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February 5, 2010

VIA E-MAIL ONLY: Toohill@littletonma.org

Town of Littleton
Ms. Maren Toohill
Municipal Building
37 Shattuck St.
Littleton, MA 01460

RE: Aggregate Industries/Northeast Region, Inc./ Application for Site Plan Review

Dear Ms. Toohill:

On behalf of Aggregate Industries/Northeast Region, Inc., enclosed please find a Memorandum answering the three questions you posed to the company in your e-mail of January 13, 2010 and addressing the company's zoning rights in general. Please feel free to contact us should you have any questions or concerns. Thank you.

Very truly yours,

LAW OFFICES OF JERRY C. EFFREN



Jerry C. Effren

**Cc: Aggregate Industries/Northeast Region, Inc.
Thomas Harrington, Esq. (tom@miyares-harrington.com)**

MEMORANDUM RELATIVE TO AGGREGATE INDUSTRIES/NORTHEAST REGION, INC.'S APPLICATION FOR SITE PLAN REVIEW

Introduction

Aggregate Industries/Northeast Region, Inc. ("Aggregate") has filed an application for site plan review in connection with its plan to up-grade and re-locate its existing aggregate processing plant at 149 Ayer Road ("the Application"). The project triggers site plan review, pursuant to Section 173-16 of the Zoning Ordinance, only because the proposed equipment up-grade and relocation requires the installation of structural foundations. In Aggregate's knowledge this is the first time that the Planning Board has reviewed the mining and processing operations at 149 Ayer Road, and Aggregate has been asked to participate in a task force to discuss and review present and future plans for the property. Aggregate welcomes the opportunity to discuss its operations and plans with interested individuals, boards and departments of the Town of Littleton and submits this Memorandum to address that task force's initial set of questions concerning the history of the stone quarry and its operations and Aggregate's zoning rights.

Based upon the information provided below and the documents attached hereto, Aggregate submits that it requires no municipal approval other than site plan approval for its existing plant and for the planned equipment upgrade and relocation. First, the property is zoned Industrial-A, where all of the existing mining and processing activities are allowed as a matter of right. Further, to the extent that any of the uses are not permitted as of right, based upon the historical record, including opinions of the present Building Commissioner and the former Town Administrator and affidavits of former San Vel employees and its engineering consultant, all of the processing and mining activities pre-date zoning and are, therefore, legally nonconforming. Aggregate does not require a non-conforming use extension special permit where the existing plant and proposed upgrades are "ordinarily and reasonably adapted to the original use and do not constitute a change in the original nature and purpose of the undertaking." *Derby Refining Co. v. City of Chelsea*, 407 Mass. 703, 712 (1990). Accordingly, the use of the property, both as-is and with the proposed equipment upgrades and relocations, is exempt from zoning, including Section XIV of the Zoning Ordinance pertaining to the Water Resource Protection District.

The Historical Ownership of the Property

The property as shown on that certain plan of land entitled "Permit Site Plan for Littleton Quarry", prepared for Aggregate Industries Northeast Region, drawn by Hancock Associates, 185 Centre Street, Danvers, MA, dated December 22, 2009, revised January 27, 2010, ("the Site Plan") consists of approximately 195 acres (the "Property"). In 1999, Aggregate acquired the Property from Middlesex Materials Management LLC ("Middlesex"). Prior to that, the San Vel Corporation owned most of the Property dating back prior to 1950. When Middlesex owned the property it was part of a much larger industrial site that included the 3-acre "pre-cast" concrete facility at 53 Ayer Road

facility that now is longer owned by Aggregate and houses various unrelated commercial businesses; the existing quarry produced all the stone for the pre-cast facility. Middlesex sold the pre-cast facility shortly after acquiring the property, as well as other lots, cutting the total acreage of the entire combined mining/processing operation to approximately one-half of what it is today. Up until 2008, the quarry also fed the now dormant concrete ready-mix plant that Aggregate leases from Middlesex at 80 Ayer Road.

Zoning

Since the enactment of zoning in the Town of Littleton in 1951, the property has been located in an industrial zoning district- originally in the “Industrial Zoning District”, then split between the Industrial A and Industrial B zoning district, and since 1988 in the Industrial A zoning district. At all times, “manufacturing” has been allowed as a matter of right in all industrial-zoning districts. Prior to 1988, the Zoning Ordinance did not define “manufacturing”; since then, the Ordinance defines “manufacturing as: “Transformation of materials or components into new products, including fabrication, processing, finishing or packaging.” Aggregate submits that the removal of rock from the ground and transforming it into various crushed sizes falls within the definition of “manufacturing”. In 1982, the Town of Littleton enacted present Article XIV, “Aquifer and Water Resource District.” Since 1982, the bulk of the property has been located in the Water Resource Protection District which requires a special permit for various, enumerated industrial uses. As explained below, Aggregate contends that its mining and processing activities are pre-existing, non-conforming with respect to the Water Resource Protection Overlay District, even though in the absence of such protection the mining and processing activities might otherwise trigger the need for a Water Resource Protection District Special Permit.

