

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGSCOUNTY OF (1) WAKE

(2) THE UMSTEAD COALITION,)
)
)
 (your name) PETITIONER,)
)
)
v.)
)
 (3) NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF)
)
ENERGY, MINERAL, AND LAND RESOURCES,)
RESPONDENT.)
 (The State agency or board about which you are complaining))

**PETITION
FOR A
CONTESTED CASE HEARING**

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

Please see Attachment A to this Petition for a Contested Case.

(4) Amount in controversy \$ _____ (if applicable)
 (If more space is needed, attach additional pages.)

(5) Because of these facts, the State agency or board has: (check at least one from each column)

<input type="checkbox"/> deprived me of property;	<input checked="" type="checkbox"/> exceeded its authority or jurisdiction;
<input type="checkbox"/> ordered me to pay a fine or civil penalty; or	<input checked="" type="checkbox"/> acted erroneously;
<input checked="" type="checkbox"/> otherwise substantially prejudiced my rights;	<input checked="" type="checkbox"/> failed to use proper procedure;
AND	<input checked="" type="checkbox"/> acted arbitrarily or capriciously; or
	<input checked="" type="checkbox"/> failed to act as required by law or rule.

(6) Date: May 11, 2023(7) Your phone number: (919) 749-9943(8) Print your full address: Calhoun, Bhella & Sechrest, LLP, 4819 Emperor Blvd., Suite 400, Durham, NC 27703

(street address/p.o. box) (city) (state) (zip)
 (9) Print your name: James L. Conner II

(10) Your signature: _____

You must mail or deliver a **COPY** of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.**CERTIFICATE OF SERVICE**I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed **OR** by delivering it to the named agency or board:

(11) Bill Lane, General Counsel (12) N.C. Dept. of Environmental Quality, Division of Energy, Mineral & Land Resources
 (name of person served) (State agency or board listed on line 3)
 (13) 1601 Mail Service Center, Raleigh, NC 27699-1641
 (street address/p.o. box) (city) (state) (zip code)

(14) This the 11 day of May, 2023.(15) _____
 (your signature)When you have completed this form, you **MUST** mail or deliver the **ORIGINAL** to the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609.

CERTIFICATE OF SERVICE CONTINUED

Wake Stone Corporation & Wake Stone Property Company
C/O Samuel T. Bratton, Registered Agent
P.O. Box 190
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This box for OAH use only.

<p>Amount Paid \$_____</p> <p><input type="checkbox"/> Cash – receipt number _____</p> <p><input type="checkbox"/> Money Order <input type="checkbox"/> Certified Check <input type="checkbox"/> Attorney Trust Account</p> <p>Check number_____</p>	<p><input type="checkbox"/> Indigent (must complete form HOI)</p> <p><input type="checkbox"/> Mandated federal cause of action</p> <p>Received by:_____</p>
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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

ATTACHMENT A TO PETITION FOR A CONTESTED CASE HEARING

Petitioner challenges the validity of the 2018 modifications to Wake Stone’s mining permit for its Triangle Quarry on the basis that Respondent granted this permit after making major

¹ Exhibit B is a copy of the Petitioner's previous First Amended Complaint for Declaratory Judgment and Petition for Writ of *Certiorari*, as discussed below, which contains additional factual details and exhibits that Petitioner incorporates herein. The history underlying this permit is lengthy, and provided in greater detail in Exhibit B. However, Petitioner summarizes the factual and procedural background in this Attachment as an introduction to this issue.

modifications without following the relevant statutory and rule provisions, and without providing any confirmation of its decision to do so until several months after the fact. Respondent made these major modifications at Wake Stone's informal request in 2018, without notice to the public, other agencies, or anyone else, and without otherwise following the law with regard to permit modifications. The modifications fundamentally change the basis for the mining permit and its effects on surrounding properties including William B. Umstead State Park ("Park"). The modifications removed a fiercely negotiated sunset provision in the permit that required Wake Stone to cease operations within fifty years from 1981 and donate the land to the State. The modifications also adversely changed the buffer zone in the permit by significantly reducing the amount of undisturbed vegetated area between mining operations and the Park. Respondent failed to give the notice of its actions as required by N.C. Gen. Stat. §150B-23(f)², and it therefore never triggered the applicable deadline for filing a contested case petition.³ Accordingly, this Petition is timely filed.

Petitioner is a nonprofit membership corporation that has worked since 1972 to protect and preserve the Park for current and future generations. Petitioner works closely with the North Carolina Division of State Parks and Recreation with respect to Park management, conservation, recreational opportunities, and fundraising for real property acquisitions. Historically, Petitioner has engaged with private parties and government agencies regarding development proposals that

² In fact, to this date, the Respondent has never provided notice to Petitioner as required under N.C. Gen. Stat. § 150B-23(f).

³ At the time, N.C. Gen. Stat. § 74-61 afforded to anyone affected by a permit modification the right to file a petition to contest the action under N.C. Gen. Stat. § 150B-23 within 30 days after the decision was made. Exhibit C. In this instance, the 30-day window ended several months before Petitioner first learned on its own that the modifications had been made.

would affect the Park and its users. Specifically, Petitioner has engaged with Respondent regarding the modifications to Wake Stone's existing mining permit challenged herein.

Petitioner's members regularly visit and recreate in and around the Park, including the areas of the Park closest to Wake Stone's Triangle Quarry and the part of Crabtree Creek that flows from the Triangle Quarry and into the Park. Some Coalition members also live and/or own property in close proximity to the Park, the neighboring Odd Fellows Tract, and the Triangle Quarry. They have a vested interest in the quarry's impacts on the Park, not only because of their personal use and enjoyment of the Park, but also because the Triangle Quarry's operation impacts their own properties.

Respondent is the state agency responsible for implementing and enforcing The Mining Act of 1971 ("Mining Act"), N.C. Gen. Stat. §§ 74-46 to -68, and associated rules. 15A NCAC 05A .0101 *et seq.* Part of Respondent's responsibilities is to review and then grant or deny applicants' requests for permit modifications. *Id.* § 74-52.

Wake Stone Corporation ("Wake Stone") is a North Carolina corporation and a mining company that currently operates the Triangle Quarry located at 222 Star Lane, Cary, North Carolina 27513. As of the time of this filing, Wake Stone holds the title to part of permitted area covered by Mining Permit No. 92-10 ("Mining Permit").

Wake Stone Property Company is a North Carolina limited liability company and wholly-owned subsidiary of Wake Stone that was created on January 25, 2021. On March 1, 2021, Wake Stone deeded to it the remaining part of the permitted area covered by the Mining Permit that is not retained by Wake Stone.

I. Original Mining Permit Application, Appeal, and Issuance

The 2018 permit modifications challenged in this contested case relate back to provisions that remained in place for 37 years, since the Mining Permit's original issuance in 1981. Because the historical context for the challenged permit is germane, Petitioner briefly summarizes it herein.

On May 26, 1980, Wake Stone filed an application for a mining permit for a rock quarry on a 195-acre tract located at the northwest corner of the intersection of I-40 and Harrison Avenue having a common boundary of approximately 3,150 feet with Umstead State Park on its east side, and a common boundary of approximately 9,350 feet with Crabtree Creek on its northwest side. There was significant public opposition to the quarry because of its location adjacent to the Park, including from then-Governor James Hunt and Attorney General Rufus Edmisten. On August 22, 1980, Respondent's predecessor agency⁴ denied Wake Stone's permit application, finding that the combined adverse effects of noise, sedimentation, dust, traffic, and blasting vibration associated with the proposed quarry operation would adversely impact the Park in the form of noise intrusion and deterioration of visual resources. Exhibit 2 to Exhibit B.

Following an appeal to the North Carolina Mining Commission, then the body that heard permit appeals, the Commission reversed Respondent's predecessor agency's decision, Exhibit 3 to Exhibit B, instructing that the permit should be issued, "subject to the Commission's final approval," with adequate protections mutually agreeable to Wake Stone and the Department to avoid the quarry's possible adverse effects on the Park. Those protections included: 1) requiring state-of-the-art techniques to minimize noise, dust, and other possible adverse effects; 2) selection

⁴ Over the decades, the Department of Environmental Quality and the Division of Energy, Mineral, and Land Resources have existed under different names. For the sake of simplicity, the current departmental names are used in this Petition to refer to all iterations of the Department and Division, and references to the Department or Respondent are intended to encompass the relevant actors within the Division.

of the optimum location of processing and stockpiling facilities; 3) provision for adequate buffer zones between the quarry and Umstead State Park; and 4) requiring construction of a berm or berms between the quarry and Umstead State Park. In addition, the Commission directed counsel for Wake Stone, Assistant Attorney General Mr. Daniel C. Oakley (“Assistant AG Oakley”), and the Director of the Office of Administrative Hearings Ms. Becky R. French, to reach agreement and submit to the Commission the best method for donating the quarry to the State for use by Umstead State Park. *Id.*

The Commission issued amended and corrected Findings of Fact, Conclusions, and Decision on April 3, 1981. Exhibit 4 to Exhibit B. This document expressly stated that the Commission’s decision was not final, scheduled a public hearing, and directed Wake Stone and the Department to present their plans for protecting the Park to the Commission. *Id.* Following the conclusion of these steps, the Commission would render its final decision. *Id.* On April 3, 1981, the Commission entered its Final Decision reversing the denial of Wake Stone’s permit application. Exhibit 5 to Exhibit B. The Final Decision ordered the Department to grant the permit “subject to several specified conditions,” including Condition No. 3 – Buffer Zone⁵ Plan, and Condition No. 5 – Donation of Quarry to the State (the “Sunset Provision”). The Commission itself did not issue a permit nor write the permit, which would have been outside of its statutory authority. It only reversed the denial of the permit and directed the Department to issue a permit.

On May 13, 1981, the Department notified Wake Stone of the issuance of its mining permit as ordered by the Commission, and it enclosed a copy of Permit No. 92-10 (“1981 Permit”). Exhibit 11 to Exhibit B. The letter requested that Wake Stone “review the permit and to notify this

⁵ The terms “buffer” and “buffer zone” in this Petition do not refer to riparian buffers, but to areas comparable to setbacks from adjacent properties that were intended to remain undisturbed.

office of any objection or question concerning the terms of the permit.” *Id.* Wake Stone did not appeal the terms of the permit, nor is there any record of any less formal objection by Wake Stone to any permit terms.

