

PLANNING COMMISSION REPORT
Regular Agenda –Public Hearing Item

PC Staff Report
6/20/16

ITEM NO. 5 CONDITIONAL USE PERMIT; CLEAN RUBBLE LANDFILL; 1736 E 1550 ROAD

CUP-16-00105: Consider a Conditional Use Permit for clean rubble landfill, on approximately 40 acres located at 1736 E 1550 Rd. Submitted by Grob Engineering Services, LLC, for Nunemaker-Ross, Inc., property owner of record. *Deferred by the Planning Commission on May 23, 2016 at the property owner's request.*

STAFF RECOMMENDATION: Staff recommends approval of the CUP request for a clean rubble landfill at 1736 E 1550 Road subject to the following conditions:

1. Truck traffic associated with this use is not permitted on City streets except to access that portion of 9th Street as part of the following approved route: Hwy 40/59 – Hwy 24/40 – E 1600 Rd – N 1650 Rd – N 9th Street
2. Only 'Clean Rubble' shall be used to fill the Borrow Pit. 'Clean Rubble' shall be defined using the Kansas Department of Health and Environment's definition as follows: *"....the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."*
3. When the Borrow Pit has been filled as shown on the plan, top soil shall be applied and the property seeded with brome or fescue type grasses. Top soil application and seeding shall be completed within 1 year following the completion of filling and grading activities on the site.
4. The Conditional Use Permit shall expire 5 years after the date of the Board of County Commissioners approval. The approval may be extended by the County Commission if a written request showing good cause is submitted prior to the expiration date.
5. Submittal of a revised plan which lists Conditions 1-4 above as the Conditions and Restrictions of Use.

Reason for Request: *"The owner would like to fill a depressed area where soil had previously been removed."*

KEY POINTS

- The property had been used as a borrow pit for improvements to I-70 from 2009 through 2010.
- A borrow pit is classified as a *Mining and Excavation* use and requires approval of a Conditional Use Permit (CUP); however, a CUP was not obtained for this borrow pit. A borrow pit CUP would have included measures for the reclamation of the pit and noted whether it would be converted into a pond or filled. In the absence of a CUP for the borrow pit, the addition of fill to the site will be processed as a landfill.
- The Zoning Regulations contain a list of land uses which are allowed with a Conditional Use Permit. Uses which are similar in nature and operational characteristics to the listed uses are generally included as a conditional use under that classification, even though they vary from the listed use. The landfill use proposed is most similar to the Conditional Use classification of a *'Sanitary Landfill'*.

- The subject property contains approximately 40 acres. With this CUP, clean rubble fill would be placed on approximately 4.95 acres of the subject property.

OTHER ACTION REQUIRED

- Approval of the Conditional Use application and plan by the Board of County Commissioners.
- Applicant shall obtain a permit for the Conditional Use from the Zoning and Codes Office prior to commencing the use.

PUBLIC COMMENT

- No public comment was received prior to printing this report.

GENERAL INFORMATION

Current Zoning and Land Use: A (County-Agricultural) District with F-F (County-Floodway Fringe Overlay) District; *Residential Detached Dwelling* and a lake which resulted from a sand pit. A CUP for the stabilization of the sand pit banks was approved in 1992.

Surrounding Zoning and Land Use: To the north: A (Agricultural) District with F-F (Floodway Fringe) Overlay District / and IG (City-General Industrial) District; I-70 Highway and right-of-way adjacent to the property. North of the highway: *Agriculture, Residential Detached Dwelling*, and the municipal airport in the City IG District. To the west: I-1 (Limited Industrial) District; *Agriculture*.

To the south: A (Agricultural) and I-3 (Heavy Industrial) Districts with F-F (Floodway Fringe) and F-W (Floodway) Overlay Districts; *Agriculture* and *Residential Detached Dwelling*.

To the east: A (County-Agricultural) District with F-F (Floodway Fringe) Overlay District; *Agriculture* and a lake resulting from sand pit.

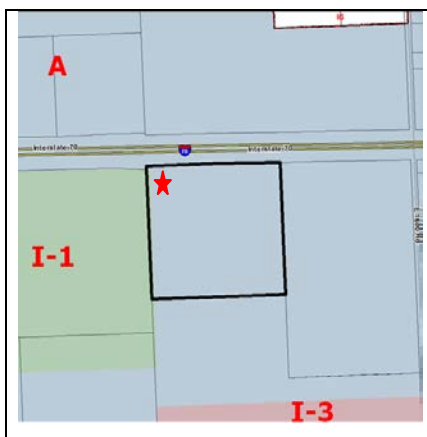


Figure 1a. Zoning: A (Agricultural), I-1 (Limited Industrial), IG (City-General Industrial) Districts. General location of proposed landfill marked with a star.

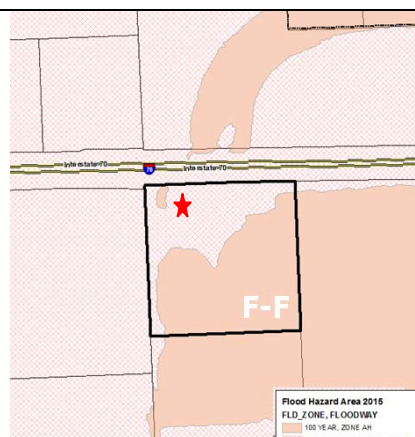


Figure 1b. Floodplain in the area.