Since 1988, “Major Commercial or Industrial” uses have been allowed in the Industrial District only by special permit. Section 173-86 of the Ordinance defines a major industrial or commercial use as an industrial or commercial use that exceeds one or more of the following thresholds:

- A. More than thirty thousand (30,000) square feet gross floor area in retail use, or more than fifty thousand (50,000) square feet gross floor area in any other nonresidential use of combination of residential uses.
- B. Sewage disposal of more than ten thousand (10,000) gallons per day, based upon sewage flow estimates in 310 CMR 15.00, Title 5 of the State Environmental Code.
- C. More than one thousand (1,000) estimated motor vehicle trip ends [one (1) arrival or one (1) departure) for an average business day, based upon either the Institute of Traffic Engineers Trip Generation or an engineering study of the activity.

Aggregate's activities do not meet the thresholds of items B and C. Assuming, for the sake of argument, however, that the area covering the quarry and the processing operations are characterized as "floor area" for purposes of item A, the quarry and processing activities pre-exist the ordinance and, as explained below, are exempt from the requirement of a permit.

The Current Use of the Property

Aggregate uses the property to mine the quarry, to process the quarry rock into size various sizes and to distribute the rock to customers at the property. The actual commercial sales take place off-site. It also imports a small amount of "wash-out" concrete from off-site for crushing and re-cycling. Subsidiary uses include blasting, the crushing, screening and washing of the rock, the transportation of the rock throughout the facility by way of trucks and conveyors, stockpiling, and the loading of the crushed rock onto trucks. Aggregate has never produced a concrete product at the facility, only the crushed rock used to produce concrete. Up until 2008, Aggregate transported the rock to the ready-mix plant it leases at 80 Ayer Road, but that plant has been discontinued and there are no current plans for its revival. As noted above, quarry owners prior to Aggregate used the quarry rock to feed the massive "pre-cast" facility at 53 Ayer Road.

As noted in the text to the Application and in the description of the plant in Aggregate's Non-Major Comprehensive Plan Approval submitted to the Massachusetts Department of Environmental Protection, the existing plant consists, essentially, of a primary crusher located in the center of the site, with secondary and tertiary crushers located a considerable distance away in the southern portion of the site near Ayer Road. The existing secondary and tertiary rock crushers, and much but not all of the conveyor system, date to the 1950's or earlier and are in need of replacement.

The Proposed Plant Up-Grades

Aggregate plans to reconfigure and upgrade its existing aggregate processing operation to improve the efficiency of its rock crushing and to obtain better access to future reserves of rock. There will be no change in use. The primary crusher, located in the center of the site, will remain in its existing location, while the secondary and tertiary crushers, located in the southern portion of the site, will be relocated within the quarry and be placed closer to the primary. Conveyors will be up-dated and relocated. The locations of the plant components, their configuration, integration, and use is shown on the Site Plan and explained in Hancock Associate's text to the Application and in Aggregate's Non-Major Comprehensive Plan Approval application submitted with the Application. In addition, several screens will be removed and replaced. A new water spray dust suppression system will be installed to minimize particulate matter emissions.

The proposed upgrade will result in increased efficiency of operation but as the primary crusher will stay the same, the equipment upgrade and relocation will cause no increase in production. Aggregate is not seeking to increase its annual maximum operating hours of 3,080 hours per year, established by its air quality permit.

As noted in Hancock's text to the Application, the equipment upgrades will satisfy modern safety codes and standards and comply with all required permits and regulations. Further, the relocation of the plant further into the center of the property will improve view lines along Ayer Road. The present, large stockpiles of rock directly abutting Ayer Road will also be moved further into the property and no longer be visible from Ayer Road. All crushing equipment will be located below the quarry rim. The three crushers are presently permitted under a "Non Major Plan Approval" and a new permit application for the new crushers is pending with the Massachusetts Department of Environmental Protection."

Aggregate also holds a National Pollutant Discharge Elimination System Multi-Sector General Permit ("MSGP") for storm-water discharges. The facility maintains an up-to-date Storm Water Prevention Plan ("SWPPP") on site as required by the MSGP. The SWPPP will be updated to reflect the changes to the facility layout and drainage. The existing storm water discharge point for the facility will not change.

Other aspects of the up-grade are as follows:

Dust suppression

Aggregate plans to install a new comprehensive water spray dust suppression system to minimize particulate matter emissions from the reconfigured crushing operations. The dust suppression system will consist of two water spray systems installed at the primary and tertiary plants. The existing spray bars and nozzles with respect to the primary crusher will remain the same.

Noise

Attached to Aggregate's Non-Major Comprehensive Plan Approval application is the noise report of Tech Environmental. According to the report, the maximum sound levels from the reconfigured plant will comply with the MassDEP Noise Policy as well as the Littleton Noise Bylaw, at Article XVII of the Zoning Bylaw.

Parking

As noted in the Application, there is no proposed change to existing parking.