The following subsections discuss the two Conditions contained within the 1981 Permit that are central to this contested case.

A. The Sunset Provision

The 1981 Permit contains the Sunset Provision, Condition No. 5.B.⁶ (“Condition 5.B.”), within the Reclamation Plan. Condition 5.B. states:

If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, *whichever is sooner*, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

Id. at 129 (emphasis added). This language represents the agreement reached by the parties to the 1981 appeal, and provided assurance that Wake Stone’s mining operation would cease within 50 years—a compromise between disallowing the mine completely and allowing it to continue indefinitely.

Upon information and belief, the wording of the above-quoted provisions in Conditions 3 and 5.B. of the 1981 Permit (as well as the wording in the 1981 Permit’s other Conditions) was insisted upon by the Attorney General’s Office and the Department, absent which they would have appealed the Commission’s Amended Final Decision. Further, this language represented a

⁶ The paragraph numbering in the 1981 Permit restarts several times. Though the permit contains more than one paragraph 5.B., the above reference is to the terms and conditions contained within the Reclamation Plan section, found on the final page of the permit.

mutually acceptable compromise between and among Wake Stone, the Attorney General's Office, and the Department.⁷ See Affidavit of Rufus Edmisten, Exhibit 12 to Exhibit B.

B. Mine Setback Requirements (Buffer Zone)

Regarding Condition No. 3 and for reference, the Commission's Final Decision provided that the permit must include a "completely undisturbed" natural buffer zone not to be developed or altered, as described in Wake Stone's March 10, 1981 memorandum to the Department. Exhibit 6 to Exhibit B. The memorandum states, in part:

- We have offered to provide a very wide buffer area adjacent to Umstead Park which we believe will, as a practical matter, avoid impact on Umstead Park.
- [W]e would propose that *all of the areas northeast of our initial pit area and northeast of our plant area would remain in its present natural state and undisturbed during the first 10 years ...*⁸
- The buffering of the park during the early years of our quarrying operation, as well as the latter years, would offer a maximum of protection to Umstead park ...

Id. (emphasis added).

The Commission amended its Final Decision, likewise dated April 3, 1981, providing that "the 250' buffer area shown on the northern boundary and the 100' buffer area shown on the eastern boundary of Wake Stone's property *is considered by the Commission to be permanent buffer zone.*"⁹ Exhibit 5 to Exhibit B (emphasis added).

⁷ A memorandum from the Assistant Secretary of the Department dated February 4, 1981, referencing a strategic meeting between members of that agency and Assistant AG Oakley, clearly evidences the Department's dissatisfaction with the Commission's Final Decision and a commitment to insist that the permit contain "the most stringent possible conditions." Failing inclusion of such conditions, the memorandum indicates that the Department would contemplate appealing the Commission's Final Decision. Exhibit 13 to Exhibit B (containing later-added highlighting).

⁸ The initial permit was only effective for a period of ten (10) years from the date of issuance, after which time it would expire unless the applicant successfully applied for and received a new permit from Respondent.

⁹ These distances were memorialized in later permits. *E.g.*, Exhibit 24 to Exhibit B.

The 1981 Permit's Condition No. 3 ("Condition 3") expressly addresses the buffer zones, including the point at which the undisturbed vegetated buffer along Crabtree Creek begins:

The dotted line labelled as buffer along the northern boundary and along the eastern boundary is the *permanent buffer* as designated by the Mining Commission (Site plan dated March 10, 1981).

An undisturbed buffer of existing natural vegetation shall be maintained between the mining disturbance and Park property as indicated by the "10 years buffer" shown on the site plan dated March 10, 1981.

An undisturbed buffer zone of existing natural vegetation shall also be maintained between the top edge of the bank of Crabtree Creek and any mining disturbance within the 10 years permit area. The buffer zone shall be of sufficient width to prevent offsite sedimentation and to preserve the integrity of the natural watercourse. In any event, the buffer will meet U.S. Corps of Engineers requirements for Crabtree Creek Watershed.

Id. at 120 (emphasis added).

Neither the Commission nor Wake Stone appealed the 1981 Permit, and no objections to Conditions 3 and 5.B. were made until decades later, as described in the following section.

II. Subsequent Permit History

Since the 1981 Permit's issuance, the conditions related to the Sunset Provision and setback requirements in place for 37 years. During this time, the permit was renewed four times: on April 1, 1991; April 20, 2001; March 20, 2011; and December 1, 2017. During this same time, Respondent granted four permit modifications, all made at the request of Wake Stone and related to other permit conditions: on April 15, 1986; February 5, 1992; October 11, 1986; and November 24, 2010.

A. The Sunset Provision

With regard to the Sunset Provision, on March 7, 2011, Wake Stone applied for a permit renewal and informally requested by phone and email that Respondent change the language in Condition 5.B. from "whichever is sooner" to "whichever is later." Exhibit 14 to Exhibit B. This

one-word change would entirely defeat the original purpose of the Sunset Provision—ensuring that Wake Stone’s mine did not operate longer than 50 years—and would allow it to operate indefinitely. Respondent did not grant this request, and Condition 5.B. remained unchanged in the 2011 permit, which Wake Stone did not appeal.

In March 2018, Wake Stone submitted another informal, email request to Respondent to make substantive, fundamental changes to the permit’s Sunset Provision (and buffer zone provisions) outside of the process mandated by N.C. Gen. Stat. § 74-52. In total, Wake Stone requested that Respondent make eight changes that Wake Stone categorized as “several editorial/typographical errors.” Exhibits 15 and 26 to Exhibit B. Wake Stone referred to the change to Condition 5.B. as “a simple one-word change,” despite it being a major, substantive amendment directly at odds with the intent of the original permit and all parties involved in negotiating the final permit terms. This request for modification of Condition 5.B. was not made on Respondent’s official form for modifications, and no fee whatsoever was paid by Wake Stone for the modification request to eliminate the Sunset Provision. The only reason Wake Stone offered for its requested modification was that the Commission’s 1981 Final Decision had used the language “whichever is later.” Wake Stone did not mention or acknowledge that the actual 1981 Permit included the language “whichever is sooner” without objection or challenge by Wake Stone, the Commission, or any other party.

B. Mine Setback Requirements (Buffer Zone)

On February 26, 2018, David Lee of Wake Stone sent a letter to Respondent stating he had “discovered” that the then-current site plan map dated February 4, 2011, Exhibit 21 to Exhibit B

(prepared by Wake Stone),¹⁰ did not properly delineate the property boundary “as the centerline of Crabtree Creek.” Exhibit 22 to Exhibit B. The letter further states “[i]t appears that this discrepancy occurred during our company’s transition to digital mapping.” *Id.*

Petitioner agrees that the *property boundary* is the centerline of Crabtree Creek, and this point has never been in dispute nor have previous site plan maps improperly delineated this boundary. *E.g.*, Exhibit 21 to Exhibit B. Those maps’ depictions of the property boundary also are consistent with Wake County’s real property records, contrary to Mr. Lee’s assertion. Exhibit 23 to Exhibit B. What is in dispute is the relevance, or lack thereof, of that line with respect to the undisturbed vegetated buffer zone along Crabtree Creek.

Wake Stone’s February 26, 2018 email also asserts that “[t]his discrepancy is critical in that the buffers are to be measured from the Property Boundary/Mining Permit Boundary (which are one and the same).” Exhibit 22 to Exhibit B. This statement is erroneous. As noted, previous permits were explicit on this point, and consistent with the permit language, pre-2018 site plan maps that remained in force for at least 17 years clearly show that the 250-foot undisturbed vegetated buffer does not extend to the creek’s centerline. *E.g.*, Exhibit 21 to Exhibit B; Exhibit D. For example, the original 1981 permit expressly stated that “[a]n undisturbed buffer zone of existing natural vegetation shall also be maintained *between the top edge of the bank of Crabtree Creek and any mining disturbance* within the 10 year permit area.” Exhibit 11 to Exhibit B (emphasis added). Any mapping corrections made to the property boundary simply do not affect in any way the location of the undisturbed vegetated buffer along the Creek.

The 2011 and 2017 permits also contained consistent buffer zone language:

¹⁰ This map also is available online and may be easier to view in that format. <https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/DEMLR/wake-stone/2011A.jpg>.

3. Buffer Zones

A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.

B. Sufficient buffer shall be maintained *between any affected land and any adjoining waterway* or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.

C. A minimum buffer zone of 250 feet shall be maintained *between any mining activity and Crabtree Creek along the north side of the mine site*.

D. A minimum buffer zone of 100 feet shall be maintained between any mining activity and both the Umstead Park property and adjoining property along the east and south sides of the mine site, respectively.

E. All buffer zones shown on the Site Plan Map dated February 4, 2011 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, *shall remain undisturbed*.

Exhibit 24 to Exhibit B at 222 (emphasis added).

Wake Stone's letter also included a revised site plan map, Exhibit 25 to Exhibit B, modifying the 100-foot and 250-foot undisturbed vegetated buffers adjoining Crabtree Creek to run from the Creek's centerline. This map uses modified language to denote the undisturbed vegetated buffers; in comparison to the 2011 site plan map, the 2018 version changed the language for the 100-foot buffer from "100' Undisturbed Vegetated Buffer" to "100' Buffer from Property Boundary," and changed the language for the 250-foot buffer from "250' Undisturbed Vegetated Buffer" to "250' Buffer from Property Boundary." Cf. Exhibits 21 and 25 to Exhibit B. Removal of the term "undisturbed" in the 2018 map is not insignificant as the map is supposed to comport with the permit's terms.

Wake Stone further requested that Conditions 3.C and 3.D be removed from the permit and to change Condition 3.E to 3.C to read: “All buffer zones shown on the Site Plan Map revised February 26, 2018, be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required erosion control and sedimentation control measures and approved earthen berms, shall remain undisturbed.” Exhibit 22 to Exhibit B at 212. Removal of Conditions 3.C. and 3.D., Exhibit 24 to Exhibit B, would result in a reduction of the actual undisturbed buffer zone—far from a merely “ministerial” change.

Taken together, Wake Stone’s requests would result in measuring the undisturbed vegetated buffers from Crabtree Creek’s centerline instead of the top edge of the Creek, thereby significantly reducing the total undisturbed vegetated buffer area by approximately 230,000 to 280,000 square feet, or 5.28 to 6.43 acres.

