

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
4/25/16

ITEM NO. 5A: A & VC TO I-3; 77.5 ACRES; N 1300 RD & E 1750 RD (MKM)

Z-15-00617: Consider a request to rezone approximately 77.5 acres from County A (Agricultural) District and VC (Valley Channel) District to County I-3 (Heavy Industrial) District, located at N 1300 and E 1750 Rds. Submitted by Landplan Engineering PA, for Dan King, Denise King, Kent King & Patricia King, property owners of record

STAFF RECOMMENDATION: Staff recommends denial of the rezoning request for approximately 77.5 acres County A (Agricultural) District to County I-3 (Heavy Industrial) District and forwarding the request to the Board of County Commissioners with a recommendation for denial based on the findings of fact found in the body of the staff report.

REASON FOR REQUEST

Applicant's Response:

"The subject property has been a borrow area for the South Lawrence Trafficway. Proposed use to continue the borrow area and recycle construction waste."

KEY POINTS

- The property is located within the planning area of the Southeast Area Plan; however, no future land use recommendations are provided for this property in the plan.
- The area in this rezoning request is part of an approximately 124.8 acre parcel. The southern 47.3 acres of the parcel are not included in this rezoning or development proposal. This remnant acreage will be suitable for Agricultural use, but will need to be subdivided per the provisions in the Subdivision Regulations to be eligible for a Building Permit.
- Per Section 12-319-4 of the *Zoning Regulations for the Unincorporated Territory of Douglas County*, a borrow pit requires approval of a Conditional Use Permit. The borrow pits for the South Lawrence Trafficway were processed as Temporary Business Uses to accommodate the construction schedule of the South Lawrence Trafficway (SLT). Continued use of the borrow pit requires approval of a Conditional Use Permit as a *Mining and Excavation* use. A Conditional Use Permit application and plan have been submitted and will be considered at the April Planning Commission meeting in conjunction with this rezoning request. The CUP plan serves as the overall site plan for the facility.

ASSOCIATED CASES

- PP-16-00068: One-lot plat for property to be included in the recycling facility.
- CUP-16-00069: Conditional Use Permit for the *Mining and Excavation* use, the borrow pits, and for a *Single-Family Dwelling in the Industrial District*. CUP approval of the residence will prevent the existing residence from becoming a nonconforming use if the rezoning request is approved.

These associated cases were submitted as part of this development project and are also being considered at the April, 2016 Planning Commission meeting.

OTHER ACTION REQUIRED

- Board of County Commissioners' approval of rezoning request and adoption/publication of rezoning resolution.
- Board of County Commissioners' approval of the Conditional Use Permit.
- Application for and issuance of permit for the Conditional Use by the Zoning and Codes Office.
- Submittal of Final Plat for administrative review.
- Recording of Final Plat with the Douglas County Register of Deeds, when approved.
- Application for and issuance of building permits by the Zoning and Codes Office prior to development.

ATTACHMENTS

Attachment A: Zoning map

PUBLIC COMMENT

No public comment was received for this item prior to the printing of this staff report.

Project Summary

The original parcel was a quarter section that was divided with right-of-way for the South Lawrence Trafficway. The subject property is to the south/southeast of the recently constructed trafficway. A construction materials recycling facility is proposed on the northern 77.5 acres of the parcel and the remaining acreage to the south will remain in agricultural production.

The remainder of the parcel to the south has frontage on N 1250 Road and E 1750 Road and can be subdivided in the future. The subdivision required will depend on the future land use proposed: a Certificate of Survey will be necessary to accommodate residential uses and a Plat will accommodate non-residential uses. As the future land use for this portion is not known, it would be premature to subdivide it at this time.

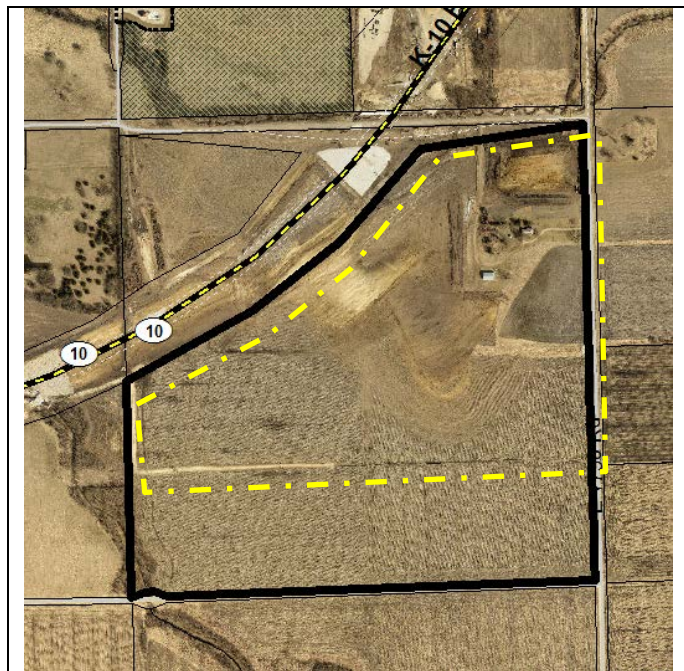


Figure 1. Property within rezoning request. Parent parcel (124.8 acres) is outlined, subject of rezoning request (77.5 acres) is outlined in yellow dashed line.

The property contains a *Single Family Dwelling*, which requires approval of a Conditional Use Permit in the Industrial Zoning Districts. The continued excavation from the borrow pits, which is classified as *Mining and Excavation*, requires a Conditional Use Permit in any zoning district. In addition to these uses, a construction materials recycling facility, contractor

shop/yard and a truck storage area is being proposed. These uses are permitted by right in the I-3 Zoning District with site plan approval. The plans submitted with the Conditional Use Permit application include all the proposed uses.