Stormwater

The proposed grading on the site plan maintains a flow pattern similar to the existing one, with all site stormwater flowing from east to west into the bottom of the quarry pit. The flow will accumulate in the Quarry Pond, a large low lying flat area with the center of the quarry, where it is retained and used to supply water to the facility. Storm water in the Quarry Pond will also continue to be discharged off site pursuant to the existing MSGP.

Aquifer and Water Resource District

The bulk of the property falls within the Water Resource Protection District. Because the mining and processing activities pre-date the creation of the district in 1982, Aggregate is exempt from the requirement of a Water Resource Protection District special permit.

Wetlands Protection

As noted in the text to the Application, Hancock has found no wetlands jurisdiction in the project area. A copy of Hancock's Environmental Resource Area Analysis is attached to the Application.

Zoning Analysis

As noted above, because all existing processing and mining operations pre-date the first Zoning Ordinance in 1951, and because the proposed equipment upgrades do not involve any change in the pre-existing uses, all existing and proposed plant operations and mining operations do not require any use special permits, including a non-conforming use extension special permit and a water resources protection district special permit. The task force has asked Aggregate to specifically address the following:

1. When the use of the site began.
2. When it became non-conforming as a matter of zoning; and
3. What the use looked like when that happened.

The answers are as follows.

In 1999, Aggregate entered into a purchase and sale agreement with Middlesex and its several related companies to acquire all of its stock and thereby all of the land of the companies, which included the entire 195 acre industrial locus at 149 Ayer Road. Prior to the agreement, Aggregate conducted extensive investigation and research as to the legality of the stone quarry and the processing operations. In so doing, Aggregate obtained the notarized affidavits of three former San-Vel workers and a consulting engineer to San Vel concerning the history of the processing and mining activities. Each person represented, under oath, that the quarry on Ayer Road was in regular operation by 1950 and involved rock crushing, screening, washing and other processing and mining

activities. Copies of the four affidavits are attached hereto as Exhibit A. A summary of each affidavit is as follows:

- a. A. Russell Webster, P.E., dated March 12, 1999. From 1950 through 1955, Mr. Webster, was an engineer with Thompson & Lichtner and provided consulting services for San-Vel in connection with the Ayer Road mining and processing activities. Mr. Webster states: “The Quarry Site was in regular operation by 1950.... the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth and rock processing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.”
- b. Harry Rivets, a former worker for San-Vel at the quarry site, dated March 15, 1999. “The quarry... was in regular operation by 1950... the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth removal and rock crushing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.”
- c. Francis Sabourin, the nephew of the owner of San-Vel, dated March 15, 1999 “The quarry... was in regular operation by 1950... the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth removal and rock crushing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.”
- d. Mary Mederios, former executive assistant to the owner of San-Vel, dated March 17, 1999: “The quarry at the Quarry Site was in regular operation by 1950. Throughout the period of my involvement with the Quarry Site, I personally observed and or hear operations including all types of crushing, screening, washing, blasting and other processing and manufacturing activities associated with commercial earth and rock processing operations.”

As part of its due diligence, Aggregate also obtained statements from the two municipal representatives most familiar with the history of the facility and the Zoning Ordinance and General Town Code, the Building Commissioner/Zoning Officer and then Town Administrator Timothy Goddard. Aggregate did so to ensure that the official charged with enforcing zoning in the Town of Littleton and the Town’s chief administrative officer both acknowledged the legality of the non-conforming mining and processing activities and would identify, if needed, any issues of non-compliance with zoning. The fact that the facility would be allowed to continue without the need for any

additional use permit was the most important factor in Aggregate's decision to purchase the Property and Middlesex's business. As follows, both individuals acknowledged that the existing uses, both the mining of the quarry and the processing of the quarry rock, did not require any permits other than those that existed:

- a. In a correspondence to Michael J. Mancuso, VP of Operations for Middlesex Materials Corporation, dated January 11, 1999, Building Commissioner Roland Bernier stated "There is presently no active enforcement or outstanding or pending issues being pursued by the Building Department. This would include Building Code Enforcement of the Massachusetts State Building Code, 780 CMR, and Littleton Zoning Bylaws."
- b. In a further correspondence "to whom it may concern" of March 15, 1999, Mr. Bernier wrote "... please be advised that to the best of my knowledge all activities at 53-55 Ayer Road are in compliance with the Code Of Littleton, Chapter 173 Zoning. As of this date, the quarrying and aggregate processing operation is a legally pre-existing use, with no pending or required permit process or variance."
- c. In a written correspondence dated March 15, 1999, Mr. Goddard stated "to the best of my knowledge all activities at Middlesex Materials LLC, 53-55 Ayer Road are in compliance with the Town of Littleton General Code."

Copies of the three statements are attached hereto as Exhibit B.

Mr. Bernier authored his January 11, 1999 and March 15, 1999 opinions in his capacities as Building Commissioner and Zoning Officer. As Zoning Officer, Mr. Bernier has the statutory responsibility under local and state law to determine compliance with the Zoning By-Law at any particular time. In taking enforcement action or in rendering an opinion, a zoning officer is presumed to have knowledge of all records and facts within the custody of the Town necessary to such determination. His statement that all activities are in compliance with the Zoning Ordinance and his opinion that the operation is a legally pre-existing use were correct when issued and remain correct today.