C. March 28, 2018 Permit

The changes described in Subsections A and B constitute major permit modifications per 15A NCAC 05B .0122(b) that require Respondent to follow the Mining Act’s requirements for permit modifications, and they require the Respondent to timely notify the public of the permit modification’s issuance. Wake Stone’s 2018 request incorrectly suggested that over the course of 37 years, multiple renewals, and ongoing engagement between Wake Stone’s staff, counsel, the Respondent, and the Attorney General’s Office, that the Sunset Provision and setback requirements were erroneous. On March 28, 2018, Respondent issued a modified permit (“2018 Permit”) with all eight of Wake Stone’s requested changes. Exhibit 18 to Exhibit B. During all relevant times in 2018 preceding the permit modification, and including in the cover letter to the 2018 Permit, Respondent referred to Wake Stone’s requested changes as constituting “modifications” to the permit. *Id.*

Months later, Respondent's then-Interim Director S. Daniel Smith issued a memorandum, in part to correct the use of this terminology.¹¹ Exhibit 1 to Exhibit B. In the first paragraph, the memorandum references a letter received from Petitioner dated December 17, 2018, requesting reversal of the 2018 modifications to the permit. It also attempts to correct the term "modification" in the March 28, 2018 cover letter, as it relates to Condition 5.B. in the permit, and it seeks to belatedly reframe the action taken as "a ministerial correction" and "not a permit modification." *Id.* The memorandum states that the Sunset Provision change in the March 28, 2018, permit was "made in response to an e-mail request received by Wake Stone dated February 26, 2018."¹² *Id.* The memorandum was backdated to March 29, 2018. Director Smith's reasoning runs contrary to the documentation presented to the Mining Commission, the previous 37-years of permit history, and the plain language of all the documents and evidence available from this time. It also implies that during this time, the parties and their attorneys all somehow missed fundamental terms within the permit that resulted from extensive negotiations and were memorialized in several permits throughout recent decades.

III. Recent Procedural History Leading to This Filing

On July 13, 2022, Petitioner filed a Petition for Declaratory Judgment in Wake County Superior Court to challenge Respondent's issuance of the 2018 Mining Permit on the bases outlined above. Exhibit B. Given the unusual procedural circumstances surrounding this

¹¹ Petitioner questions the accuracy of the date of this memorandum as there is an internal inconsistency with a later-dated letter from Petitioner, and Petitioner was entirely unaware of the 2018 modification until months later.

¹² Notably, Director Smith's memorandum does not mention the modification to buffer Condition 3 or the acceptance of the amended site plan map or even attempt to classify those modifications as mere "corrections." Furthermore, the February 26, 2018 request from Wake Stone to Respondent is entirely related to buffer protection modifications and does not mention the 50-year Sunset Provision, making the reference to the February 26, 2018 request irrelevant to the 50-year Sunset Provision.

modification and discrepancies between how Respondent handled the modification versus the substance of the modifications, Petitioner sought review before the Superior Court. Among other things, Respondent had not provided Petitioner, nor any other known members of the public, any notice of the 2018 permit modification, as required by N.C. Gen. Stat. §§ 74-61¹³ and 150B-23(f). *See also* Exhibit A at 1. Petitioner only learned of the modification while reviewing Respondent's hard copy permit file related to another matter in late 2018. At some later date, Respondent posted a copy of a memorandum from then-Interim Director S. Daniel Smith to its website. Exhibit 1 to Exhibit B. On or around this same time, Petitioner contacted both the Respondent and its counsel at the Attorney General's Office to resolve the discrepancy between the historical documents and permit record and the language in the modified permit. To date, Petitioner has not received a final determination from Respondent or its counsel.

The Defendants in the Superior Court case all filed Motions to Dismiss Petitioner's Amended Complaint in January 2023 and briefs in support the following month. Defendants argued, in pertinent part, that Petitioner should have filed a Contested Case Petition instead of pursuing judicial review pursuant to N.C. Gen. Stat. §§ 150B-43 *et. seq.* or, alternatively, via writ of *certiorari* and/or declaratory judgment relief in Superior Court, and that Petitioner had failed to exhaust its administrative remedies.¹⁴ A hearing on the Motions to Dismiss was held on March 1, 2023 before Superior Court Judge Paul A. Holcombe, III. Following review of the parties' briefs

¹³ N.C. Gen. Stat. § 74-61 was amended in July 2022. However, the version of the statute that was in effect at all relevant times is attached as Exhibit C.

¹⁴ Either Respondent believed Petitioner was not an aggrieved party entitled to pursue a contested case hearing (the only administrative remedy potentially available to Petitioner), or Respondent was obligated to provide the required notice to Petitioner of its administrative rights/remedies pursuant to the provisions of N.C. Gen. Stat. §§ 74-61 and 150B-23(f). Respondent was not entitled to seek to dismiss Petitioner's judicial review proceeding on the basis of a failure to exhaust administrative remedies which even it refused to acknowledge, recognize, or act upon.

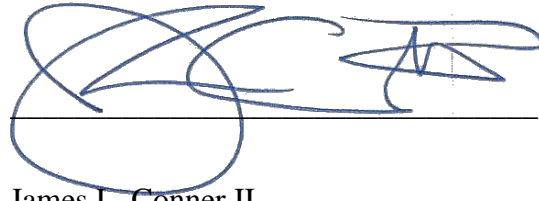
and hearing oral argument, Judge Holcombe issued an order on April 11, 2023 staying the Superior Court proceeding for 150 days and instructing Petitioner to file this contested case. Exhibit A. Accordingly, Petitioner now files this contested case before this Tribunal for review and a decision on the merits.

Petitioner respectfully reserves the right to amend, supplement, or otherwise modify this Petition and/or attachments and exhibits through amendment as provided by the North Carolina Administrative Procedure Act, through its Prehearing Statement, or otherwise, including changes to reflect matters revealed through the course of discovery or hearing. Petitioner also reserves the right to put on evidence that shows different or additional facts and different or additional errors by Respondent than those alleged herein without the benefit of discovery and other information sources, without any amendment or supplementation to this Petition. Petitioner anticipates that they will discover issues during the pendency of this case beyond those revealed by the documents and information currently available to the public.

Respectfully submitted this 11th day of May, 2023.

[Signature block on the following page]

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Attorneys for Petitioner

Exhibit A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22CVS008638-910

THE UMSTAED COALITION,)
)
Plaintiff,)
)
v.)
)
NC DEPARTMENT OF ENVIRON-)
MENTAL QUALITY, DIVISION OF)
ENERGY, MINERAL AND LAND)
RESOURCES, WAKE STONE)
CORPORATION and WAKE STONE)
PROPERTY COMPANY,)
)
Defendants.)

ORDER
(Staying Proceedings in Superior Court)

THIS MATTER came before the Court upon Defendant NC Department of Environmental Quality (“DEQ”), Division of Energy, Mineral and Land Resources’ Motion to Dismiss Amended Complaint filed on January 3, 2023, and Defendants Wake Stone Corporation and Wake Stone Property Company’s Motion to Dismiss First Amended Complaint filed on January 18, 2023. The Amended Complaint filed by the Plaintiff concerns modifications of significant interest to the parties and the public-at-large made in March of 2018 by DEQ to Mining Permit 92-10 under which Wake Stone operates Triangle Quarry in Wake County. The parties agree that Plaintiff did not receive notice about the modifications from the DEQ (while not agreeing as to entitlement of notice) but learned of the modifications in November of 2018 through a public records review related to Triangle Quarry.

Plaintiff contends that since it did not learn of DEQ’s action until well after the 30 day time limit established in N.C.G.S. § 74-61 to commence a contested case pursuant to the Administrative Procedure Act (“APA”), the Court should conclude that Plaintiff’s ability to contest the action through the APA was never actually available, and Plaintiff should be

allowed to proceed directly with judicial review in Superior Court. Defendant DEQ contends Plaintiff must avail itself of the procedures set forth in the APA, while acknowledging that Plaintiff did not receive legal or actual notice about DEQ's modifications within the 30 day time limit established in N.C.G.S. § 74-61. Defendant Wake Stone lists the failure to exhaust administrative remedies as one of several reasons it contends the action should be dismissed.

The Superior Court Division of the NC General Court of Justice interacts with the contestation of agency decisions through the APA in several ways. These include *inter alia* intervention when a final decision is unreasonably delayed, see N.C.G.S. § 150B-44, remand to allow for new evidence, see N.C.G.S. § 150B-49, and remand for further proceedings, see N.C.G.S. § 150B-51(b). In this case, the Court, in its discretion, concludes that, in the interest of justice and to avoid speculation as to the opportunity available to the Plaintiff pursuant to the APA, the proceedings in the case *sub judice* should be stayed and the Plaintiff directed to commence a contested case pursuant to the APA. The Court shall consider any procedural or substantive rulings pertaining to the contested case in deciding the Defendants' Motions to Dismiss and the parties may incorporate any procedural or substantive rulings in revising and renewing their arguments for consideration by the judge regularly scheduled and commissioned to preside in Wake County Civil Superior Court for the review date session.

IT IS, THEREFORE, ORDERED that Plaintiff shall commence a contested case pertaining to the DEQ's modification of Mining Permit 92-10 in March of 2018 in the Office of Administrative Hearings within 30 days of the date of this Order and that the proceedings in the above-styled case are stayed for a period of 150 days with a review set on September 5, 2023 or another day during the September 5, 2023 session as mutually agreed upon by counsel.

ORDERED this the 11th day of April 2023.

Paul A. Holcombe, III

PAUL A. HOLCOMBE, III
Superior Court Judge Presiding

4/11/2023 11:30:19 AM

Certificate of Service

I HEREBY CERTIFY that the foregoing document was served on the parties listed below by:



☒ Transmitting a copy hereof to each said party via e-mail; and/or

☐ Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed as follows:

James L. Conner, II
jconner@cbsattorneys.com
Attorney for Plaintiff

Thomas Hill Davis, III
hdavis@ncdoj.gov
Attorney for Defendant NC Dept. of Environmental Quality

Albert C. Ellis
ace@wardandsmith.com
Attorney for Defendant Wake Stone Corp

13th
This, the _____ day of April, 2023.