REVIEW & DECISION-MAKING CRITERIA

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"Map 3-2 Lawrence Future Land Use of Horizon 2020 this area is shown Service Area 4. The surrounding area is shown Industrial to the north GPI & I-2. The area to the south is in the Valley Channel. The area to the east is being developed as a soccer complex and Valley Channel. The area to the west is farm land and South Lawrence Trafficway right of way."

The rezoning will be reviewed in this section for compliance with general recommendations of the Comprehensive Plan. Area plans are incorporated into the Comprehensive Plan but these will be discussed in Section 4 of this report. Policies from the Comprehensive Plan are below, with staff comments in red.

Horizon 2020 includes a list of non-exclusive potential sites for new industrial development in Map 7-2 (Figure 2) and notes locations that are not on the map will be weighted against the general locational criteria. (Page 7-5, *Horizon 2020*).

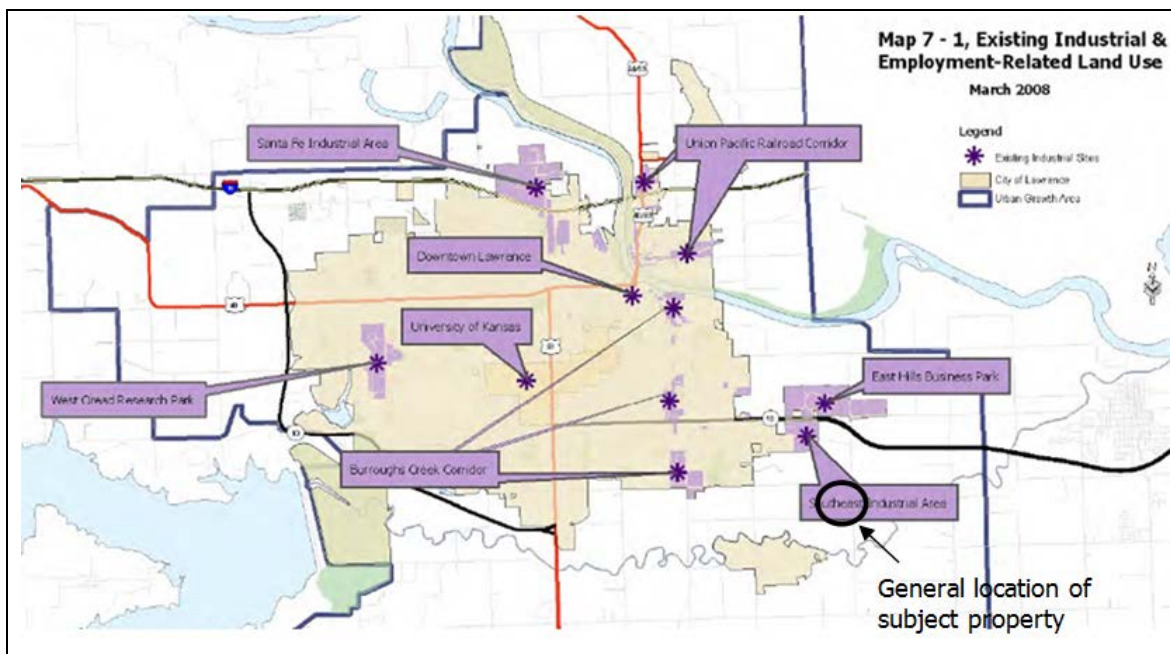


Figure 2. Map 7-2, *Horizon 2020*. Potential sites for new industrial development.

The proposed site is not shown in the map for potential industrial uses so the request is reviewed with the criteria provided in the plan. The Comprehensive Plan recommends that new industrial development *substantially* meet the following general locational criteria for Industrial Development in Chapter 7 (Policy 2.1(1), Page 7-13, *Horizon 2020*):

- Have feasible access to Federal and State transportation networks

While the property is in close proximity to the K10 Bypass, also known as the South Lawrence Trafficway, direct access to the highway is not permitted in

this area. Figure 3 shows the road network in the area. Major Collector roads provide access to the K-10 Highway. The Traffic Study indicated these roads are adequate for the proposed traffic.

- b. Be of adequate parcel size, generally over forty acres;
The property, approximately 77 acres, meets this criterion.
- c. Lie primarily outside of the regulatory floodplain
The subject property is heavily encumbered with the regulatory floodplain (Figure 4).
- d. Have minimal average slopes.
The majority of the property has slopes of less than 3%. This criterion is met.

The property substantially meets the general locational criteria.

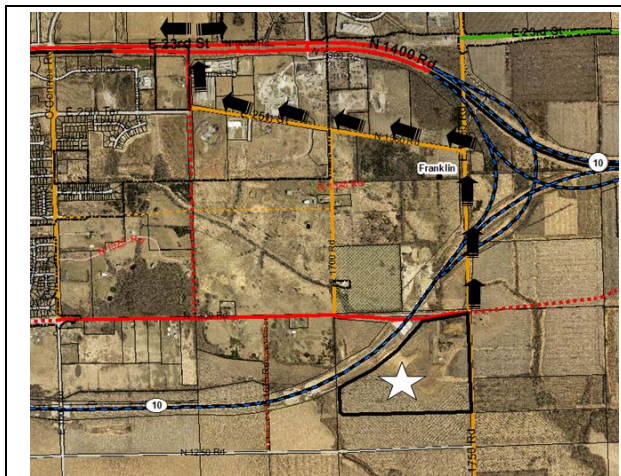


Figure 3. Subject property, outlined and marked with a star, has access to the highway system through E 1750 Road (Noria Road) and N 1360 Road (E 25th Street Extended) and E 1650 Road.



Figure 4. Regulatory floodplain on the property shown in pink. Lighter pink to the northeast is Zone A which does not have a Base Flood Elevation established.