Figure 1c. Land Use in the area. Lake is result of a sand pit in the area. A CUP for a landfill to stabilize the banks of the sand pit was approved in 1992.

Summary of Request

The subject property at 1736 E 1550 Road, approximately 40 acres, contains a depression of approximately 5 acres that was the result of a borrow pit for I-70 improvements in 2009 through 2010, a residence, several accessory structures, and a portion of a large lake which was developed with the reclamation of a sand pit. (Figure 2) The borrow pit operated without the required Conditional Use Permit; therefore, reclamation was not addressed. Reclamation of the pit through filling requires approval of a Conditional Use Permit. Adding clean rubble to the site to fill the borrow pit has been determined to be similar in nature and operational characteristics to the Conditional Use '*Sanitary Landfill*' which is listed in Section 12-319-4 of the Zoning Regulations as a use which may be approved in any district in which it is not permitted as a Conditional Use. The CUP is strictly for the addition of fill to the abandoned borrow pit.



Figure 2. Aerial of subject property with general area of landfill circled.

CONDITIONAL USES:

The following proposed use is permitted in the A District when approved with a Conditional Use Permit, as noted below:

12-319-4.12 Sanitary Landfill

The proposed conditional use has been reviewed with the following criteria provided in Section 12-319-1.02 of the Zoning Regulations:

I. ZONING AND USES OF PROPERTY NEARBY

Nearby property is zoned A (Agricultural), I-1 (Limited Industrial), I-3 (Heavy Industrial), and F-F (Floodway Fringe Overlay) Districts and is used primarily for *Agriculture, Residential Detached Dwellings* and contains a large lake. This lake was created with the reclamation of a sand pit which was in operation prior to the adoption of the 1966 Zoning Regulations.

Staff Finding – Surrounding land uses are predominantly agricultural in nature. Open space is available in the area in the form of a large lake. The proposed Conditional Use should be compatible with the zoning and uses in the area.

II. CHARACTER OF THE AREA

The property is located within the Urban Growth Area of the City of Lawrence and is approximately one-half mile north of the city limits. The area is bounded on the north by Interstate 70, on the south by the railroad, on the west by E 1500 Road (N 7th Street) and on the east by the boundary of the Urban Growth Area. The subject property is located on the north boundary of this area which includes a mix of urban residential, commercial and industrial land uses within the City limits and primarily agricultural or rural residential land uses in the rural area.

Staff Finding – The area is predominately agricultural in character but contains urban uses to the west and southwest within the city limits.

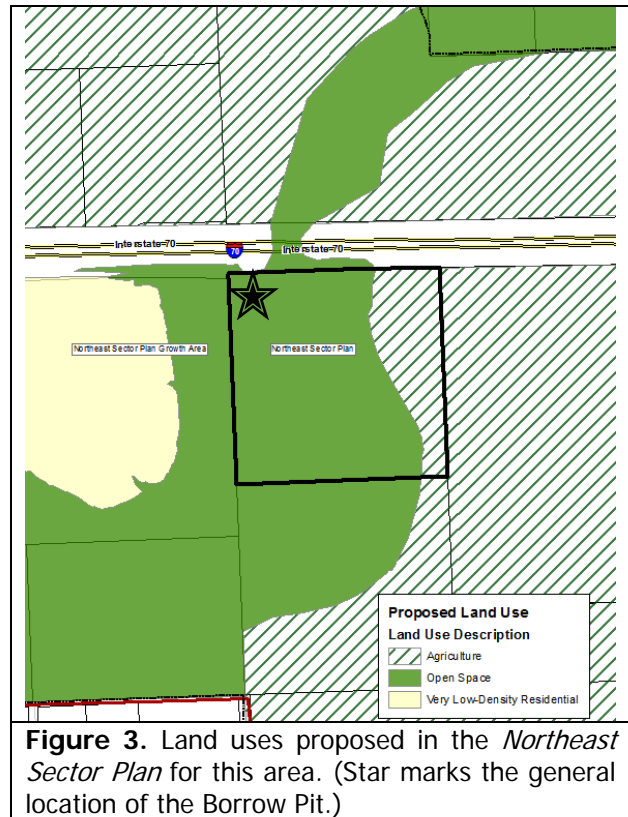
III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's Response:

"The depressed area is not uniform in shape to hold a sustainable pool of water and thus allow weeds to grow without a good means of keeping the area mowed. Property could remain as is, but not desirable."

The subject property is zoned A (Agricultural). Uses allowed in the A District include: farms, truck gardens, orchards, or nurseries for the growing or propagation of plants, trees and shrubs in addition other types of open land uses. It also includes residential detached dwellings, churches, hospitals and clinics for large and small animals, commercial dog kennels, and rural home occupations.