Shanda Smallwood

Shanda Smallwood, Court Asst.
Shanda.R.Smallwood@nccourts.org

Exhibit B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CV 008638

2022 DEC 28 P 2:31

THE UMSTEAD COALITION,)
)
Plaintiff,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
DIVISION OF ENERGY, MINERAL,)
AND LAND RESOURCES, WAKE)
STONE CORPORATION, and WAKE)
WAKE STONE PROPERTY COMPANY,)
)
Defendants.)
_____)

WAKE CO., C.S.C.

BY _____

**FIRST AMENDED COMPLAINT
FOR DECLARATORY
JUDGMENT and PETITION FOR
WRIT OF CERTIORARI**

NOW COMES Plaintiff, The Umstead Coalition ("Plaintiff"), by and through the undersigned counsel and pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure,¹ and alleges and says as follows:

INTRODUCTION/SUMMARY

1. Plaintiff seeks judicial review of major modifications made in 2018 to a mining permit issued, originally in 1981, to Wake Stone Corporation ("Wake Stone") by the North Carolina Department of Natural Resources and Community Development, Division of Land Resources ("NRCD"), now known as the Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (hereafter referred to as "DEQ")². Plaintiff seeks this review

¹ A redlined version of this Amended Complaint is provided as Exhibit 31.

² The name of the agency that was NRCD in 1981 is now DEQ, and has changed several times in the past 40 years, as have the names of the Department's constituent divisions. Hereinafter, for

pursuant to the provisions of Article 4 of the North Carolina Administrative Procedure Act, NC. Gen. Stat. §§ 150B-43 *et. seq.* or, alternatively, through Writ of *Certiorari* pursuant to N.C. Gen. Stat. § 1-269, and for entry of a declaratory judgment pursuant to N.C. Gen. Stat. §§ 1-253 *et. seq.*

2. Contrary to the assertion of DEQ staff that the modifications were simply “ministerial corrections,” Exhibit 1 at 1³, the 2018 permit modifications were major changes, including: a) the removal of a 50-year sunset provision for quarry operations (hereafter “Sunset Provision”) that affects contractual option language for the State of North Carolina to acquire Wake Stone’s quarried property as part of William B. Umstead State Park (“Umstead State Park”); and b) the reduction of protected, permanent, and undisturbed vegetated buffer zones from the top edge of Crabtree Creek to the center line of Crabtree Creek, resulting in the gutting of between 230,000 to 280,000 square feet of protected buffers. The Sunset Provision was expressly included in the initial permit, was a fundamental basis for the issuance of the permit, and was never challenged upon permit renewal or otherwise for 37 years.

3. DEQ staff informally and hastily made the substantive 2018 permit modifications at the sole request of Wake Stone and based on minimal materials supplied only by Wake Stone. This was done without any hearing or notice to, input from, or opportunity to comment by Plaintiff, any other agency, or any other interested parties or members of the public. Moreover, the request was premised upon misrepresentations of fact by Wake Stone. DEQ did not provide any notice of the modifications to any other persons, including Plaintiff, who potentially would be adversely impacted by the decision, and who otherwise would have appealed pursuant to proper notice of

simplicity and clarity, the current Departmental acronym “DEQ” will be used to refer to the agency, the relevant division, and their predecessors.

³ All exhibits attached to this Complaint are true and correct copies to the best of Plaintiff’s knowledge and are incorporated herein. Citations include additional explanatory parentheticals when appropriate.

Wake Stone's request for the modifications. That request was not made in writing on DEQ's official form for permit modifications, and Wake Stone did not pay the required non-refundable modification application fee. Moreover, Wake Stone's informal modification request, submitted via e-mail to a DEQ staff person, did not specifically request modifications pertaining to the 50-year Sunset Provision.

4. Plaintiff had no knowledge of the permit modifications until months after DEQ approved them. It only discovered the changes after requesting, for other reasons, to examine the public records within the permit files held at DEQ's office. After learning of these modifications, Plaintiff attempted to work with DEQ to resolve this issue. Those efforts were unsuccessful, and it recently became clear that litigation would be necessary to resolve DEQ's illegal modification.⁴ Accordingly, Plaintiff's only avenues for obtaining judicial review are pursuant to the provisions of N.C. Gen. Stat. §§ 150B-43 *et. seq.*, or alternatively by Writ of *Certiorari* under N.C. Gen. Stat. § 1-269, and through entry of declaratory relief pursuant to N.C. Gen. Stat. §§ 1-253 *et. seq.*

5. Plaintiff asserts that in making the permit modifications at issue, DEQ failed to comply with the provisions of N.C. Gen. Stat. §§ 74-52(a), (c), 74-54.1, and 15A NCAC 05B .0112 (a)–(e); exceeded its statutory authority, and acted erroneously in derogation of its statutory duties by modifying Wake Stone's permit in a way not consistent with and in utter disregard of several essential bases for the issuance of the original permit; failed to follow statutory and administrative procedures; abused its discretion by improperly relying and basing its decision on incomplete information and/or documentation; reached a decision unsupported by substantial evidence; and

⁴ Had Wake Stone applied for a major modification as it should have to get this result, and had DEQ denominated its action a major modification, and followed its customary protocol of notifying N.C. Parks and other long-known interested parties, it would have been available to Plaintiffs to file a petition for a contested case hearing within 30 days of the decision under N.C. Gen. Stat. § 150B-23. As things actually happened, this avenue was foreclosed.

engaged in arbitrary and capricious conduct. Plaintiff therefore seeks an order and judgment declaring that DEQ's permit modifications and the 2018 amended permit incorporating those modifications (including the February 2018 site plan map containing the changes) are invalid and void; rescinding the administrative action granting the modifications; reinstating the terms of the permit prior to the 2018 modifications; awarding to Plaintiff its costs, including reasonable attorneys' fees; and granting such other and further relief as the Court deems just and reasonable.

PARTIES

6. Plaintiff The Umstead Coalition was founded in 1968 and is a volunteer-led, 501(c)(3) nonprofit organization comprised of individual members and 16 partner conservation organizations. Plaintiff engages in service projects, park land acquisition, environmental education activities, trail maintenance, restoration of Umstead State Park's 120 historic cabins and mess halls (recently accomplished with over 7,000 volunteer hours), preservation of the cultural history of the rural community that once occupied the lands that became the Umstead State Park, and, foremost, protection and enhancement of Umstead State Park. Plaintiff's primary office is located in the City of Raleigh, North Carolina.

7. Defendant DEQ is an agency of the State of North Carolina that, in relevant part, is tasked with ensuring the wise use and protection of the State's land and geologic resources, including, *inter alia*, the issuance, revocation, modification, and enforcement of mining permits.

8. Defendant Wake Stone is a North Carolina corporation with its principal office located at 6821 Knightdale Blvd., Knightdale, North Carolina 27545. Wake Stone holds the mining permit at issue in this proceeding.

9. Defendant Wake Stone Property Company is a North Carolina limited liability company with its principal office located at 6821 Knightdale Boulevard, Knightdale, NC 27545.

Wake Stone Property Company was created on January 25, 2021, and Wake Stone deeded to it a portion of the property covered under Wake Stone's Mining Permit No. 92-10 on March 1, 2021.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action under N.C. Gen. Stat. §§ 1-253, 1-254, 1-269, 7A-3, 7A-240, 7A-243, 7A-245, 7A-250, and 150B-43 *et. seq.*

11. This court has *in personam* jurisdiction over Defendants under N.C. Gen. Stat. §§1-75.3 and 1-75.4. Defendant Wake Stone is properly joined in this action under N.C. Gen. Stat. §§ 1A-1, Rule 19 (a)-(b), 1-260, and 150B-46. Defendant Wake Stone Property Company is properly joined under Rules 19(a)(1)(A) and 20 of the North Carolina Rules of Civil Procedure, since, in its absence, the Court cannot accord complete relief among the existing parties, and it joinder is necessary to insure that any relief obtained by Plaintiff as a result of this case will equally apply to and bind that entity, as well as Wake Stone, with respect to the property covered by Wake Stone's mining permit.

12. Venue of this action in this Court is proper under N.C. Gen. Stat. § 1-82.

BACKGROUND AND HISTORY

13. Umstead State Park is a North Carolina State Park in Wake County, North Carolina covering 5,599 acres nestled between the expanding cities of Raleigh and Durham. Hikers, birders, trail runners, bicyclists, equestrians, orienteers, and researchers cherish the extensive network of hiking and multi-use trails at the Park, as well as the peaceful forest environment. Trailheads on both sides of the Park provide access to three manmade lakes. Umstead State Park visitors can take advantage of canoe and rowboat rentals, fishing, and the use of picnic grounds, shelters with fireplaces, tent campground, and group campsites with cabins, mess halls, and washhouses. Umstead State Park abuts Crabtree Creek along its southern border with Wake Stone's existing

quarry. From there, Crabtree Creek runs through the Park after flowing between Wake Stone's quarry and the adjacent undeveloped Odd Fellows Tract. Umstead State Park is a place to escape the pressures of everyday life and to enjoy the peace and quiet of nature. Preserving the Park's natural environment and its surrounds is a primary part of Plaintiff's organizational mission.

14. On May 26, 1980, Wake Stone filed an application for a mining permit for a rock quarry on a 195-acre tract located at the northwest corner of the intersection of I-40 and Harrison Avenue having a common boundary of approximately 3,150 feet with Umstead State Park on its east side, and a common boundary of approximately 9,350 feet with Crabtree Creek on its northwest side.

15. Because of the proposed quarry's close proximity to Umstead State Park, there was public outcry against the permit application, including public statements opposing the proposed quarry by then-Governor James Hunt and Attorney General Rufus Edmisten.

16. By letter dated August 22, 1980, Wake Stone was notified that DEQ had denied Wake Stone's permit application, finding that the combined adverse effects of noise, sedimentation, dust, traffic, and blasting vibration associated with the proposed quarry operation would adversely impact Umstead State Park in the form of noise intrusion and deterioration of visual resources. Exhibit 2.