Policy 2.1(2) goes on to list the specific criteria that a site proposed for industrial land uses should substantially meet:

- a. *Preserve environmentally sensitive areas, including vegetative cover and wildlife habitat, to act as buffers and site amenities;*

The site contains Floodplain as shown in Figure 4. The CUP/Site Plan shows borrow pits in these areas, but no storage of materials. No other environmentally sensitive areas are present.

- b. *Encourage natural stormwater management, including locations that permit direct discharge to the floodplain;*

Natural stormwater management will be utilized

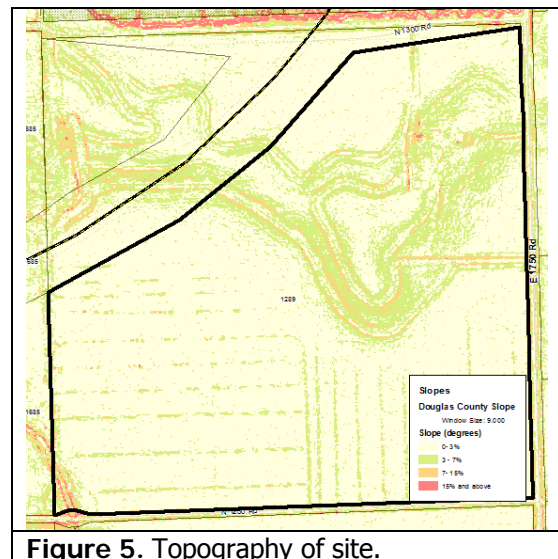


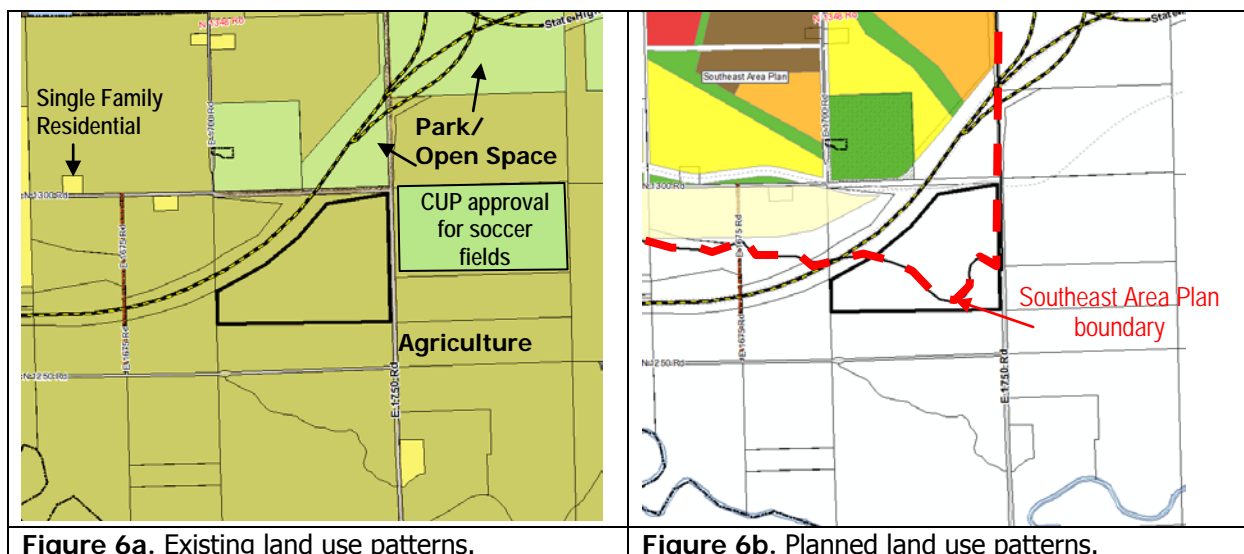
Figure 5. Topography of site.

c. Have available and adequate utilities, infrastructure and services for the proposed use.

d. Be compatible with existing and future zoning/land use patterns, including the use of appropriate buffers between land uses;

The property is adjacent to the K10 Highway/South Lawrence Trafficway and will be visible from the highway. While standards have not been adopted pertaining to the type of development that may occur along the highway, the Planning Commission expressed concern with the 'gateway' treatment along the highway and the aesthetics of proposed uses with other recent applications. In staff's opinion, the proposed construction materials recycling facility would not be an appropriate gateway use along the highway based on Planning Commission's previous discussions.

The site is not adjacent to municipal boundaries but is in the Lawrence Urban Growth Area and is within a sector plan that anticipates urbanization of the area.



Gateway Policies: The comprehensive plan defines a major gateway as an entrance to the city from other transportation facilities that often form a visitor's first impression of the community. (Page 2-18, *Horizon 2020*) The plan notes that East Hills Business Park

serves as the eastern gateway to the community and recommends that the City continue to examine future development plans for this area to ensure they reflect the image and quality the community seeks in gateway development. (Page 7-3 *Horizon 2020*) The plan also notes that the planned Southeast Industrial Area (on the south side of E 23rd Street/K-10 Hwy, south of East Business Park) will also serve as an eastern gateway to the community.

The subject property is located near the connection of the SLT/K10 Trafficway with the K10 Highway. This area would also be considered an eastern gateway to the community.

The plan provides the following recommendations for the airport industrial gateway area:

"As this area evolves into a community gateway, development proposals are also encouraged to employ sound site planning and design principles to make this area an attractive one. Interfacings with surrounding properties and neighborhoods are also encouraged to minimize negative impacts and employ appropriate and compatible industrial and business activities."

And provides the following general gateway recommendation when discussing the use of office research uses as appropriate land uses at gateways:

"Developments occurring at gateways to the community are required to be of high-quality design and visual character utilizing best management practices for site planning and design. Such developments are intended to promote an integrated and contextual design approach that minimizes unnecessary impacts, such as noise, odor, glare, or other similar intrusions to the community and surrounding neighborhoods." (Page 7-10, Horizon 2020)

The intent is for development in a gateway area to be designed and landscaped in such a way as to provide an aesthetically pleasing and inviting appearance.