Aggregate had approached Mr. Goddard, a representative of the Board of Selectmen, because it knew that the Board of Selectmen had jurisdiction over the earth removal by-law and are presumed to understand its requirements. The earth removal general by-law, presently codified at Article 147, has always governed the removal of "soil, loam, sand and gravel", but not rock and has never been interpreted to extend to the extraction of rock. None-the-less Aggregate, in an exercise of good judgment and in recognition of the enormous investment it was about to make by purchasing the Property, sought to make certain that the Board of Selectmen not take the position that the earth removal by-law applies to the quarry. The Board of Selectmen, through Mr. Goddard made clear that it did not.

Aggregate also inspected the Building Departments files for purposes of identifying all permits issued over the years. The file contains only two permits expressly relating to 149 Ayer Road, a building permit dated January 14, 1993 to “modify crusher and install conveyor”, and a building permit dated January 31, 1996 to “replace existing conveyors with new ones”.¹ Copies of the two permits are attached hereto as Exhibit C. Conspicuously absent from the file are any use permits. As some sort of zoning by-law has been in existence since 1951, it can be presumed that if any of the historical operations required a permit to comply with zoning, such permit would have long ago been applied for and issued. Consistent with his 1999 opinions, the Building Inspector issued the 1993 and 1996 building permits without requiring a non-conforming use extension special permit, a Water Resource Protection District special permit or any other permit.²

The Files of the Building Inspector contain correspondence from Mr. Bernier noting that from the late 1980’s to the early 1990’s the operation of the aggregate crushing plant had “noticeably slowed”. Since Mr. Bernier’s and Mr. Goddard’s 1999 opinions, the intensity of use of the property for rock quarrying and processing has further diminished with the closing of the concrete ready-mix plant across the street at 80 Ayer road.

Based upon the above, Aggregate answers the task force’s three questions as follows:

1. Although it is difficult to determine when exactly the use of the site began, it is clear that the quarry mining and aggregate processing activities began prior to 1951, the year of the first Zoning By-Law in the Town of Littleton.

2. The processing and mining activities became non-conforming with respect to the Water Resource Protection District when the property was first placed in that district in 1982. As “manufacturing activities” the quarrying and processing have always been allowed, as a matter of right, with respect to all other provisions of the Zoning Ordinance. To the extent that the quarry mining is deemed not to constitute “manufacturing”, it became non-conforming in 1951. To the extent that the facility is deemed a “major commercial or industrial use”, it became non-conforming in 1988.

3. Although the precise intensity of the use in 1951 is difficult to determine, the above described historical testimony and representations establish that the use of the property in both 1951 and 1982 is exactly the same as today. As noted below, pre-existing, non-conforming uses do not lose their protection from subsequently enacted zoning requirements solely because the uses have expanded in intensity over the years. The need for a special permit is triggered only where an increase in intensity is accompanied by a change in “quality or character”.

¹ The file contains a large number of building permits related to building construction at 53 Ayer Road and 80 Ayer Road.

² Aggregate and its predecessors in title have never been denied a blasting permit. Blasting permits would not have issued if Aggregate was non-compliant with zoning.

For its conclusion that it may continue and up-grade its existing operations without a zoning permit, Aggregate relies upon the Massachusetts Zoning Act, Chapter 40A, and its established caselaw. Zoning ordinances or by-laws do not apply to structures or uses lawfully in existence prior to the first publication of a notice of the public hearing on the enactment of the zoning provision that rendered them non-conforming. Mass. Gen. L. ch. 40A, s. 6 (first sentence). This statutory exemption from zoning is reflected in Section 173-10(B) of the Littleton Zoning Ordinance, which states that pre-existing, non-conforming uses "... may be continued if the use or structure was lawfully existing at the time that it became nonconforming...", subject to the requirement of a special permit only in cases of a "change, extension or alteration" of the use and limitations pertaining to "abandonment" and "restoration" of the use (not applicable here).

As to whether a pre-existing, non-conforming use has changed or been extended or altered such that a special permit is required courts employ a three-prong test:

1. whether the use reflects the "nature and purpose" of the use prevailing when the zoning by-law took effect;
2. whether there is a difference in the quality or character, as well as the degree of use; and
3. whether the current use is "different in kind in its effect on the neighborhood."

See *Powers v. Building Inspector of Barnstable*, 363 Mass. 648, 662-663 (1973) (explaining the development of three-prong test to determine "change alteration or extension" of a non-conforming use).

In elaborating on the three-prong test, the caselaw has determined that pre-existing, nonconforming use may be improved and made more efficient without a special permit as long as the changes are "ordinarily and reasonably adapted to the original use and do not constitute a change in the original nature and purpose of the undertaking." See, e.g., *Derby Refining Co. v. City of Chelsea*, 407 Mass. 703, 712 (1990) ("a valid nonconforming use does not lose that status merely because it is improved and made more efficient"); *Berliner v. Feldman*, 363 Mass. 767, 775 (1973) (We have accepted the principle that improved and more efficient means of pursuing a nonconforming use are permissible if they are ordinarily and reasonably adapted to the original use and do not constitute a change in the original nature and purpose of the undertaking).