17. On September 16, 1980, Wake Stone appealed the denial and requested a hearing before the North Carolina Mining Commission ("Commission"). After four days of hearings, the Commission issued its initial Findings of Fact, Conclusions, and Decision on January 27, 1981, Exhibit 3, reversing the permit denial and finding that the permit should be issued, "subject to the Commission's final approval," with adequate protections mutually agreeable to Wake Stone and DEQ to avoid possible adverse effects of the quarry operation on Umstead State Park. Those

protections included: 1) requiring state-of-the-art techniques to minimize noise, dust, and other possible adverse effects; 2) selection of the optimum location of processing and stockpiling facilities; 3) provision for adequate buffer zones between the quarry and Umstead State Park; and 4) requiring construction of a berm or berms between the quarry and Umstead State Park. In addition, the Commission directed counsel for Wake Stone, Assistant Attorney General Mr. Daniel C. Oakley (“Assistant AG Oakley”), and the Director of the Office of Administrative Hearings Ms. Becky R. French, to reach agreement and submit to the Commission the best method for donating the quarry to the State for use by Umstead State Park. *Id.*

18. The Commission issued amended and corrected Findings of Fact, Conclusions, and Decision on April 3, 1981. Exhibit 4. This document expressly stated that the Commission’s decision was not final, scheduled a public hearing, and directed Wake Stone and DEQ to present their plans for protecting Umstead State Park, as set forth in paragraph 16 above, to the Commission. *Id.* Following conclusion of these steps, the Commission would render its final decision. *Id.*

19. The Commission entered its Final Decision also dated April 3, 1981 reversing the denial of Wake Stone’s permit application. Exhibit 5. The Final Decision ordered DEQ to grant the permit “subject to several specified conditions,” including, among others: Condition No. 3 – Buffer Zone Plan; Condition No. 4 – Construction of Berms; and Condition No. 5 – Donation of Quarry to the State.

20. With respect to Condition No. 3, the Commission’s Final Decision provided that the permit was to include a “completely undisturbed” natural buffer zone not to be developed or altered as set forth in a Wake Stone memorandum to DEQ dated March 10, 1981. Exhibit 6. Wake Stone’s memorandum includes the following pertinent statements:

- We have offered to provide a very wide buffer area adjacent to Umstead Park which we believe will, as a practical matter, avoid impact on Umstead Park.
- [W]e would propose that *all of the areas northeast of our initial pit area and northeast of our plant area would remain in its present natural state and undisturbed during the first 10 years ...*⁵
- The buffer areas which we have proposed on our latest plan, ... will provide a barrier to vision and noise which, in general, is *50 feet or more above the bank of the Crabtree Creek.*
- The buffering of the park during the early years of our quarrying operation, as well as the latter years, would offer a maximum of protection to Umstead park ...

Id. (emphasis added).

21. The Commission also issued an amendment to its Final Decision, likewise dated April 3, 1981, providing that “the 250’ buffer area shown on the northern boundary and the 100’ buffer area shown on the eastern boundary of Wake Stone’s property *is considered by the Commission to be permanent buffer zone.*” Exhibit 5 (emphasis added). This amendment was missing from DEQ’s Mining Permit File during Plaintiff’s in-person review in November 2018. Plaintiff only became aware of the amendment during a later review of the North Carolina State Archives, the Wake County Commissioners’ Special Permit file, and the North Carolina Division of Parks and Recreation’s (“N.C. Parks”) files. Upon finding the document, Plaintiff provided a copy to the North Carolina Attorney General’s Office (“Attorney General’s Office”). Upon information and belief, the Attorney General’s Office then provided it to DEQ.

22. With respect to Condition No. 5, as contained in the Commission’s Final Decision, pertaining to when the State could exercise an option to acquire the Wake Stone property, the

⁵ The initial permit was only effective for a period of ten (10) years from the date of issuance, after which time it would expire unless the applicant successfully applied for and received a new permit from DEQ.

Commission provided that in the event all quarriable stone was not removed, “[t]he right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later . . .” *Id.* at Exhibits Page 87.

23. The Commission further expressly provided that “[t]he option may include such other terms as are mutually acceptable to the State and Wake Stone.”⁶ *Id.* at Exhibits Page 88. It is important to note, as this passage highlights, that the Commission did not issue a permit nor write the permit. It only reversed the denial of the permit and directed DEQ to issue a permit, which it did.

24. Prior to issuance of the Commission’s Final Decision, then-Division Director Stephen Conrad and Wake Stone’s John Bratton had signed a letter dated March 12, 1981, transmitting to the Commission certain materials containing proposed terms and conditions for the Commission’s consideration. Exhibit 7 (containing later-added highlighting by an unknown source). With respect to Condition No. 5, the materials included a one-page summary of the respective parties’ positions regarding the quarry donation, Exhibit 8 (containing later-added highlighting by an unknown source), and a March 12, 1981 memorandum from Wake Stone to Assistant AG Oakley, Exhibit 9 (also containing later-added highlighting by an unknown source), setting forth Wake Stone’s offered terms for the quarry donation to the State.

25. As reflected in the highlighted portion of Exhibit 10, DEQ expressed no opinion as to acceptability of the terms contained in Wake Stone’s March 12, 1981 memorandum with respect

⁶ It is important to note that while the Commission clearly had authority to review and, if deemed appropriate, reverse DEQ’s initial decision to deny Wake Stone’s permit application, it did not have the authority to issue a permit or to dictate the terms of the permit. *See* N.C. Gen. Stat. § 143B-290. That authority resided solely with DEQ, subject to compliance with all applicable statutory requirements. N.C. Gen. Stat. §§ 74-50 *et. seq.*

to the donation of the quarry property. Exhibit 10 (containing later-added highlighting by an unknown source). In the letter, DEQ advised the Commission that “it remains our position that the quarry permit should be denied for the reasons presented at the hearing,” and “there remains several points in which the Division could not agree with Wake Stone ...”⁷ *Id.* Both DEQ and Wake Stone reserved their respective rights, and, on information and belief, the parties continued to negotiate after issuance of the Commission’s Final Decision to reach agreement on all of the terms of the issued permit and avoid any further proceedings.⁸

26. By letter dated May 13, 1981, DEQ notified Wake Stone of the issuance of its mining permit as ordered by the Commission, and it enclosed a copy of Permit No. 92-10 (“permit”). Exhibit 11. The letter requested that Wake Stone “review the permit and to notify this office of any objection or question concerning the terms of the permit.” *Id.* Wake Stone did not appeal the terms of the permit, nor is there any record of any less formal objection by Wake Stone to any term of the permit.

27. Condition No. 3 of the issued May 13, 1981 permit (“Condition 3”) expressly addresses the buffer zones, including the point at which the undisturbed vegetated buffer along Crabtree Creek begins:

The dotted line labelled as buffer along the northern boundary and along the eastern boundary is the *permanent buffer* as designated by the Mining Commission (Site plan dated March 10, 1981).

⁷ It is the Plaintiff’s position that DEQ did not at any time prior to issuance of the Commission’s Final Decision agree that a permit should be issued to Wake Stone, concur with any of Wake Stone’s suggested language for Condition 5 regarding the timing for the State to exercise its option to acquire the quarry, nor waive its right to appeal or otherwise seek judicial review of the Commission’s decision.

⁸ Just as the Commission lacked authority to itself issue a mining permit, it did not have the authority to dictate what terms the parties might choose to agree upon for inclusion within the permit, including, but not limited to, the terms of Condition 5.B.

An undisturbed buffer of existing natural vegetation shall be maintained between the mining disturbance and Park property as indicated by the "10 years buffer" shown on the site plan dated March 10, 1981.

An undisturbed buffer zone of existing natural vegetation shall also be maintained between the top edge of the bank of Crabtree Creek and any mining disturbance within the 10 years permit area. The buffer zone shall be of sufficient width to prevent offsite sedimentation and to preserve the integrity of the natural watercourse. In any event, the buffer will meet U.S. Corps of Engineers requirements for Crabtree Creek Watershed.

Id. at Exhibits Page 119 (emphasis added).

28. The Sunset Provision, permit Condition No. 5.B.⁹ ("Condition 5.B.") of the May 13, 1981 permit comprises part of the Reclamation Plan, which expressly addresses the issue of when mining operations shall cease and the State can exercise its option to acquire the quarry site, as follows:

If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, *whichever is sooner*, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

Id. at Exhibits Page 128 (emphasis added). In short, the Governor, the Attorney General, and the people of North Carolina were assured that these mining operations would cease within 50 years, a compromise between disallowing the mine completely and allowing it to continue indefinitely.

29. On information and belief, the wording of the above-quoted provisions in Conditions 3 and 5.B. of the issued May 13, 1981 permit (as well as the wording of the other Conditions of the Permit) were insisted upon by the Attorney General's Office and DEQ, absent which they would not have accepted and rather would have contested and appealed the

⁹ The paragraph numbering in the permit restarts several times. Though the permit contains more than one paragraph 5.B., the above reference is to the terms and conditions contained within the Reclamation Plan section, found on the final page of the permit.

Commission's Final Decision. Further, this language represented a mutually acceptable compromise between and among Wake Stone, the Attorney General's Office, and DEQ.¹⁰ *See* Affidavit of Rufus Edmisten, Exhibit 12.

30. The Commission raised no objections to the final terms of the permit issued by DEQ. Since the Commission had on several occasions indicated that any issued permit would be subject to its review, and since it is only reasonable to assume that the Commission did in fact review the terms of the permit, its silence implies at least tacit approval of the permit. Furthermore, Wake Stone did not raise any objections to or concerns with the permit as issued, and Wake Stone did not appeal the permit or otherwise seek judicial review of DEQ's action, thereby both indicating its acceptance of the permit's terms and waiving any objections it might have had to the permit's wording.

31. Between the issuance of the original permit and 2018, the permit was renewed four times (on April 1, 1991; April 20, 2001; March 20, 2011; and December 1, 2017), each time with the same language as the original permit with respect to Condition 5.B. During that same period of time, there were four modifications to the permit, all made at the request of Wake Stone (on April 15, 1986; February 5, 1992; October 11, 1986; and November 24, 2010).

32. The very first time Wake Stone raised any issue regarding the Sunset Provision was on March 7, 2011, when it applied for a permit renewal and informally raised the issue by phone and e-mail with Judy Wehner, DEQ Assistant State Mining Specialist ("Ms. Wehner"). Now

¹⁰ A memorandum from the Assistant Secretary of DEQ (previously known as NRCD) dated February 4, 1981, referencing a strategic meeting between members of that agency and Assistant AG Oakley, clearly evidences DEQ's dissatisfaction with the Commission's Final Decision and a commitment to insist that the permit contain "the most stringent possible conditions." Failing inclusion of such conditions, the memorandum indicates that DEQ would contemplate appealing the Commission's Final Decision. Exhibit 13 (containing later-added highlighting).

retired, Ms. Wehner was a veteran DEQ staff member with significant knowledge and expertise related to DEQ's mining program and the Wake Stone quarry in particular. In those communications, Wake Stone requested that DEQ consider modifying the language of Condition 5.B. from "whichever was sooner" to "whichever was later." Exhibit 14. This one-word change would completely remove the assurance of a mine limited to 50 years of operation, allowing it to continue to operate indefinitely.