The plan recommends that developments at gateways into the city be designed not only to minimize negative impacts on neighboring properties but to provide an aesthetically pleasing and inviting appearance. In staff's opinion, the open nature of the proposed construction materials recycling facility could have negative impacts on surrounding properties. The open nature of the use would prevent the use of architectural treatments to improve the aesthetics of the use. In staff's opinion, the proposed construction material recycling facility would not be an appropriate use for this gateway area based on possible negative impacts and the aesthetics of the facility.

Staff Finding – The subject property is not shown on the map of potential locations for future Industrial and Employment Related Land Uses; therefore the location was reviewed with the general and specific criteria included in the Industrial Chapter, Chapter 7, of the Comprehensive Plan. The property is substantially compliant with the general locational criteria in this chapter; however, is not substantially compliant with the specific locational criteria. The property is not compliant with the criteria that the proposed industrial use be compatible with existing and future zoning/land use patterns, including the use of appropriate buffers between land uses. The proposed construction material recycling facility would not be an appropriate use for a gateway area based on possible negative impacts to

neighboring properties and the aesthetics of the site. The proposed rezoning is not in conformance with the Comprehensive Plan as it is not substantially compliant with the specific criteria provided in the plan or with the recommendations for gateway development.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING ANY OVERLAY ZONING

Current Zoning and Land Use: A (County-Agricultural), V-C (County Valley Channel) Districts with F-F (Floodway Fringe) District; Agriculture, and borrow pit that was approved as a Temporary Business use.

Surrounding Zoning and Land Use: To the north:

A (County-Agricultural) District with F-F (Floodway Fringe) Overlay District / and GPI (City-General Public and Institutional Uses) District; *Agriculture, Residential Detached Dwelling*, undeveloped City park, the SLT/K10 Highway, / and a sanitary sewer pump station, a *Minor Utility*, in the GPI District.

To the west:

A (County-Agricultural) and V-C (County-Valley Channel) Districts with F-F (Floodway Fringe) Overlay District; *Agriculture*, the SLT/K-10 Highway, and *Residential Detached Dwelling*.

To the east:

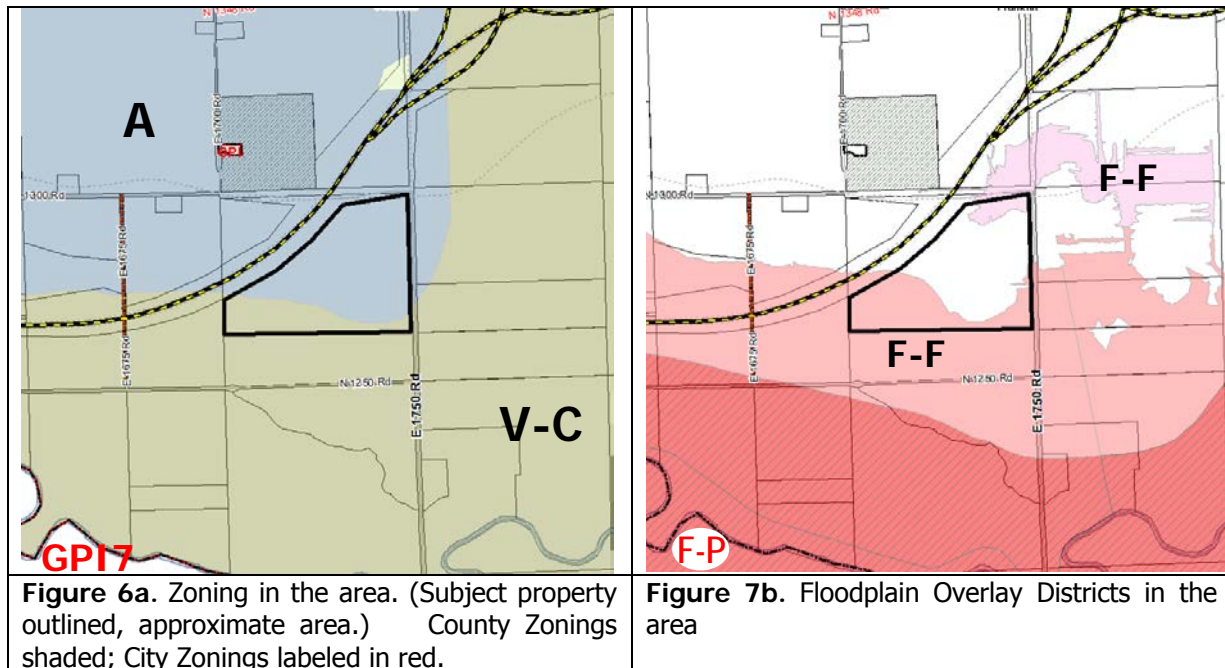
A (County-Agricultural) and V-C (County-Valley Channel) Districts with F-F (Floodway Fringe) Overlay District; *Agriculture*, northern parcel has Conditional Use approval for a soccer facility, *Athletic Field*.

To the south:

V-C (County-Valley Channel) Districts with F-F (Floodway Fringe) and F-W (Floodway) Overlay Districts / and GPI-FP (City-General Public and Institutional Uses with Floodplain Management Regulations Overlay District); *Agriculture*, the Wakarusa River corridor / and a City Wastewater Treatment Facility, a *Major Utility*, currently under development in the GPI-FP District.

(Figures 7a and 7b)

Staff Finding –The surrounding properties are zoned A (Agricultural) or V-C (Valley Channel) and F-F (Floodway Fringe Overlay) Districts. Agriculture is the predominate land use with several recreational uses in the planning stages in the area (soccer facility to the east and City park to the north). Scattered residential uses are also located in the area. Heavy industrial uses would be incompatible with the approved recreational uses in the nearby area.