A lake covers the majority of the property leaving land along the west boundary and in the northwest portion of the parcel. The abandoned borrow pit creates an uneven area in the northwest portion that is not usable for agriculture. The applicant noted that the grade change makes it difficult to maintain the property. Filling this area and grading and seeding it will make it more suitable for use. The approved plan for the area, the *Northeast Sector Plan* recommends open space uses for this area. (Figure 3)



Staff Finding – The property is not well suited for the uses to which it is restricted with the A district due to the large lake on the property and the uneven terrain caused by the abandoned borrow pit. Filling the borrow pit and seeding it will result in an area that is suitable for uses permitted within the A District as well as the open space use recommended in the *Northeast Sector Plan*.

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

Staff Finding – The property is not vacant. The Douglas County Appraiser's records indicate that the residence on the property was built in 1997. A sand pit which operated on this property to facilitate the paving of I-70 before the adoption of the Zoning Regulations in 1966 was reclaimed as a large lake.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response:

"The removal of restrictions should have minimal affect on nearby property as the owner owns the property on 2 sides and the Kansas Turnpike Authority owns the property on the other 2 sides."

Section 12-319-1.01 of the County Zoning Regulations recognize that *"certain uses may be desirable when located in the community, but that these uses may be incompatible with other*

uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."

The proposed CUP will allow a landfill use for the reclamation of a Borrow Pit. The Borrow Pit, if properly permitted, would have included a reclamation plan. Reclamation typically includes the development of a pond or filling of the depression. When filling is proposed, it is important to determine the type of fill that will be utilized and to consider the impacts of the truck traffic on properties along the delivery route. Filling the pit will result in a more level grade that will facilitate mowing and other maintenance activities, as well as preventing standing water.

The application notes that this will be a clean rubble fill. KDHE provides the following definition: "Clean rubble means the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary." This restriction on the type of fill should be included with the CUP as a condition.

The activity associated with the filling of the borrow pit would be trucks accessing the site to dump the clean rubble and heavy equipment to move the fill into place and to grade the site. The noise associated with this heavy equipment should not impact nearby properties as they are in agricultural use, with the exception of Interstate 70 to the north. No exterior lighting is being proposed. Truck traffic to and from the site could impact residents along the truck route. The application notes that truck traffic will utilize the following route to access the property: N 2nd Street/Hwy 40/59 then east on Lyon Street or Locust Street, then north on E 1550 Road/N 9th Street. (Figure 4)

The applicant estimated that it would take 1,500 to 2,000 truckloads to fill the pit. The owner will not be paying for fill material so it will be delivered when contractors choose to deposit. Traffic to the site will vary with construction activity; there could be 30 to 40 trucks a day to the site, and then weeks with none. E 1550 Road/N 9th Street is gated approximately 188 ft north of the intersection with Lyon Street (Figure 4). Loads would be delivered by appointment only.

The City Public Works Director indicated that the city streets proposed for a route to the landfill were not designed to accommodate heavy truck traffic. He noted the standard route for trucks with destinations outside the City limits (Figure 5) should be used to access the facility and that large trucks are permitted to use local streets only to access the highway system.

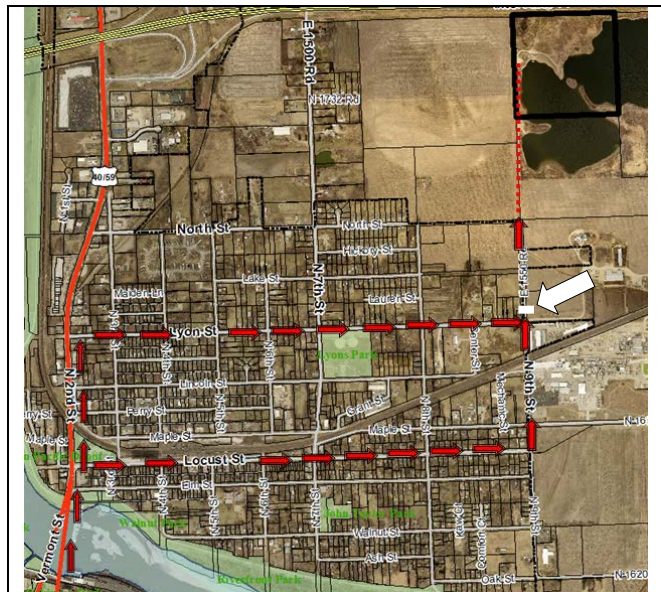


Figure 4. Proposed truck route shown with red arrows. Dotted lines show route past the gate on E 1550 Road. White line is a gate on E 1550 Road/N 9th Street.

The Grant Township Trustee indicated the truck route was acceptable and that a maintenance fee would not be required with the additional traffic. He noted that it is Grant Township's policy that when chip and seal roads are damaged they are replaced with gravel.

Conditional Uses are typically required to be administratively reviewed by the Zoning and Codes Office every 5 years to insure compliance with the standards of the Conditional Use Permit. Expiration dates are often applied to Conditional Uses so they may be re-evaluated to determine if they remain compatible with the development in the area. The landfill is compatible with the current development, but may become incompatible as the area develops further. A five-year expiration period is recommended as that matches the time frame the applicant estimates for the filling of the pit. The Commission could extend the approval, if necessary, provided the applicant provides a written request showing good cause prior to the expiration date.