33. On information and belief, the informal request in 2011 was considered and rejected by then-Division Director James D. Simons, who had first-hand knowledge of how the challenged language of Condition 5.B. had been reached in 1981. Accordingly, the permit was renewed without any changes to Condition 5.B., the Sunset Provision.¹¹ Likewise, during the same 37-year timespan, there is no record of any objections by Wake Stone to the buffer provisions of Condition No. 3, nor any request to modify the undisturbed vegetated buffer zone abutting Crabtree Creek to cause it to run from the centerline of the Creek, rather than from the top of the Creek bank's edge.

34. Historically, it was standard practice for DEQ to consult with N.C. Parks regarding the permit's issuance, re-issuance, and modifications.

CHALLENGED 2018 PERMIT MODIFICATIONS

35. By 2018, DEQ staff who had been aware of and/or involved in the 1981 permit proceedings and were familiar with the bases for that permit's negotiated terms had all died or

¹¹ The online copy of the March 30, 2011, official records of DEQ pertaining to the renewed 2011 permit, similar to many of the other permit records dating back to the 1980s, includes handwritten write-outs, strike-through, notes, and added verbiage by an unknown source. In addition, the 2011 permit records reflect removal of various provisions of the preceding permit without any record of a formal request for the modifications, along with other unexplained irregularities. Through discovery in this case, Plaintiff intends to attempt to obtain clean and accurate copies of all pertinent records, along with explanations for the various handwritten notes and changes, the identity of whomever added the notes and changes, when the notes and changes were added and at whose direction, and an explanation of the reason(s) for other apparent irregularities.

retired, including, but not limited to a) then-Division Director Stephen Conrad, who was directly involved in negotiations of the permit conditions with Wake Stone representatives in 1981 and responsible for the wording of the original permit, and b) then-Division Director James Simons who refused Wake Stone's informal 2011 request for modification of Condition 5.B. of the permit.

I. Fifty-Year Sunset Provision Modification

36. David Lee of Wake Stone sent an e-mail to Ms. Wehner on March 16, 2018, re-sending a copy of the previous e-mail of March 7, 2011, discussed in paragraph 32 hereinabove. Exhibit 15¹². In its March 16, 2018 e-mail Wake Stone referred to the change in the Sunset Provision as “a simple one-word change,” despite it being a major, substantive amendment directly at odds with the intent of the original permit and the parties involved in negotiating the final permit terms. As discussed in paragraphs 31 and 32 above, Wake Stone's 2011 request to change the 50-year Sunset Provision was rejected. The March 16, 2018 e-mail request for modification of Condition 5.B. was not made on DEQ's official form for modifications, and no fee whatsoever was paid by Wake Stone for the modification request to eliminate the Sunset Provision.

37. Absolutely no explanation was provided by Wake Stone as to why it had not previously raised any objection to the wording of the provision in the original or modified permits over a span of more than 30 years. The *only* proffered justification for its requested modification was that the Commission's 1981 Final Decision had used the language “whichever is later.” Wake Stone failed to mention the fact that the actual issued May 13, 1981 permit by DEQ included the

¹² Earlier, on February 26, 2018, Wake Stone had sent Ms. Wehner a letter requesting modifications to Condition 3 (buffers) of the permit, which is discussed hereinafter commencing at paragraph 48. Wake Stone's February 26, 2018 permit modification request did not include any request for modification of the 50-year Sunset Provision contained within Condition 5.B. or, for that matter, any of Condition 5's terms. Furthermore, Wake Stone never requested to amend or modify its February 26, 2018, modification request to include modifications to Condition 5.B.

language “whichever is sooner” without objection or challenge by Wake Stone, the Commission, or any other party.

38. The Condition 5.B. change would fundamentally change the permit and undo the basis for agreement to have ever issued a permit for this mine. The “whichever is later” language, if it is allowed to remain in the permit, would contradict all of Wake Stone’s representations, and the intentions of the actors in 1981, about this being a 50 year mine. This is especially true with Wake Stone currently— 41years after issuance of the permit—trying to expand the mine to a completely new piece of property. Instead of a 50-year mine, with the “later” language we have a mine that can continue operation indefinitely—until Wake Stone has finished extracting stone from both tracts decades from now and has not extracted any stone for an uninterrupted period of 10 years. Despite this, and despite the March 2018 DEQ administrators’ lack of knowledge of any of the circumstances surrounding the wording of Condition 5.B. in the issued permit, DEQ decided to accede to Wake Stone’s request and issue a new permit incorporating the changes based upon, at most, 3 days’ consideration.¹³ Neither Plaintiff, N.C. Parks, the Attorney General’s Office, any local residents or businesses in the vicinity of the Wake Stone quarry, or any members of the public were provided with any notice of or opportunity to comment or have any input whatsoever on: a) the fact DEQ was considering the modification to the permit at Wake Stone’s behest; b) the reasons given and representations made to DEQ by Wake Stone in support of change; c) consideration of the requested modifications by the DEQ staff; or d) the proposed wording of the Wake Stone permit as modified.

¹³ Wake Stone sent the e-mail requesting the change to Judy Wehner on March 16, 2018, and a new permit including the requested change to Condition 5.B. was issued by William (“Toby”) Vinson on March 19, 2018.

39. On information and belief, the members of the staff of DEQ involved in the review of very limited information supplied by Wake Stone in support of the suggested change to Condition 5.B. to the permit, taking part in the decision to grant the requested modifications, and involved in the wording of the permit as modified did not, at any time during their extremely brief deliberations, contact any of the former DEQ members knowledgeable regarding the issues raised by Wake Stone, including but not limited to former Division Director James Simons, the representatives of the Attorney General's Office responsible for or involved in negotiating the final terms of the original permit or with personal knowledge of what occurred, former members of the Commission familiar with the Commission's review and approval of the original permit, or anyone else involved in negotiating the terms of the original permit. In addition, it appears that DEQ did not seek or obtain the input of N.C. Parks or any other agencies regarding Wake Stone's requested modifications.¹⁴

40. During the 1981 hearings before the Commission on Wake Stone's appeal of the original denial of its permit application, representatives of Wake Stone repeatedly referenced the fact that it expected the mine to have a 50-year life, and even projected the anticipated aggregate output in tons per year over the 50-year life. A memorandum of December 31, 1980 to the Commission prepared by Becky French, Director of the Office of Administration Hearings, and who subsequently was tasked with conferring with counsel for Wake Stone and Assistant AG Oakley regarding the best method for transfer of the Wake Stone mining property to the State,

¹⁴ Aware of Plaintiff's and N.C. Park's interest in the permit, their strong objections to the permit having ever been granted, and their active participation in doing everything possible to protect Umstead State Park, DEQ had routinely notified N.C. Parks when DEQ was considering any material changes to previous permits and afforded N.C. Parks the opportunity to provide input. With respect to its consideration of the 2018 modifications, Plaintiff and N.C. Parks staff were kept in the dark.

reflects the general understanding of those involved that there would be a 50-year sunset on mining of the property under any alternative transfer scenario. Exhibit 16. As previously noted, but for the inclusion in the issued permit of the 50-year Sunset Provision contained in Condition 5.B, DEQ and the Attorney General's Office would never have agreed to issuing the permit, but rather would have appealed the Commission's Final Decision.¹⁵

41. As referenced above and incorporated herein is a true and correct copy of an affidavit of Rufus L. Edmisten, Exhibit 12, the Attorney General of the State of North Carolina from 1975 to 1985. According to Mr. Edmisten, he, then-Governor James Baxter Hunt, Jr., and then- DEQ Secretary Howard N. Lee, all publicly criticized the Commission's Final Decision, opposed the location of a quarry adjacent to Umstead State Park, and were publicly considering a legal appeal of that Final Decision. Mr. Edmisten states that the "whichever is sooner" language included in the wording of Condition 5.B. was consistent with Wake Stone's repeated public statements that it expected the life of the mine to be 50 years, after which it would be donated to the State, *i.e.*, a 50-year Sunset Provision. While Mr. Edmisten concedes that Wake Stone preferred there be no time limit for donating the land in Condition 5.B., he recalls that the Attorney General's Office and DEQ insisted upon the 50-year time limit for the mine to close and the donation to

¹⁵ Wake Stone has never denied that it made the commitment contained in the original Sunset Provision, starting with its initial application for a mining permit, during the hearings before the Commission, in discussions with DEQ staff, and to the public. In fact, in responding to DEQ's information requests as a result of Plaintiff's objections raised to the granting of the 2018 modification, Wake Stone admitted that the real reason for the modification request was to accommodate an anticipated quarry expansion. Exhibit 17 (providing Wake Stone's explanation that it needed to "postpone" its earlier commitments related to the Sunset Provision and including highlighting of relevant language). Wake Stone has estimated that its mining operations in the current footprint will, in fact, cease within the initial 50-year Sunset Provision, although others familiar with the quarry believe that rock reserves and the permitted mining depth would allow for mining beyond 50 years. What is known is that if the mining permit expansion is granted and the 50-year Sunset Provision modification is upheld, then mining operations will continue for decades beyond the original 50-year time limit.

occur. According to Mr. Edmisten, the issue was resolved with a compromise consisting of agreement to the “whichever is sooner” language in Condition 5.B. and, in return, a concession by the Attorney General’s Office and DEQ not to appeal the Commission’s Final Decision and to issue the permit.

42. Based on his recollection of what occurred at the time, Mr. Edmisten states that inclusion of the “whichever is sooner” language in Condition 5.B. of the May 13, 1981 permit was not a typographical error by then-Division Director Stephen Conrad; that it is difficult to believe that Wake Stone would have accepted the permit if it was an error or not objected to that language for nearly 37 years during which the permit was renewed or modified 8 times; and that it was and is inappropriate to modify the permit at this late date to eliminate a pivotal provision without which the permit would never have been issued—especially without the input of those actually involved in the decision-making process in May of 1981.

43. DEQ itself repeatedly referred to its actions, including in the cover letter accompanying the March 28, 2018 permit, as constituting “modifications” to the permit. Exhibit 18.