3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

"This area is out in the county and the neighborhood is rural in nature and is farmland surrounding this area. The recycle area will have a small portion of the property to be used as farmland."

The area is located approximately 1 mile east of the eastern Lawrence city limits and is bounded on the south by the Wakarusa River Corridor and its associated floodplain and on the north by the K10 Highway. The recently constructed South Lawrence Trafficway, SLT/K10 Highway passes through the area from the west and connects to K10 Highway to the northeast of the subject property. Roads in the immediate area are 2 lane blacktop roads. Recreational uses are located throughout the area, with a future City park to the north of the subject property, a soccer facility to the east of the property (not yet developed but has development approvals), and a ski lake to the northeast. A private wildlife conservation area is located east of the soccer facility property. Industrial uses have been developed in the north portion of this area adjacent to the existing K10 Highway and E 25th Street.

Current and previous industrial uses in the area are shown in Figure 8. A 3.5 acre parcel north of the Trafficway (Parcel 1 in the figure) was rezoned from A to I-2 in 1999 with zoning application Z-8-27-99 and in 2000, a site plan, SP-07-49-00, was submitted and approved for Pioneer Stone, a decorative stone storage and sales facility. This use was classified as *Building Materials Storage and Sales* and was a permitted use in the I-2 Zoning District with approval of a site plan. Stone was to be stockpiled on the site for sales.

A recycling facility had previously been located on E 1750 Road just north of the current SLT/K10 Highway. (Parcel 2 in the figure) A rezoning to the I-3 District, Z-1-3-98, was requested along with a CUP application, CUP-1-2-98, for the recycling facility. The rezoning request was recommended for denial by staff was withdrawn. The Conditional Use Permit was approved for the recycling facility. The CUP had an expiration date of January 1, 2013 for the recycling facility and December 31, 2015 for the reclamation work. The staff report indicated that the CUP was used as a tool to allow the recycling facility on a temporary basis

without permanently rezoning the property to an industrial district. The staff report noted that the recycling facility was not included in the list of uses permitted with a CUP and noted that if it was proposed as a long term purely industrial use it would require industrial rezoning but if the use were of a temporary or interim nature the CUP would be appropriate. The staff report indicated that the temporary facility would be appropriate given the future gateway nature of the area.

The property identified with a '3' in the figure is a permanent recycling facility in the I-3 Zoning District. A contractor's shop and yard is located to the north, on property zoned I-2. Other industrial uses are to the west, within the City limits of Lawrence, and these include an asphalt/cement plant, the Douglas County Public Works facility and yard, and a KDOT facility for vehicle storage.

Staff Finding –

This rural area is characterized by the SLT/K10 Highway Corridor, open space/recreation uses, agriculture, and rural residences and to a lesser degree the Wakarusa River corridor to the south and industrial uses to the north along the existing K10 Highway and E 25th Street. Industrial uses had been located in the area in the past; however, in staff's opinion, heavy industrial zoning and uses would not be compatible with the character of the area in the location proposed but would be more appropriate located to the north with the existing industrial uses.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The northern portion of the subject property is located within the planning boundary of the *Southeast Area Plan*; however, the plan does not include any recommendations for this property. The plan shows the general location of the trafficway and the subject property was divided from the remainder of the planning area by the trafficway right-of-way. The drafters of the plan may have assumed that this area would be used primarily for right-of-way for the trafficway and therefore omitted recommendations for this parcel.

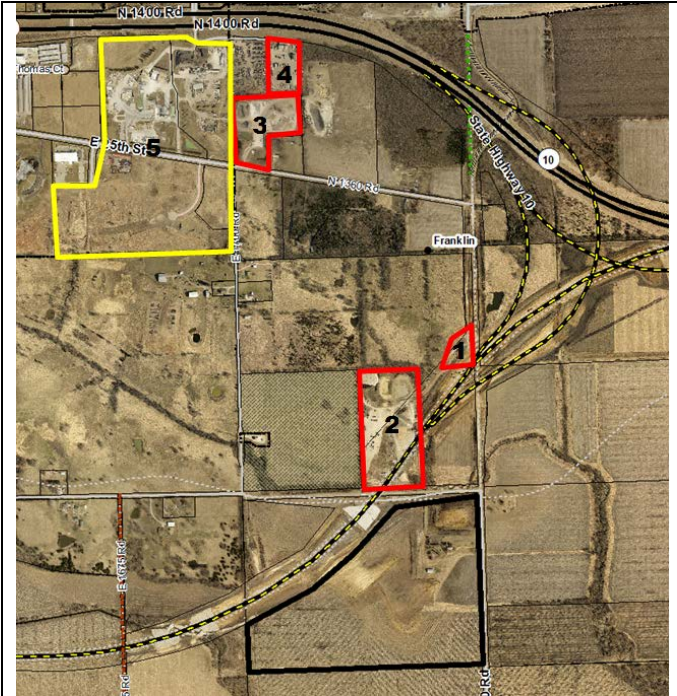


Figure 8. Current and previous industrial uses in the area:

1. Property zoned I-2 for a *Building Materials Storage and Sales* use (property is now almost entirely within the SLT/K10 right-of-way).
2. Construction Materials Recycling Facility, temporary use approved with a CUP. CUP expired in 2013.
3. Property zoned I-3 contains LRM Industries Recycling Facility (site plan approved in 2003).
4. Property zoned I-3 contains an excavating company contractor's office.
5. Property within City limits zoned PID (Planned Industrial Development) and IG (General Industrial) contains asphalt and concrete plant, Douglas County Public Works Facility and yard, and KDOT facility.