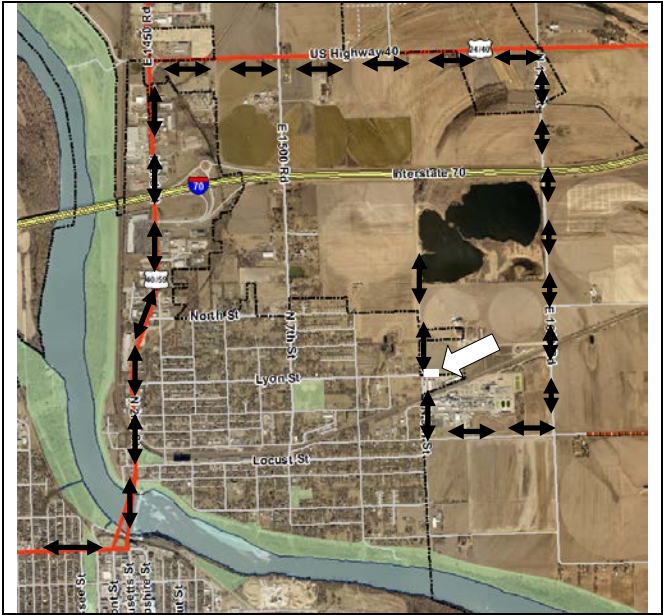


Figure 5. Route for trucks accessing and leaving the facility.

Staff Finding – The heavy equipment and earthwork required for the landfill are not expected to have negative impacts on nearby properties as a lake and I-70 are neighbors on 2 sides and other nearby properties are in agricultural production. The truck traffic to and from the site could negatively impact the uses along the truck route and the roads themselves if a large number of trucks would access the site daily. Heavy truck traffic is restricted to the highways within the City of Lawrence and may use city streets only to access the nearest highway. It would be necessary to use E 1600 Road and N 9th Street to access the facility and the Grant Township Trustee and the City of Lawrence Public Works Director have approved the use of these roads for this use. The landfill is expected to be temporary and a five year expiration period is recommended.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response:

"The depressed area is not uniform in shape to hold a sustainable pool of water and thus allows weeds to grow and provides breeding ground for mosquitoes and is somewhat unsightly. Clean rubble fill will not destroy the value of the owner's land nor any adjoining land."

Approval of the request for the Conditional Use would allow the abandoned borrow pit to be filled and reclaimed to a more level grade. Denial of the request would not allow the pit to be reclaimed so it would remain uneven which leaves it relatively unusable for the property owner.

Denial of the request would benefit the public in that it would prevent the additional truck traffic along E 1600 Road, a fairly narrow township road (Figure 6).

Staff Finding – In staff’s opinion, the gain to the public health, safety, and welfare by the denial of the request for the Conditional Use for the reclamation of the borrow pit, a landfill use, would be the prevention of heavy truck traffic on E 1600 Road. The damage of the heavy truck traffic could be mitigated if the property owner executes a maintenance agreement with the township; however, the narrowness of the road could present a safety issue. The hardship to the property owner of denial would be that the borrow pit could not be reclaimed.



Figure 6. E 1600 Road, between I-70 and the subject property. (Google Maps)

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"Generally filling on property is not outlined in the Comprehensive Plan. As the property is not a solid waste landfill, it complies with the Comprehensive Plan."

An evaluation of the conformance of a Conditional Use Permit request with the comprehensive plan is based on the strategies, goals, policies and recommendations contained within *Horizon 2020*. The comprehensive plan does not directly address Conditional Use Permits; however it does contain recommendations for properties within the Urban Growth Area in Chapter 4, Growth Management. The plan recommends that the Urban Growth Area not be developed to urban densities until infrastructure is in place and recommends that developing properties be annexed.

Specific plans are incorporated into *Horizon 2020* in Chapter 14. The subject property is located within the planning boundary of the *Northeast Sector Plan*, approved in 2012. The plan recommends that this property be used as Open Space. The filling of the borrow pit would create a more even terrain which could make the property more usable as Open Space.

Staff Finding –The proposed Conditional Use is in compliance with recommendations in the Comprehensive plan regarding development within the *Northeast Sector Plan*.

CUP PLAN REVIEW

Height, Area, and Density Standards: No new buildings are being proposed.

Parking and Access: There is no parking associated with the use. The trucks will deliver the fill and leave. Access is provided from E 1550 Road, which is the extension of N 9th Street. E 1550 Road is gated approximately 190 ft north of the intersection with Lyon Street. Deliveries will be by appointment only and the property owner will open the gate to allow access to the property at those times.

Water/Sewage Management: The residence on the property is served by rural water and a septic system. No utilities are required for the proposed Conditional Use.

Screening: Screening the use is not necessary as the property is bounded on the west by agricultural land, under the same ownership, and on the east and south by a large lake. The fill area will be visible from I-70 to the north. Given the height of the highway in relation to the property, screening would be difficult to accomplish. In staff’s opinion, screening from I-70 is not

necessary based on the practical difficulties in providing screening and the fact that this is a temporary use.

Reclamation is an important component of the landfill as the application of top soil and the establishment of vegetation will return the area to a natural appearance. Top soil application, seeding, and the establishment of vegetation should be completed within 1 year following the completion of filling and grading activities on the site. This should all be completed within the five year life span of the Conditional Use Permit.