Moreover, a non-conforming use is not different in kind simply because it is bigger. See *Cape Resorts Hotels v. Alcoholic Licensing Board of Falmouth*, 385 Mass. 205, 215 (1982) While it is true that a use is not different in kind simply because it is bigger, ... the increased use must be attributable to growth of the original nonconforming use in order to fall within the rule." (citations omitted)); *Wayland v. Lee*,

325 Mass. 637 (1950) (modifications to a gravel pit processing operation using improved technology (hand to machinery) ³satisfy three-prong test even though the improved technology allows greater output).

Aggregate satisfies the three-prong test. The existing uses are the exact same uses that existed in 1951. There has never been, and will not be with the proposed equipment up-grades, any difference in quality or character of the pre-existing, non-conforming uses. The proposed equipment up-grade is “ordinarily and reasonably” adapted to the original use of the property because it merely allows Aggregate to mine and process rock more efficiently, safely and economically. The sole fact that the equipment up-grade allows Aggregate to mine and process rock from the property at a faster rate does not trigger the need for a non-conforming use extension special permit. The use cannot be said to be “different in kind” in its effect on the neighborhood, where the use meets the requirements of the noise by-law and will be visually screened by earthen berms.

The Effect of the 1993 Building Permit

Section 7 of the Zoning Act operates as a six-year statute of limitations with respect to zoning enforcement actions as against uses contemplated by a duly issued building permit. See *Bruno v. Board of Appeals of Wrentham*, 62 Mass. App. Ct. 527 (2004); *Moreis v. Oak Bluffs Board of Appeals*, 62 Mass. App. Ct. 53 (2004); *Lopez v. Bruno*, Mass. Land Ct. 2009, 2009 WL 533888 (Long, J.). The pertinent text states:

“... if real property has been improved and used in accordance with the terms of the original building permit issued by a person duly authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use allowed by said permit or the removal, alteration or relocation of any structure erected in reliance upon said permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or bylaw adopted thereunder shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county or district in which the land lies within six years next after the commencement of the alleged violation of law.”

Mr. Bernier duly issued the above noted 1993 building permit for the modification of one of the crushers and to “install conveyors”. Clearly, the purpose of the permitted crusher and conveyors was to facilitate rock quarrying and rock processing at the property. Because more than six years have passed and the property has been improved and used in accordance with the permit without challenge, no action... the effect or purpose of which is the compel the abandonment, limitation or modification of the use...” can be maintained in any proceeding. Thus, the existence of the 1993 building permit provides an additional, independent ground for the legality of the existing rock quarrying and processing activities.

³ In fact, much of the abutting residential neighborhood came into existence in the past Middlesex purchased the property and sold off residential lots. Aggregate understands that many of the deeds acknowledge the existence of the quarry.

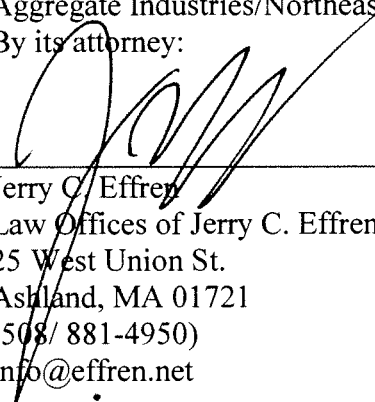
Conclusion

For the aforementioned reasons, Aggregate submits that its proposed equipment upgrades and relocation with respect to its existing rock quarrying and processing operations do not require any zoning permits other than site plan approval.

Respectfully submitted:

Aggregate Industries/Northeast Region, Inc.

By its attorney:



Jerry C. Effren
Law Offices of Jerry C. Effren
25 West Union St.
Ashland, MA 01721
(508/ 881-4950)
info@effren.net

EXHIBIT A

AFFIDAVIT

STATE OF MASSACHUSETTS)
) ss Littleton, MA
COUNTY OF MIDDLESEX)


A. Russell Webster, P.E., under oath, hereby deposes and states as follows:

1. My name is A. Russell Webster, P.E. and I reside at 10 Elm Court, E. Providence, Rhode Island 02916. I am a professional engineer and am currently engaged in business as an independent consultant with particular expertise with respect to the operations of quarries and asphalt plants.

2. Starting in 1950 and for a period of about five (5) years, as an employee of Thompson & Lichtner, an engineering firm, I provided consulting services for San-Vel Concrete Corporation ("San-Vel") in connection with its quarrying and earth and rock processing operations on land located on Ayer Road and Spectacle Pond Road in Littleton, Massachusetts (the "Quarry Site"). Accordingly, I am familiar with the past operations at the Quarry Site.

3. The quarry at the Quarry Site was in regular operation by 1950. Throughout the period of my involvement with the Quarry Site, the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth and rock processing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.

Signed under the penalties of perjury this 12th day of March 1999.