The *Southeast Area Plan* recommends very low density residential uses west of the subject property, across the SLT/K10 Highway, and recommends open space and low density residential to the north of the subject property, across the SLT/K10 Highway. (Figure 9) The proposed use, a construction materials recycling facility, will be an open use which will utilize a rock crusher and heavy trucks for hauling the construction debris and products throughout the site. In staff's opinion, heavy industrial uses and zoning, particularly an unenclosed use such as proposed, would not be appropriate in close proximity to the low density residential uses and open space uses recommended in the area plan.

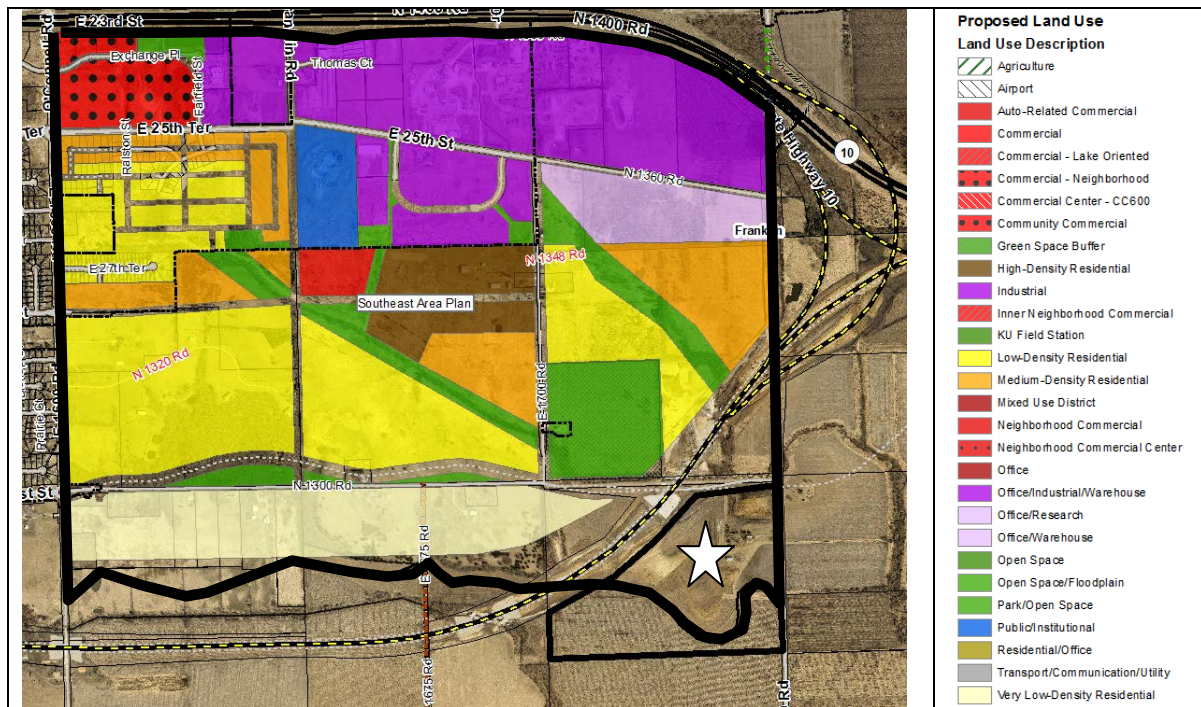


Figure 9. Land use recommendations in *Southeast Area Plan* for area. Planning area boundary outlined and subject property marked with a star.

Staff Finding – A portion of the subject property is located within the limits of the *Southeast Area Plan*; however, no recommendations were provided for the future use of the property. The plan recommends very low density residential uses to the west of the subject property and recommends open space and low density residential to the north; both across the SLT/K10 Highway right-of-way. In staff's opinion, heavy industrial uses and zoning, particularly an unenclosed use such as proposed, would not be appropriate in close proximity to the planned low density residential and open space uses.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response:

"The use of the site for the past two years has been a borrow site for the newly constructed South Lawrence Trafficway. The existing site now has two small pond areas from the borrow site and will continue to have small ponds for the future which will be used for stormwater management. The rest of the area will be used for stockpiling and construction waste and recycle which is a better option than the landfill in the area."

The property is currently zoned A and V-C which permits agricultural uses as well as other low intensity uses in the County. The property is suitable for uses which are permitted within the A and V-C Districts.

The property is relatively level, as shown in Figure 4, and has been in use for a borrow pit, which is classified as *Mining and Excavation* in the Zoning Regulations. This use would require approval of a Conditional Use Permit regardless of the zoning. The residence would require a Conditional Use Permit only if the industrial zoning is approved.

Rezoning to the I-3 Zoning District is being requested for the operation of a construction materials recycling facility. The level topography of the site would be suitable for a recycling use; however, this use may not be compatible with the adjacent SLT/K-10 Highway and open space/ recreational uses.

Staff Finding – The property is well suited for the uses to which it is restricted with the A and V-C Zoning. The topography of the property would be suitable for the recycling use; however, in staff's opinion, the recycling use would not be compatible with the adjacent land uses: SLT/K-10 Highway and open space/ recreational uses.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

"The property has been used as a farm area prior to the borrow for the South Lawrence Trafficway."

Staff Finding – The property is not vacant. The Douglas County Appraiser's records indicate that the residence on the property was built in 1920. A temporary borrow pit was approved for the site to accommodate the construction of the SLT/K-10 Highway.



Figure 10. Existing residence

7. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicants Response:

"Approval of this rezoning application will not adversely affect the neighboring properties."

Rezoning to the I-3 District would allow the development of a construction waste recycling facility, or other heavy industrial use. The proposed use is an open use with exterior storage of the waste to be recycled and the resultant product. Heavy equipment will be used to move the material on the property and heavy truck traffic to and from the site is expected. The facility will utilize a rock crusher. The noise and dust created by the heavy equipment, the truck traffic and the rock crusher could detrimentally affect the planned recreational uses to the northwest and east, the approved soccer facility, and the future city park and may have an impact on the private wildlife conservation further to the east.