44. Some months later, Plaintiff became aware of a memorandum purportedly dated March 29, 2018, from S. Daniel Smith, Interim Director, Division of Energy Mineral and Land Resources (“Director Smith”), to “File,” subject: “Clarification Memorandum to File Wake Stone Corporation Permit No. 92-10, Wake County.” Exhibit 1. In the first paragraph, the memorandum references a letter received from the Plaintiff dated December 17, 2018, requesting reversal of the 2018 modifications to the permit. Since it clearly would have been impossible for Director Smith to know on March 29, 2018, that the Plaintiff had sent a letter on December 17, 2018

(approximately 8 months after the memorandum was created), it is clear the memorandum was improperly dated, either intentionally or accidentally.

45. The memorandum purports to be “correcting” the term “modification” in the March 28, 2018 cover letter, as it relates to Condition 5.B. in the permit, and it seeks to belatedly reframe the action taken as “a ministerial correction” and “not a permit modification.” The memorandum states that the Sunset Provision change in the March 28, 2018, permit was “made in response to an e-mail request received by Wake Stone dated February 26, 2018.”¹⁶ *Id.*

46. Director Smith’s belated and mis-dated memorandum notes that the Commission’s April 3, 1981 Final Decision used the phrase “whichever is later” in the quarry donation provision of Condition 5.B., while the permit issued by DEQ used the phrase “whichever is sooner,” thereby supposedly justifying Director Smith’s position that the Condition 5.B. modification was merely a “ministerial correction” “in keeping with the final agency decision.” *Id.*

47. The obvious implications of this distorted reasoning are that, in 1981, the parties, despite all the statements regarding a 50-year mine, did not really intend to put any time limitation on the mining activities, and that: 1) DEQ mistakenly, rather than intentionally, used the term “sooner” rather than “later”—a mistake missed by the Director, all staff members reviewing the permit, and representatives of N.C. Parks asked to review the draft 1981 permit; 2) counsel from the Attorney General’s Office involved in the hearing before the Commission and in the negotiations with Wake Stone’s counsel on the final terms of the permit, as well as others within

¹⁶ Notably, Director Smith’s memorandum does not mention the modification to buffer Condition 3 or the acceptance of the amended site plan map or even attempt to classify those modifications as mere “corrections.” Furthermore, the February 26, 2018 e-mail request from Wake Stone to DEQ is entirely related to buffer protection modifications and does not mention the 50-year Sunset Provision, making the reference to the February 26, 2018 e-mail irrelevant to the 50-year Sunset Provision.

the Attorney General’s Office, never noticed the “error;” 3) counsel for Wake Stone did not notice the different language, either initially or during the repeated renewals of the permit or numerous modifications to the permit over a 37-year timeframe; and 4) the Commission members who ordered issuance of the permit and their staff, comprised of DEQ and Attorney General staff persons who were intimately familiar with the terms of the Final Decision and undoubtedly received and reviewed the issued permit, likewise failed to notice the language. Without unduly belaboring the issue, Plaintiff submits that this belated, self-serving justification for why DEQ’s action was merely a “ministerial correction” is preposterous, disingenuous, belies credulity, and should be disregarded.

48. Moreover, in a letter of November 18, 2021, sent to current Division Director Brian Wrenn (“Director Wrenn”) by Dwayne Patterson, Director of N.C. Parks, regarding Wake Stone’s requested expansion of its mining operations, Director Patterson specifically referenced the importance of the wording of Condition 5.B. in 1981, stating:

We ask that when weighing the various proposals regarding this matter and interpreting prior decisions of the Commission, you consider whether such a significant expansion of the quarry was ever contemplated. As far as DPR is concerned, we have always—*since our then-Director reviewed a draft permit including the "sooner" language in 1981—relied upon the plain language of the permit and planned for the land donation to occur at the "sooner" date of 2031 or the exhaustion of quarryable stone at the existing quarry.*

Exhibit 19 (referring to Exhibit 20) (emphasis added).¹⁷

¹⁷ North Carolina has long recognized that when the language of a statute is clear and unambiguous, it is the duty of a court to give effect to the plain meaning thereof and judicial construction of the legislative intent is not required. *See N.C. Dept. of Corr. V. N.C. Med. Bldg.*, 363 N.C. 189, 201, 675 S.E.2d 641, 649 (2009). Similarly, it has consistently held that when the plain language of a contract is clear, the intention of the parties is inferred from the words used, and there is no room for construction. *See Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996); *Jones v. Casstevens*, 222 N.C. 411, 413, 23 S.E.2d 303, 305 (1942). These legal principles should likewise apply to final rulings and pronouncements of administrative bodies, including issued permits. There is nothing ambiguous in the use of the language “whichever is

II. Buffer Modifications

49. On February 26, 2018, David Lee of Wake Stone sent a letter to Ms. Wehner stating he had “discovered” that the then-current site plan map dated February 4, 2011, Exhibit 21 (prepared by Wake Stone),¹⁸ did not properly delineate the property boundary “as the centerline of Crabtree Creek.” Exhibit 22. The letter further states “[i]t appears that this discrepancy occurred during our company’s transition to digital mapping.” *Id.*

50. Plaintiff agrees that the *property boundary* is the centerline of Crabtree Creek. The property boundary has never been in dispute, and any suggestions that previous maps improperly denoted the property boundary are unfounded as previous site plan maps properly showed this boundary. *E.g.*, Exhibit 21. Those maps’ depictions of the property boundary also are consistent with Wake County’s real property records, contrary to Mr. Lee’s assertion. Exhibit 23. What is in dispute is the relevance, or lack thereof, of that line with respect to the undisturbed vegetated buffer along Crabtree Creek.

51. Wake Stone’s February 26, 2018 letter also asserts that “[t]his discrepancy is critical in that the buffers are to be measured from the Property Boundary/Mining Permit Boundary (which are one and the same).” Exhibit 22. This statement is erroneous. Further, previous permits and site plan maps indicated that the undisturbed vegetated buffer along Crabtree Creek began at the top of the bank where vegetation begins, and therefore was not intended to be related to the property boundary where the Creek divides the Odd Fellows Tract from Wake Stone’s existing quarry property. For example, and as previously noted, the original 1981 permit expressly stated

sooner” as used in Condition 5.B. of the initial Wake Stone permit, and the intent of DEQ in choosing that language in 1981 should therefore be inferred from the words used.

¹⁸ It is easier to view this map online, although Plaintiff has attached a printed copy to this Complaint. The map may be found at the following web address: <https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/DEMLR/wake-stone/2011A.jpg>.

that “[a]n undisturbed buffer zone of existing natural vegetation shall also be maintained *between the top edge of the bank of Crabtree Creek and any mining disturbance* within the 10 year permit area.” Exhibit 11 (emphasis added). Any mapping corrections made to the property boundary simply do not affect in any way the location of the undisturbed vegetated buffer along the Creek.

52. The 2011 and 2017 permits also contained consistent buffer language:

3. Buffer Zones

A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.

B. Sufficient buffer shall be maintained *between any affected land and any adjoining waterway* or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.

C. A minimum buffer zone of 250 feet shall be maintained *between any mining activity and Crabtree Creek along the north side of the mine site*.

D. A minimum buffer zone of 100 feet shall be maintained between any mining activity and both the Umstead Park property and adjoining property along the east and south sides of the mine site, respectively.

E. All buffer zones shown on the Site Plan Map dated February 4, 2011 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, *shall remain undisturbed*.

Exhibit 24 at Exhibits Page 221 (emphasis added).

53. The letter also included a revised site plan map, Exhibit 25, modifying the 100-foot and 250-foot undisturbed vegetated buffers adjoining Crabtree Creek to run from the Creek’s centerline. This map changes the language used to denote the undisturbed vegetated buffers; in comparison to the 2011 site plan map, the 2018 version changed the language for the 100-foot

buffer from “100’ Undisturbed Vegetated Buffer” to “100’ Buffer from Property Boundary,” and changed the language for the 250-foot buffer from “250’ Undisturbed Vegetated Buffer” to “250’ Buffer from Property Boundary.” *Cf.* Exhibits 21 and 25.

54. Wake Stone further requested that Conditions 3.C and 3.D be removed from the permit and to change Condition 3.E to 3.C to read: “All buffer zones shown on the Site Plan Map revised February 26, 2018 be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required erosion control and sedimentation control measures and approved earthen berms, shall remain undisturbed.” Exhibit 22 at Exhibits Page 211.

55. Taken together, Wake Stone’s requests would result in measuring the undisturbed vegetated buffers from Crabtree Creek’s centerline instead of the top edge of the Creek, thereby significantly reducing the total undisturbed vegetated buffer area by approximately 230,000 to 280,000 square feet, or 5.28 to 6.43 acres.

56. In its letter, Wake Stone stated that it assumed the changes would qualify as a “mining permit modification,” and it asked that its letter be accepted as a “formal request to modify” its’ permit. *Id.* Upon information and belief, Wake Stone never submitted a formal modification request using DEQ’s official forms, and it is unclear if the required fee was paid by Wake Stone, as required by N.C. Gen. Stat. § 74-52(a) and 15A NCAC 05B.0122 Permit Application Processing Fees.

57. 15A NCAC 05B .0122 (b) sets forth the submission requirements for minor and major modifications:

Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. *All other changes to the permit are major modifications.*

(emphasis added).

58. Applying the above the language in 15A NCAC 05B .0122, Wake Stone's requested amendments and resulting diminution of undisturbed vegetated buffer area constitute major changes. Accordingly, DEQ's categorization of these amendments as "ministerial" is incorrect and misleading.

59. On or about March 26, 2018, DEQ provided Wake Stone with a new modified permit signed and dated on March 19, 2018. On that same day, Wake Stone e-mailed Ms. Wehner with a list of 8 requested changes, as noted in handwritten annotations on the permit dated March 19, 2018. Exhibit 26. In its communication, Wake Stone represented that its requested modifications were to correct "several editorial/typographical errors." *Id.*

60. Upon review and later forwarding Wake Stone's request to her supervisors, Ms. Wehner recommended that 7 of Wake Stone's suggestions be accepted, but specifically stated that she did not agree with the requested changes to Condition 3 with regard to changing the buffer area's location along Crabtree Creek to run from the Creek's centerline rather than from the Creek's bank. *Id.*

61. Despite Ms. Wehner's recommendation and within 23 minutes of Ms. Wehner's e-mail, then-Interim Division Director William "Toby" Vinson indicated that he approved of all 8 requested changes. *Id.* Upon information and belief, Mr. Vinson only had held his position as Interim Division Director for a few weeks and had not previously worked on this permit during his tenure at DEQ.