A. Russell Webster, P.E.


JULIA A. EDMONSON

AFFIDAVIT

STATE OF MASSACHUSETTS)
) ss Littleton, MA
 COUNTY OF MIDDLESEX)

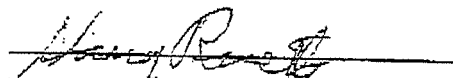
Harry Rivetts under oath, hereby deposes and states as follows:

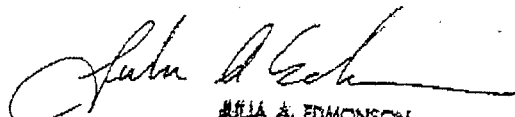
1. My name is Harry Rivetts and I reside on Taylor Street, Littleton, Massachusetts.

2. Prior to 1950, I worked for San-Vel Concrete Corporation ("San-Vel") in connection with its quarrying and earth and rock processing operations on land located on Ayer Road in Littleton, Massachusetts (the "Quarry Site"). Accordingly, I am familiar with the past operations at the Quarry Site.

3. The quarry at the Quarry Site was in regular operation by 1950. Throughout the period of my involvement with the Quarry Site, the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth and rock processing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.

Signed under the penalties of perjury this 15th day of March 1999.


 Harry Rivetts


 JULIA A. EDMONSON
 Notary Public

AFFIDAVIT

STATE OF MASSACHUSETTS)
) ss Littleton, MA
COUNTY OF MIDDLESEX)

Francis Sabourin, under oath, hereby deposes and states as follows:

1. My name is Francis Sabourin and I reside at 138 Goldsmith Street, Littleton, Massachusetts 01460.

2. Starting prior to 1950, as the nephew of Al Roy, the late owner of San-Vel Concrete Corporation ("San-Vel"), I had the opportunity on many occasions to visit the quarry located on Ayer Road and Spectacle Pond Road in Littleton, Massachusetts (the "Quarry Site") and I am familiar with the past operations at this location.

3. The quarry at the Quarry Site was in regular operation by 1950. Throughout the period of my many visits to the Quarry Site, the operations there included all types of crushing, screening, washing and other processing and manufacturing activities associated with commercial earth and rock processing operations. These activities, including blasting and the use of earth removal and rock crushing equipment, were conducted openly and on a regular basis.

Signed under the penalties of perjury this 15th day of March 1999.

Francis H. Sabourin

Francis Sabourin

Julia A. Edmonson

JULIA A. EDMONSON
Notary Public
My Commission Expires November 6, 2003

AFFIDAVIT

STATE OF MASSACHUSETTS)
) ss Littleton, MA
COUNTY OF MIDDLESEX)

Mary Medeiros under oath, hereby deposes and states as follows:

1. My name is Mary Medeiros and I reside at 8 McDowell Street, Ayer, Massachusetts.

and Lynn Stone Industries

2. From 1942 to 1991, I worked for San-Vel Concrete Corporation ("San-Vel") as executive secretary to Al Roy, owner of San-Vel. During this time I was present at the site on a daily basis and, accordingly, I am familiar with the past operations at the Quarry Site.

3. The quarry at the Quarry Site was in regular operation by 1950. Throughout the period of my involvement with the Quarry Site, I personally observed and or heard operations including all types of crushing, screening, washing, blasting and other processing and manufacturing activities associated with commercial earth and rock processing operations. I am familiar with types of rock crushing equipment and personally observed rock crushing operations and trucks filled with crushed rock leaving the site for delivery to particular customers. These activities were conducted openly and on a regular basis.

Signed under the penalties of perjury this 17th day of March 1999.

Mary Medeiros
Mary Medeiros

Lynn Stone
LYNN A. EDMONSON
Notary Public

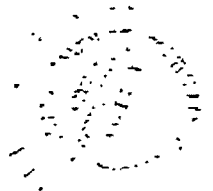


EXHIBIT B

Bob



FROM THE OFFICE OF THE
BUILDING COMMISSIONER
ZONING OFFICER

37 SHATTUCK STREET, P.O. BOX 1305
LITTLETON, MA 01460
VOICE (508) 952-2308
FAX (508) 952-2321

Monday, January 11, 1999

Michael J. Mancuso
VP Operations
80 Ayer Road
Littleton, MA 01460

Dear Mr. Mancuso,

Pursuant to your letter received this date, be advised of the following:

- There are presently no current or active permits issued to Middlesex Materials from this department for the operation of their businesses. This does not preclude Special Permits and Variances issued over the years by the Planning Board, Board of Appeals or the Board of Selectmen. Request for information regarding these permits should be addressed to the specific department or board, or to the Town Clerks office.
- There is presently no active enforcement or outstanding or pending issues being pursued by the Building Department at this time. This would include Building Code enforcement of the Massachusetts State Building Code, 780 CMR, and Littleton Zoning Bylaws.

If I can be of further assistance regarding these matters, please do not hesitate to contact me.