Conclusion

The Conditional Use proposed complies with the County Zoning Regulations and the land use recommendation of *Horizon 2020*. The use, as conditioned, should be compatible with the surrounding land uses.

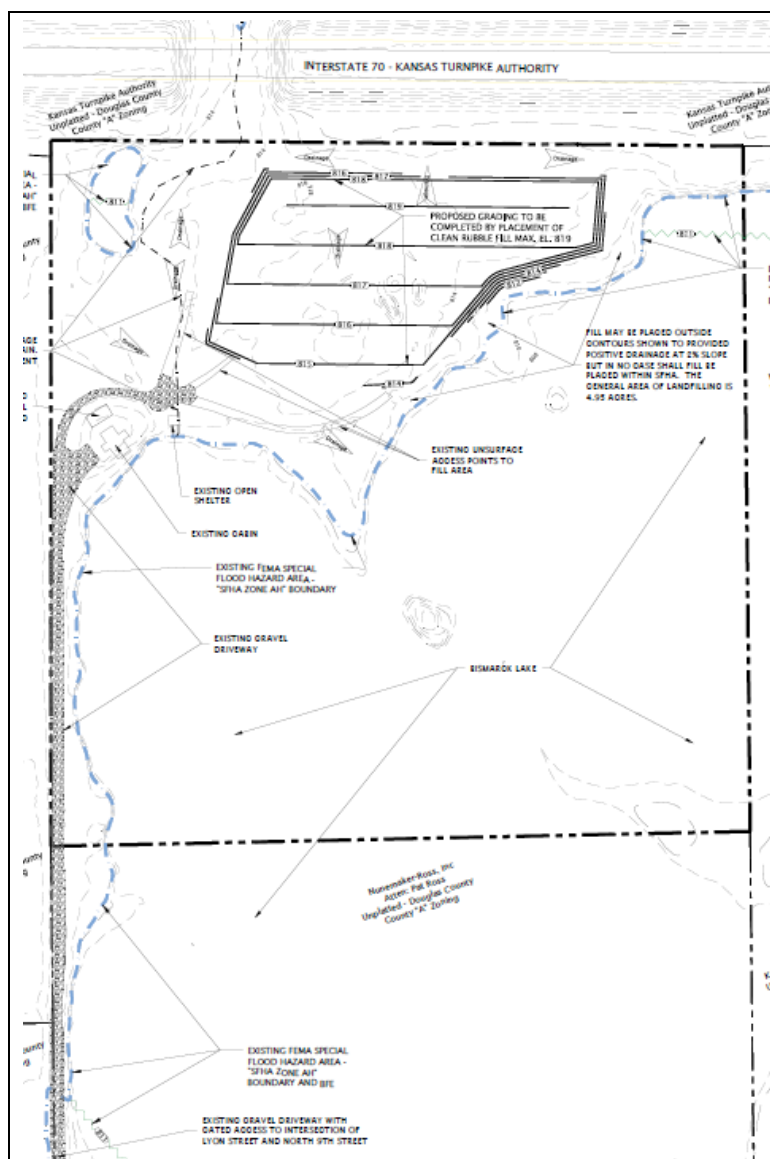
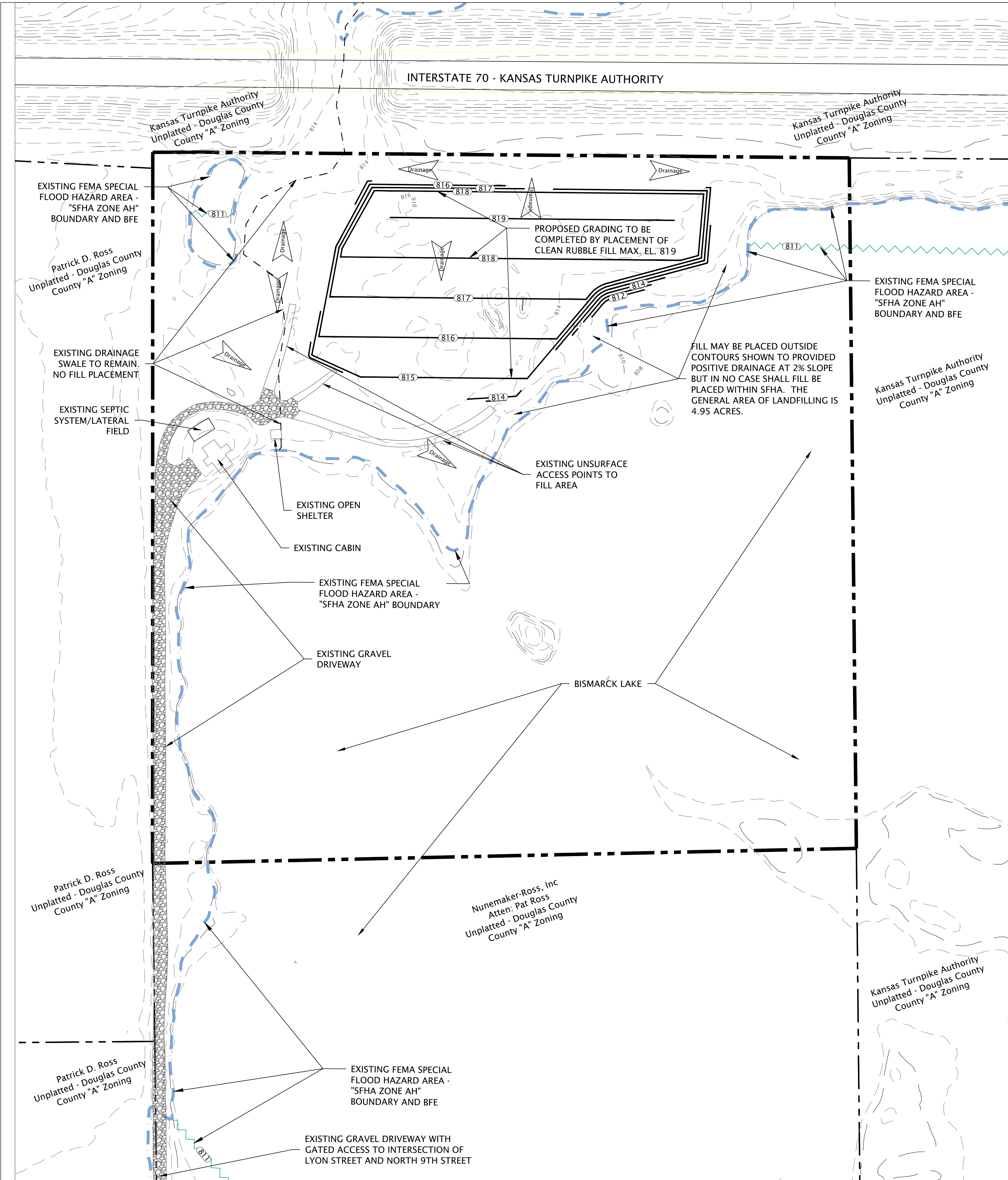