Ground water level is a principal concern of residents and property owners in the area as Rural Water is not available in this area. The amount of water that would be used with the rock crusher, or other uses on site would need to be limited to insure no detrimental impacts on residences in the area.

This area is considered a 'gateway' into the City of Lawrence. The Planning Commission supported the soccer facility to the east in part because of the aesthetics when seen from the trafficway. The proposed use would be an open industrial use and would not provide the aesthetics required by the Comprehensive Plan or as the Commission indicated they preferred along the trafficway.

Staff Finding – The rezoning to the I-3 District will permit heavy industrial uses on the subject property. This may have detrimental impacts to nearby properties by a reduction in groundwater level, unless water usage is limited; noise impacts to nearby recreational and open space uses, and a negative visual impact along the trafficway.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicants Response:

"Approval of this application will fill a need of the community for a better alternate to filling up the landfill with construction waste. This will provide a use for concrete, brick and stone that has not been able to be used other than filling the landfill."

Evaluation of these criteria includes weighing the benefits to the public versus the benefits of the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

Approval of the rezoning request would allow development of a recycling facility of clean construction rubble. Reusing these materials would benefit the public welfare by reducing the waste in the landfill and thereby extending the lifespan of the landfill. Recycling would also reduce the need for new materials and could help to maintain low costs for public and private construction projects.

Denial of the rezoning request would prevent the establishment of a heavy industrial use on the property, with potential noise and visual impacts, which would benefit the nearby properties. If the rezoning is denied, an alternate use/zoning may be proposed that would visually enhance this gateway area and have less negative impact on nearby properties.

Denial of the rezoning request would present some hardship to the property owners, as it would not be possible to develop the property with the proposed recycling facility. They could, however, continue with the CUP application for the continued use of the borrow pits and the property could also be used for other uses which may be more compatible with the residential and recreational/open space uses in the area.

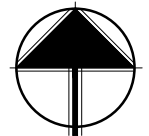
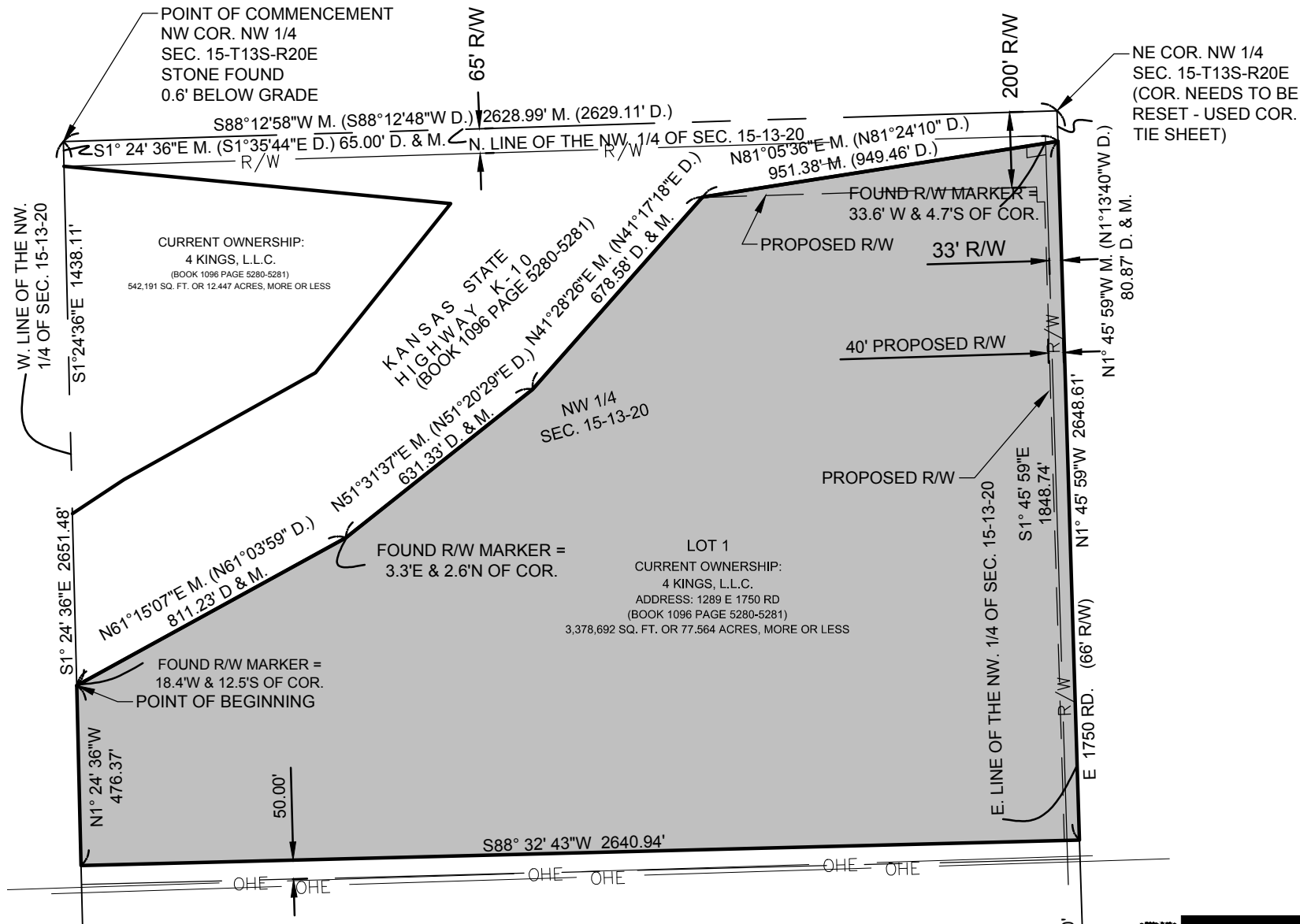
Staff Finding – Approval of the rezoning request would provide a recycling facility for construction clean rubble which would benefit the public welfare by keeping these materials out of the landfill and extending the life of the landfill and reducing the need for new materials. The denial of the rezoning request would benefit the nearby properties by preventing the negative impacts from the noise, truck traffic, and dust associated with the recycling facility and would prevent the negative visual impacts the facility would have on the trafficway area. The denial of the rezoning request would create some hardship for the applicant as they would need a new location for the recycling facility but they could continue with the CUP application for the *Mining and Excavation* to continue the use of the borrow pits

and could develop the property with a use that is more compatible with the existing and approved uses in the area.