Sincerely,

ROLAND J. BERNIER
Building Commissioner
Zoning Officer

CC: C:\QAWIN\1999\LETTER\15-21.QW



FROM THE OFFICE OF THE
BUILDING COMMISSIONER
ZONING OFFICER

37 SHATTUCK STREET, P.O. BOX 1305
LITTLETON, MA 01460
VOICE (508) 952-2308
FAX (508) 952-2321

Monday, March 15, 1999

To Whom It May Concern;

At the request of Middlesex Materials LLC, please be advised that to the best of my knowledge all activities at 53 - 55 Ayer Road are in compliance with the Code of Littleton, Chapter 173 Zoning. As of this date, the quarrying and aggregate processing operation is a legally pre-existing use, with no pending or required permit process or variance.

ROLAND BERNIER

Building Commissioner
Zoning Officer

JULIA A. EDMONSON
Notary Public



OFFICE OF THE
BOARD OF SELECTMEN
37 SHATTUCK STREET, P.O. BOX 1305
LITTLETON, MASSACHUSETTS 01460
(978) 952-2311

March 15, 1999

To Whom It May Concern:

Please be advised that to the best of my knowledge all activities at Middlesex Materials LLC, 53 - 55 Ayer Road are in compliance with the Town of Littleton General Code. The operation is a legally pre-existing use requiring no permits to be issued by the Board of Selectmen for the Town of Littleton.

Sincerely,

Timothy D. Goddard
TIMOTHY D. GODDARD,
Town Administrator

TDG:lk

Julia A. Edmonson

JULIA A. EDMONSON
Notary Public

EXHIBIT C

CERTIFICATE ISSUED

DATE 3-8-99

BUILDING PERMIT - CERTIFICATE OF OCCUPANCY

APPLICANT Middlesex Materials DATE September 14, 19 93 PERMIT NO. 220-93
 ADDRESS 80 Ayer Rd Box 2045 (NO.) (STREET) (CONTR'S LICENSE) NA
 PERMIT TO foundation (TYPE OF IMPROVEMENT), (NO.) STORY modify and install (PROPOSED USE) NUMBER OF DWELLING UNITS _____

AT (LOCATION) 80 Ayer Road (NO.) (STREET) ZONING DISTRICT IB
 BETWEEN New Estate Road (CROSS STREET) AND King Street (CROSS STREET)

SUBDIVISION _____ LOT 21 BLOCK R15 LOT SIZE _____
 BUILDING IS TO BE _____ FT. WIDE BY _____ FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION TO TYPE _____ USE GROUP _____ BASEMENT WALLS OR FOUNDATION _____ (TYPE)

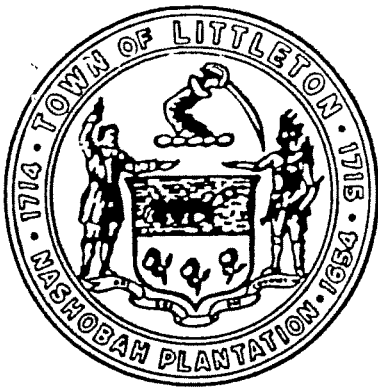
REMARKS: CONSTRUCTION TO CONFORM TO LITTLETON ZONING BYLAWS AND MSBC PERMIT TO MODIFY CRUSHER AND INSTALL CONVEYOR

AREA OR VOLUME _____ (CUBIC/SQUARE FEET)



OWNER Middlesex Materials
 ADDRESS 80 Ayer road, P.O. Box 2045, Littleton, MA 01460
 SEE REVERSE SIDE FOR CONDITIONS OF CERTIFICATE
 TO BE POSTED ON PREMISES
R. Bernier

FORM NO. BOCA - BP 1969



TOWN OF LITTLETON

BUILDING PERMIT APPLICATION

Permit # 297 26 Date Received 10-28 Approved Date _____
Map R15 Parcel 24 District IB

Office use only

INFORMATION AND INSTRUCTIONS

- 1. When Required:** A Building Permit is required whenever a project includes construction, reconstruction, alteration, repair, removal or demolition of a structure; change of use or occupancy of a building or structure; or installation or alteration of any equipment that is regulated by the Commonwealth of Massachusetts State Building Code (MSBC).
- 2. Application:** Applications must be signed by the owner or his/her authorized agent. Forms thoroughly and accurately completed will directly affect the time required to process. Please PRINT clearly.
- 3. Plans and Specifications:** Three (3) complete sets of plans and specifications shall accompany the Building Permit Application as follows;
 - A. New residential one and two family construction** shall include but not be limited to a scaled site plan, Board of Health septic permit and design plan, curb cut permit, applicable subdivision plans or ANR's endorsed by the Planning Board with evidence of lot release, copies of any Special Permits or Variances, Conservation Order of Conditions if applicable, Railroad right of way permit if applicable, evidence of water availability on site and a complete set of scaled construction drawings. All plans and specifications for One and two family dwellings with more than thirty five thousand (35,000) cubic feet of enclosed space shall bear the seal of a qualified Massachusetts Architect or Engineer.
 - B. Residential additions, accessory buildings and structures:** Some requirements noted in "A" above may be waived by the Building Commissioner if deemed unnecessary or already on file.
 - C. Commercial Buildings, buildings and structures not noted in "A" & "B"** shall, in addition to the requirements noted in "A" include an endorsed site plan from the Planning Board unless waived by the Building Commissioner. Buildings and structures in excess of thirty five thousand (35,000) cubic feet of enclosed space shall comply with section 127.0 of the MSBC. The last page of this form **MUST** be completed before a permit will be issued. Buildings and structures under 35,000 cubic feet need only a stamped set of documents.