Figure 7. CUP/Site Plan showing approximate area for placement of fill.



LEGAL DESCRIPTION

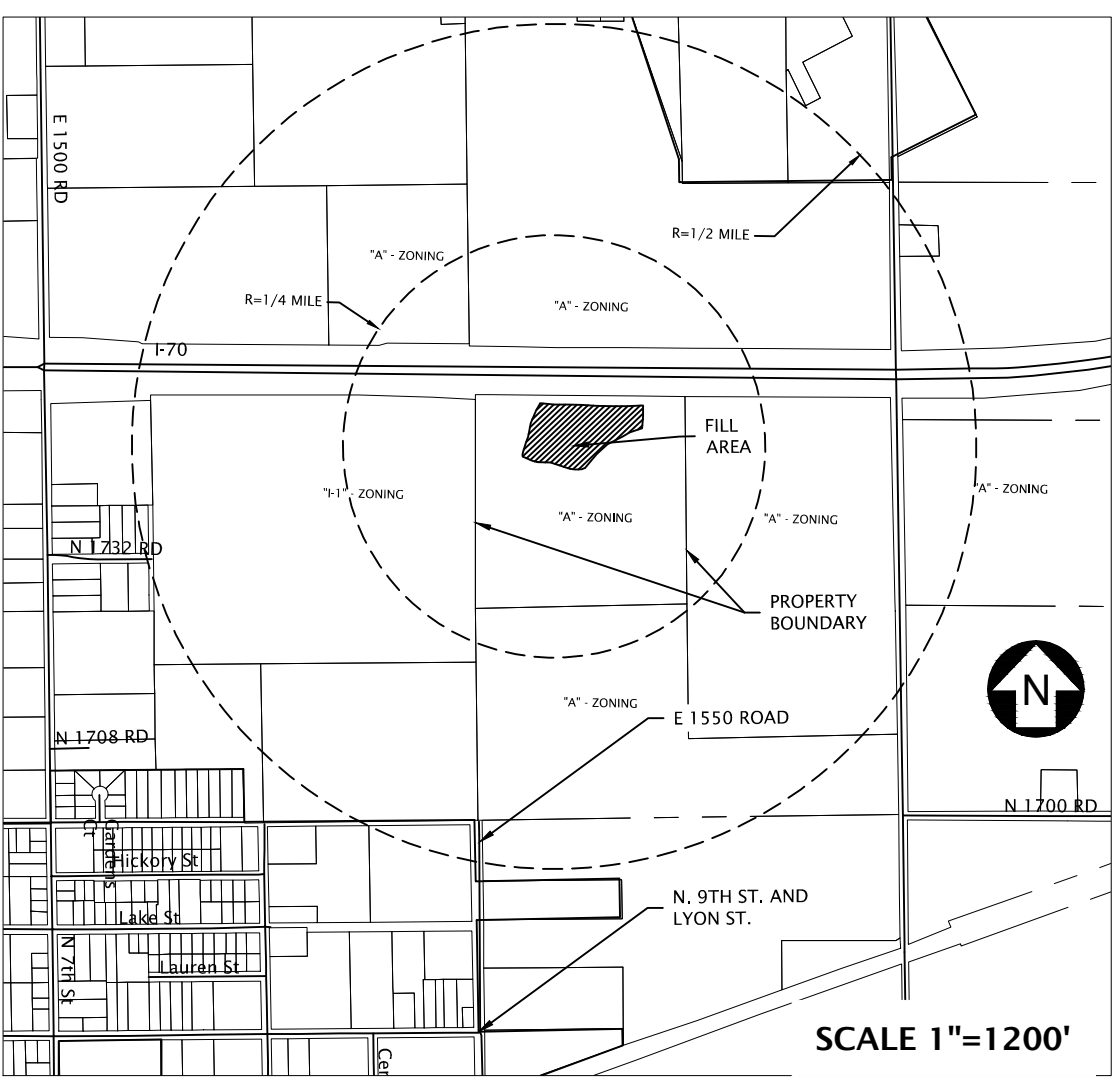
THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION TWENTY (20), TOWNSHIP TWELVE (12) SOUTH, RANGE TWENTY (20) EAST OF THE 6TH P.M. CONTAINING 40 ACRES MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS.