PROFESSIONAL STAFF RECOMMENDATION

This staff report reviews the proposed rezoning request for its compliance with the Comprehensive Plan, the Golden Factors, and compatibility with surrounding development. This report finds that the rezoning request is not substantially compliant with criteria for industrial development provide in Chapter 7 of *Horizon 2020*. The request is also not compatible with the character of the area, the land use recommendations in the Southeast Area Plan for nearby properties, or with existing and planned uses in the area. In addition, the rezoning request may have negative impacts on nearby properties. A more appropriate location for the heavy industrial use is located in the north portion of this area, along the existing K10 Highway and E 25th Street. Based on these factors, staff is unable to recommend approval of the rezoning request and recommends that the Planning Commission forward the rezoning request to the Board of County Commissioners with a recommendation for denial.





NORTH
SCALE: 1" = 400'

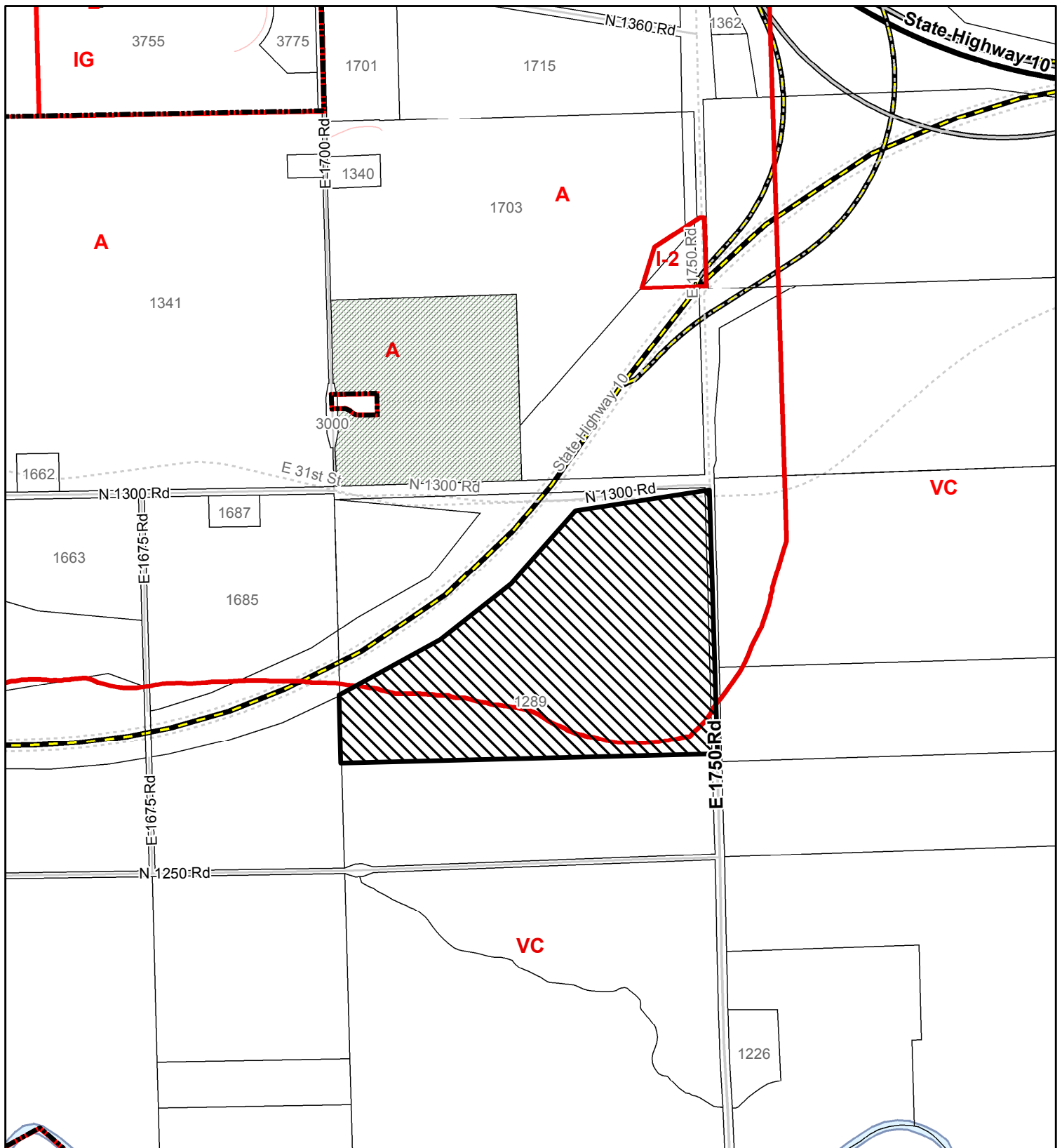
KING'S RECYCLING CENTER REZONING EXHIBIT A TO I-3

SHEET 2 OF 2



**LANDPLAN
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Z-16-00067: Rezone Approximately 77.5 acres from County A District and County VC District to County I-3 District

PP-16-00068: Preliminary Plat for Four King's Subdivision

**CUP-16-00069: Conditional Use Permit for King's Recycling Center
Located on the Southwest Corner of E 1750 Road and N 1300 Road**