Construction Plans shall include scaled Architectural, Structural, Fire Protection, Electrical, Plumbing, HVAC plans as necessary to clearly show the nature and character of work to be performed. Plans shall clearly identify use group classification, use and occupancy of all parts of the building, construction type, rating and location of all fire rated construction, occupant load of all areas, handicap accessible areas, special occupancy pursuant to Article 6, and structural details including framing plans of all levels. Structural applications not clearly identified as acceptable in the MSBC shall require design analysis by a qualified architect or engineer. The use of a facsimile signature stamp will not be accepted.
- 4. Occupancy:** No building or structure shall be occupied until written approval is issued from the Building Commissioner's office. Upon completion of work and prior to occupancy, the applicant must return the building permit with all approval signatures to the building department for issuance of a Certificate of Use and Occupancy. No occupancy permit will be issued until all finishes are installed, the mechanical equipment is functioning and in proper working order and all site grading completed. Temporary occupancy will not be issued unless it can be demonstrated that the delay was unavoidable and that the building can be occupied safely.
- 5. General:** A building permit expires if the work authorized is not started within six (6) months of issuance and continued through, in good faith, to completion. The building permit will indicate specific points at which inspection must be made. It is the applicants responsibility to arrange for the necessary inspections in accordance with section 111.0 of the MSBC.

PROJECT INFORMATION

Address 80 WATER ROAD Lot Area _____ Lot Frontage _____
 (No.) (Street) (SF) (LF)

NOTE: If lot area is less than 40,000 square feet in district R and 15,000 square feet in district B, a notarized copy of a title search dating back to 1950 must accompany this application showing lot qualifies for separate lot protection.

TYPE AND USE OF STRUCTURE

Type of Improvement

- New Building
- Addition
- Alteration
- Repair, Replacement
- Demolition (requires debris disposal info)
- Moving, Relocation
- Swimming Pool
- Other (specify) _____

One and two family dwellings under 35,000 cubic feet of enclosed space

- One Family
- Two Family
- Garage
- Porch-deck
- Accessory Building
- Farm Building
- Retaining wall under ten (10) feet
- Other (specify) _____

Brief Description Replace existing conveyors with new ones

All buildings and structures over 35,000 cubic feet of enclosed space

(check all that apply)

- | | | |
|--|---|--|
| Use
<input type="checkbox"/> A-1 <input type="checkbox"/> B <input type="checkbox"/> I-2 <input type="checkbox"/> R-3
<input type="checkbox"/> A-2 <input type="checkbox"/> E <input type="checkbox"/> I-3 <input type="checkbox"/> R-4
<input type="checkbox"/> A-3 <input type="checkbox"/> F-1 <input type="checkbox"/> M <input type="checkbox"/> R-5
<input type="checkbox"/> A-4 <input type="checkbox"/> F-2 <input type="checkbox"/> R-1 <input type="checkbox"/> S1
<input type="checkbox"/> A-5 <input type="checkbox"/> H <input type="checkbox"/> R-2 <input type="checkbox"/> S2 | Construction Type
<input type="checkbox"/> 1A <input type="checkbox"/> 3A
<input type="checkbox"/> 1B <input type="checkbox"/> 3B
<input type="checkbox"/> 2A <input type="checkbox"/> 4
<input type="checkbox"/> 2B <input type="checkbox"/> 5A
<input type="checkbox"/> 2C <input type="checkbox"/> 5B | Mixed Uses
<input type="checkbox"/> Non-separated uses
<input type="checkbox"/> Separated Uses
<input type="checkbox"/> Incidental uses |
|--|---|--|

Heating Fuel

- Gas
- Oil
- Coal
- Electricity
- Solar
- Other (specify) _____

Method of Delivery

- Hot Water
- Steam
- Forced Hot Air
- Other (specify) _____

Total Maximum Input Btu of All Appliances

*** Do not include sealed combustion system appliances, cooking appliances, refrigerators or clothes dryers
 *** Appliance location should be clearly identified on the drawings

Debris Disposal

As a condition of this permit application for the demolition, renovation, or other alteration of a building or structure, MGL C40, S54 requires that the debris resulting therefrom shall be disposed of in a properly licensed solid waste facility as defined by MGL C111, S150A. I verify that the debris will be disposed of by

Trade in old equipment
 (name of hauler or location of facility)

Water Supply

- Public water (water connection receipt attached)
- Private Well (well Test Attached)

Railroad Right of Way

Land formally owned by any railroad company cannot be built upon without written consent from the Secretary of the Executive Office of Transportation

- Attached consent form (MGL C40, S54A)

Cost of Improvement \$ 95,000.00