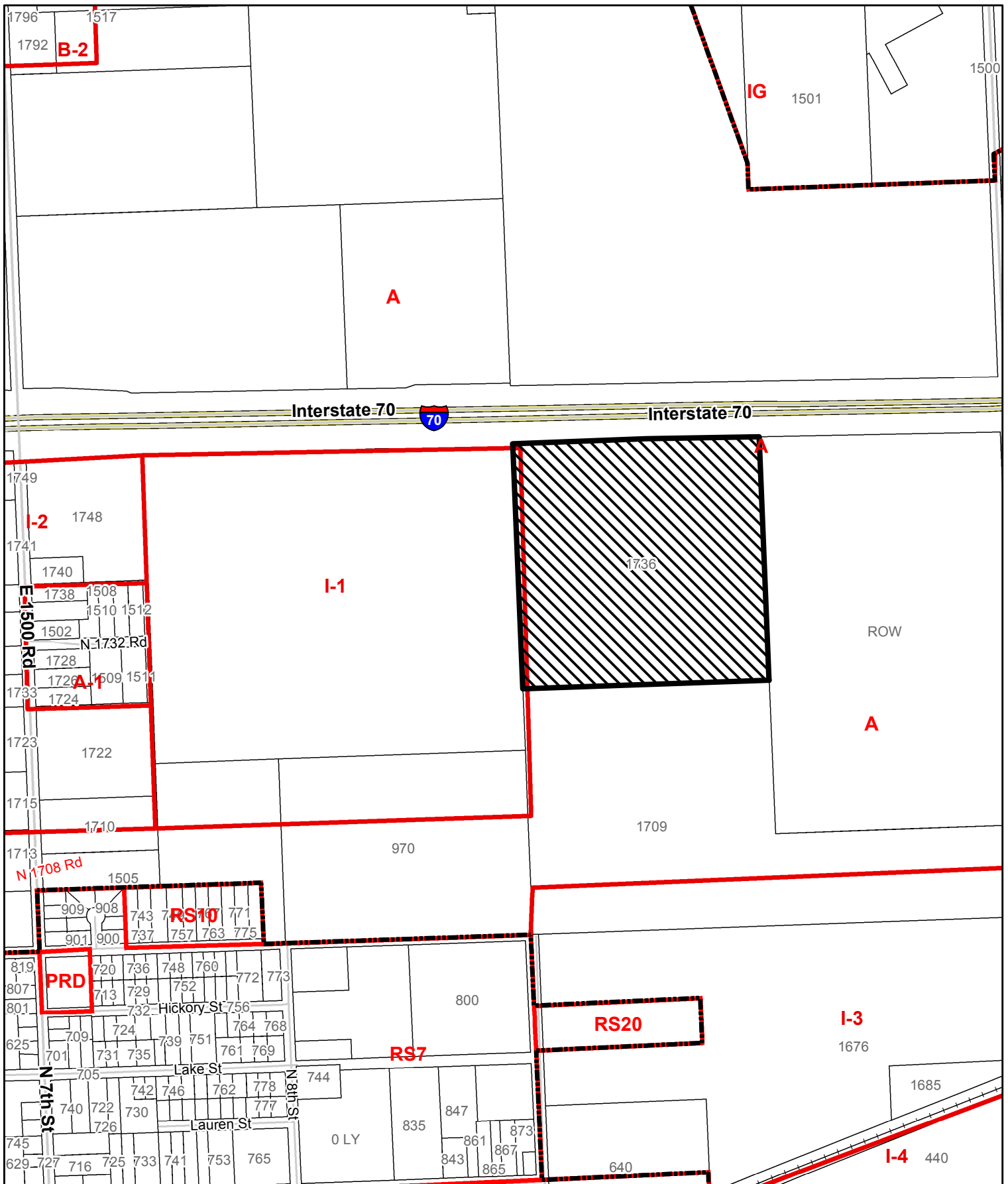
GENERAL NOTES

- OWNER: Nunemaker-Ross Inc.
1687 E 1600 Road
Lawrence, Kansas 66044
Attention: Patrick D. Ross
- Land Planner/Engineer: Grob Engineering Services, LLC
3210 Mesa Way, Suite A
Lawrence, Kansas 66049
 - This Conditional Use Permit (CUP) Site Plan was developed to allow clean rubble landfilling activities as outlined in the Kansas Department of Health and Environment, Bureau of Waste Management Construction and Demolition Wastes and Clean Rubble, Technical Guidance Document SW-1994-G2, to be performed to raise and level an area with depressions. Landfilling will NOT include construction and demolition (C&D) wastes as outline in the above referenced document. Unlike a C&D landfill, state statues do not require a solid waste permit for operation of a site that only accepts clean rubble.
 - The property/landfill area will have controlled access. Access to/from this property will be via an existing driveway that is gated at the entrance on E 1550 Road near the intersection of Lyon Street and North 9th Street.
 - Access to the site will be via Lyon Street and Locust Street which are defined as "Truck Delivery Routes" within the city limits and E 1550 Road within the county.
 - Aerial and topographic information obtained from aerial survey performed by Sanborn Mapping for the City of Lawrence and Douglas County 2006 and 2013.
 - Typical Soil Type: Ev - Eudora-Kimo Complex
 - Existing Land Use: Residential Detached Dwelling
 - Proposed Land Use: Residential Detached Dwelling
 - Current Zoning: A Agriculture
 - A large portion of the property is located within the Special Flood Hazard Area (SFHA) Zone AH per FEMA Map # 20045C0177E Effective Date: September 2, 2015 with a Base Flood Elevation of 811.00. The remaining portion of the property is located within the Special Flood Hazard Area (SFHA) Zone X per FEMA Map # 20045C0177E Effective Date: September 2, 2015. The SFHA is delineated on this Conditional Use Permit - Site Plan. No portion of the activities associated with this CUP include filling within the regulated SFHA illustrated on this Site Plan.
 - Existing utility locations, elevations, and sizes are shown for reference only. No additional utilities will be constructed as part of this CUP.
 - This Site Plan has been designed to comply with the provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for Buildings and Facilities, appendix A to 28 CFR, part 36.
