone Company is concerned about being a good neighbor. We also encourage Magruder Limestone Company to form a citizens advisory committee that will embed public participation to define management goals and objectives. It is our hope that with an established citizens advisory committee that Magruder Limestone and the community will be able to bind together in attempts to resolve controversial issues. Magruder Limestone Company would be going above and beyond the current wording of The Land Reclamation Act to involve community input in their mining decisions.

The disparity of public interest versus regulatory authority continues to be a frustration for all involved. The Commission is asked to involve itself outside of their legal authority on a regular and frequent basis. Program staff is often forced to advise the public that we cannot legally address their concerns and the public often feels that the present system of government has failed to protect them from issues of great concern. This is an area of great opportunity for Magruder Limestone to take a proactive part in bridging the gap between government and concerned citizens. We encourage Magruder Limestone to respond to issues of truck traffic, blasting, dust, groundwater, noise and potential impacts to the residential area. In every case, a mine operator who communicates well has an extreme advantage over all competitors.

Although The Land Reclamation Act does not specifically provide guidance for some concerns involving mining in a residential area, we have confidence that Magruder Limestone Company will not be able to legally destroy the environment outside of the permit area without consequences. The Land Reclamation Act requires strict performance requirements on how to conduct a mining operation that involves: how to handle topsoil, mine generated wastes, timing of reclamation, erosion and siltation control, revegetation and other requirements.

In addition, we are also aware that there is no planning and zoning authority in Miller County. If county zoning and planning laws were in place they might have an impact as to whether or not a quarry could operate in a residential area in Miller County. Please understand that even if zoning and planning were to have requirements that would forbid mineral extraction; the Staff Director of the Land Reclamation Program is still required to recommend issuance of a permit to a mining company if the company fulfills the requirements of The Land Reclamation Act. However, in all cases, a certificate to conduct surface mining operations issued by the Land Reclamation Commission does not allow an operator to deviate from other laws, provisions or requirements.

Request for a Public Meeting

Concern: We feel it is reasonable to ask the MO DNR to conduct a meeting in the local area so ALL people that will be affected can express their concern. We believe a public meeting is in order and we would like to attend. Please notify us by mail or post in the local papers. I am requesting a public meeting to address this issue. Please let me know when and where this meeting will take place. Please notify us in writing or post in the Lake Sun or Eldon Advisor. We are requesting a hearing and/or a public meeting to discuss these issues.

Response: On June 20, 2007, Magruder Limestone Company contacted the Land Reclamation Program via telephone to respectfully decline holding an informal public meeting. According to the rules and regulations at 10 CSR 40-10.080(1)(A) if the applicant does not agree to the public meeting then the petition may be referred to the commission for a formal public hearing as directed by subsection (3)(B) of this rule if the petitioner makes a written request within fifteen (15) days of notification of the denial of the public meeting by the applicant.

Hearing Request

Concern: The following individuals wrote to the staff director to request a hearing: Vicky & Larry Stockman, Mr. & Mrs. William Moore, Michael C. Atkisson, Jacqueline Atkisson, Honorable Mayor Penny Lyons, Johnnie Franzekos, Joseph M. Bax, Judy Taylor, Jerry Vincent, Robert Zawislak, Dennis & Linda Croxton, Clinton & Tamira Sheppard, Steve & Teresa Beeny, Donald R. Baker, Linda Weeks, Mary W. Denton, Steve Terviel, Carl Williams, Joyce Mace, John V. Williams, Jack & Barb Farris, Kevin & Judith Meyer, Todd & Rebecca Reinecke, Andrew Zawislak and John & Marline Zawislak.

Response: We are placing the request for a hearing on the Missouri Land Reclamation Commission's September 27th, 2007 agenda. The decision as to whether or not a formal hearing will be granted rests solely with the Missouri Land Reclamation Commission. In order for the commission to grant a formal hearing, the petitioners must first establish standing. The petitioners are said to have standing if the petitioners provide good faith evidence of how their health, safety or livelihood will be unduly impaired by the issuance of the permit. The impact to the petitioner's health, safety and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.

The request for hearing will be presented to the Land Reclamation Commission on September 27, 2007 at 10:00 AM. The location will be at the Missouri Department of Natural Resources, East Elm Office Complex, 1738 E. Elm Street, Jefferson City Missouri. If the Commission grants the requests for a hearing, the actual hearing will be scheduled at a later date. It should be understood that if a hearing is granted, the burden of proof shall be on the applicant for the permit. If the Commission finds, based on competent and substantial scientific evidence on the record of the hearing, that an interested party's health, safety or livelihood will be unduly impaired by the issuance of that permit, the Commission may deny such permit.

Comments beyond the scope of the Land Reclamation Act

There was a comment in the letters received by the Director of the Land Reclamation Program that was outside the scope of the Land Reclamation Act and the mining permit application under consideration. The concerned individual supplied this comment to provide insights to how they believe that they will be affected by the issuance of this mining certificate. The Staff Director considers all comments.

- This is very concerning to me because if this is the way they operate, and the lack of concern they have about their neighbors, what would it be like if they are granted a permit?