 - Drainage arrows and proposed contours are shown on the plan to indicate general drainage patterns.
 - The existing septic waste lateral field from the existing cabin will remain and no changes are proposed with this CUP Site Plan.
 - National Geodetic Survey vertical benchmark is a disk marked "B 276 Reset 1956" set in a concrete headwall at the intersection of Highways 40, 59, and 24. The disk is 74.0 feet east of the center line of the northbound lane of Highway 59, in the top of the northeast end of the south headwall of a 6-foot concrete culvert, Elevation = 816.37 ft. On-site bench mark is "4" on the top of the south end of the west headwall of culvert under E 1400 Road, Elevation = 839.82 ft.
 - No additional water service will be required as part of this CUP.
 - No trash enclosure or outdoor storage areas will be constructed as part of this CUP. Trash disposal will be by owner off-site.
 - No parking areas are designated as part of this CUP.
 - All fill areas will be restored with topsoil and all disturbed areas shall be reseeded with fescue or brome type grasses and otherwise restored to their original condition.

LEGEND			
— OHW —	— OHW —	OVERHEAD WIRE	⊙ SANITARY SEWER MANHOLE
— OHE —	— OHE —	OVERHEAD ELECTRICAL	⊙ STORM MANHOLE
— UCT —	— UCT —	UNDERGROUND TELEPHONE	⊙ STORM DRAIN
— GAS —	— GAS —	GAS	⊙ CUP ANCHOR
— W —	— W —	WATERLINE	⊙ UTILITY POLE
— SAN —	— SAN —	SANITARY SEWER LINE	⊙ WATER METER
— SS —	— SS —	SANITARY SEWER LATERAL	⊙ WATER VALVE
— STM —	— STM —	STORMWATER LINE	⊙ FIRE HYDRANT
— BSR —	— BSR —	BUILDING SETBACK	⊙ TRAFFIC SIGNAL STR.
—	—	SECTION LINE	⊙ GAS VALVE
—	—	CENTER LINE	⊙ GAS METER
—	—	PROPERTY LINE	⊙ LIGHT POLE
—	—	EASEMENT	⊙ SIGN
—	—	FEATURE LINE	⊙ ELECTRIC BOX
—	—	NO ACCESS TO LOT	⊙ CABLE TV BOX
NOTE: "X" IN UTILITY DENOTES EXISTING FEATURE			
B/B	BACK OF CURB TO BACK OF CURB		
ROW	RIGHT-OF-WAY		
C/L	CENTERLINE		
D/E	DRAINAGE EASEMENT		
U/E	UTILITY EASEMENT		
(D)	DEEDED		
(M)	MEASURED		
(CA)	CALCULATED FROM MEASUREMENTS		
(SR)	REFERENCED SURVEY		
⊙	2" X 24" BAR SET W/CAP "APS 1391"		
⊙	BUILDING INGRESS/EGRESS		
⊙	BUILDING ILLUMINATION		


LOCATION MAP





**CUP-16-00105: Conditional Use Permit for a Clean Rubble Landfill
Located at 1736 E 1550 Road**

Lawrence-Douglas County Planning Office
May 2016

 Subject Property