62. Wake Stone did not provide any legal basis or substantiated factual basis for its patently incorrect representation to DEQ that the boundary line for the 100-foot and 250-foot

undisturbed vegetated buffers adjoining Crabtree Creek should be the property boundary line and/or that those buffers should run from the centerline of the Creek.

63. There are no applicable statutes or regulations suggesting that a buffer adjacent to a stream is to be measured from the stream's centerline, nor directing or authorizing the use of a property boundary as the beginning point of an undisturbed vegetated buffer abutting a stream. To the contrary, DEQ's regulations suggest that such buffers exist in the area between any stream and the mined land. 15A NCAC 05B .0105(2) (specifying that DEQ may issue a permit when subject to certain conditions, including that "a natural buffer be left between any stream and the affected land). Nonetheless, and without providing any justification for its actions, DEQ accepted Wake Stone's representations after giving the matter little time or consideration. This was done without the customary notice to or input from any other interested agencies or members of the public. As a result, a large swath of long-designated undisturbed vegetative buffer area was improperly eliminated by sheer administrative fiat.¹⁹

64. DEQ issued a modified permit signed and dated on March 28, 2018. Exhibit 18.

¹⁹ It is worth noting that Wake Stone's April 7, 2020, application for a permit modification included site plan maps showing significant mining disturbance within the buffer area that previously had been protected until the 2018 modification. Exhibit 27 (also available online at <https://edocs.deq.nc.gov/EnergyMineralLandResources/DocView.aspx?id=347&dbid=0&repo=EnergyMineralLandResources>); *see also* Exhibit 28 (excerpted) (confirming that Wake Stone intended for the undisturbed, vegetated buffer to start at the Creek's centerline) (excerpted). Plaintiff submits that the real reason for Wake Stone's 2018 buffer modification request, as later implicitly admitted by Wake Stone in responding to DEQ's post-2018 inquiry into the buffer change, was to enable it to expand mining operations onto the Odd Fellows Tract, which would require disturbing the previously-protected buffer area. *See* Exhibit 17 (including highlighting of relevant language).

C. Violation of Applicable Statutes and Agency Rules

65. N.C. Gen. Stat. § 74-52(c) provides that permit modifications are to be “generally consistent with the bases for issuance of the original permit.” The modification and effective elimination of the Sunset Provision, by substituting “whichever is later” for “whichever is sooner,” wholly undoes one of the important and material bases for issuance of the original permit. As explained above, “whichever is later” allows Wake Stone to continue to operate the mine for as long as it likes, with the 50-year cutoff of operation next to the Umstead State Park intended by the drafters completely undone.

66. DEQ’s actions in modifying the 50-year Sunset Provision and changing the boundary of 100-foot and 250-foot undisturbed buffer zones abutting Crabtree Creek from the top edge of the Creek to the centerline of the Creek were both inconsistent with the bases for issuance of the original permit under N.C. Gen. Stat. § 74-52 (c). DEQ’s actions therefore exceeded the agency’s statutory authority, constituted an erroneous application of law, and represented an abrogation of the agency’s statutory duties. Furthermore, DEQ acted contrary to law and its own regulations by granting modifications absent the filing of formal applications and the payment of required fees by Wake Stone pursuant to the terms of N.C. Gen. Stat. § 74-52(a) and the provisions of 15A NCAC 05B .0112(a), (d) and (e), and its decision to grant the modifications requested by Wake Stone was arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

D. Estoppel

67. If Wake Stone was not in agreement with the provisions of the original permit, it had the opportunity to appeal in 1981, yet it chose to accept and operate under those provisions. Had it appealed, the Plaintiff, DEQ, the Attorney General’s Office, and other interested agencies

and parties would have had the opportunity to participate in the appeal process, which was denied to them in the long-delayed, informal, and *ad hoc* modification process followed in the contested instance.²⁰ Furthermore, by itself accepting the Sunset Provision and buffer condition contained in the original permit without challenge for over 37 years, Wake Stone was estopped from thereafter belatedly and improperly challenging these substantive provisions that are critical to protecting the Umstead State Park and the people of the State of North Carolina. Those provisions are fully consistent with the terms negotiated between DEQ, the Attorney General's Office, and Wake Stone in 1981, with the bases for issuance of the original permit, and with the bases communicated to then- and still-interested agencies and parties.

E. Exhaustion of Remedies

68. It was not until November 6, 2018, that Plaintiff unexpectedly discovered the disturbing permit modifications while engaging in a public records examination of the Wake Stone permit file at DEQ's office. Plaintiff had no previous knowledge of Wake Stone's 2018 modification requests or DEQ's granting of those modifications.

69. While N.C. Gen. Stat. § 74-61 affords to anyone affected by a permit modification the right to file a petition to contest the action within 30 days after the decision is made, the 30-day window ended on June 28, 2018, thereby precluding Plaintiff from taking advantage of any administrative review rights through no fault whatsoever on its part. This provision assumes that DEQ's decision is knowable to any person affected by that modification.

²⁰ Had a timely challenge or appeal been filed by Wake Stone in 1981, those personally involved in the wording of the original permit and the negotiations between the parties between the date of issuance of the Mining Commission's Final Decision and the issuance of the original permit would have been available to explain the circumstances and the reasons for the original permit's language.

70. Plaintiff claims that the modifications requested by Wake Stone to Conditions 3 and 5.B. adversely impacts Umstead State Park by reducing the 100-foot and 250-foot. undisturbed buffers adjacent to Crabtree Creek and bordering Umstead State Park, and by gutting the 50-year Sunset Provision. By reason of the Plaintiff's primary dedicated purpose and responsibility in conserving, protecting, and enhancing Umstead State Park and its surrounding environment for its members, Plaintiff is adversely impacted by DEQ's modifications to the permit.

71. On November 14, 2018, Plaintiff's Chair, Dr. Jean Spooner ("Dr. Spooner"), sent a letter to then-DEQ Secretary Michael A. Regan, on behalf of itself and its 16 partner conservancy organizations to request the reversal of the 2018 permit modifications. Exhibit 29. The letter pointed out that the permit modifications had been made by DEQ staff without any notice whatsoever, were not "clerical corrections," but constituted significant substantive changes to important and fundamental negotiated bases for of the issuance of the original permit in 1981, and that the modifications were inconsistent with multiple permit renewals and modifications made during the 37-years preceding the 2018 modification. *Id.*

72. On March 5, 2019, DEQ invited Plaintiff's representatives to a meeting to discuss Plaintiff's objections to the permit modifications. On March 12, 2019, Dr. Spooner sent a memorandum to DEQ summarizing the meeting and Plaintiff's objections. Exhibit 30. Following a May 7, 2019 meeting with Director Smith, Plaintiff waited to hear whether DEQ intended to correct the 2018 modifications.

73. Since the May 7, 2019, meeting, Plaintiff's representatives have been culling through the State Archives searching for relevant DEQ records regarding the permit provisions and various subsequent additions/changes to the permit—many of which are nowhere to be found among the records DEQ maintains at its office. Plaintiff has worked diligently to uncover and

confirm the facts underlying this Complaint and has shared them with the Attorney General's Office which, based upon information and belief, has shared them with DEQ. In a virtual meeting held on January 7, 2022, Representatives of Plaintiff discussed these issues with Director Wrenn. Plaintiff has heard nothing further from DEQ or the Attorney General's Office.

74. Despite Plaintiff's efforts to share with DEQ all pertinent information it obtained from other agencies' files and the State Archives so that DEQ internally could rectify the improper permit modification before the filing of this action became necessary, and DEQ's knowledge that significant public interest exists with respect to Wake Stone's Triangle Quarry, DEQ has failed to correct its errors or even to inform Plaintiff as to what course of action it intends.

75. DEQ failed to provide Plaintiff and other interested parties notice of the permit modification. DEQ's actions ensured that the present action would be Plaintiff's only available avenue for relief.

CLAIMS FOR RELIEF

1. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 74 of this Complaint.

2. By reason of the matters alleged above in this Complaint, Plaintiff seeks and is entitled to:

a. Judicial *de novo* review of whether DEQ's actions in granting the modifications requested by Wake Stone violated applicable laws or regulations, exceeded the agency's statutory authority, and/or were erroneous in derogation of the agency's statutory duties;

b. Judicial whole record review of whether DEQ's actions in granting the modifications requested by Wake Stone were arbitrary and capricious, an abuse of discretion, and/or unsupported by substantial evidence;

c. A finding and declaration that due to DEQ not notifying Plaintiff or the public that it was considering Wake Stone's modification requests or that it had granted those requests, Plaintiff was not required or able to file an appeal under N.C. Gen. Stat. § 74-61 or §150B-23, and that Plaintiff is entitled to review of the agency's decision by *certiorari*;

d. A finding and declaration by the Court that in approving the requested permit modifications and issuing an amended permit with those modifications, as well as accepting an amended site plan map, DEQ: (i) violated applicable statutes or regulations, including the terms and provisions of N.C. Gen. Stat. §§ 74-52 (a), (c), 74-54.1, and 15A NCAC 05B .0112 (a)–(e); (ii) exceeded its statutory authority under N.C. Gen. Stat. §§ 74-52(a), (c) and 74-54.1; and (iii) acted erroneously in derogation of its statutory duties under N.C. Gen. Stat. §§ 74-52(a), (c) and 74-54.1;

e. A finding and declaration by the Court that DEQ's actions in agreeing to the permit modifications requested by Wake Stone and amending the permit to incorporate those modifications were arbitrary and capricious, unsupported by substantial evidence, and constituted an abuse of the agency's discretion; and

f. A finding and declaration that the permit dated March 28, 2018, including the related revised site plan map, was improperly, improvidently, and unlawfully issued by DEQ, that the modified permit is void, *ab initio*, and that the modified permit with revised 2018 site plan map therefore should be rescinded in its entirety, leaving the 2017 permit in force without the improper 2018 modifications.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to enter an order and judgment:

1. Finding that it has jurisdiction over this action pursuant to the provisions of N.C. Gen. Stat. §§ 1-253, 1-254, 1-269, 7A-3, 7A-240, 7A-243, 7A-245, 7A-250, and 150B-43 *et. seq.*; that venue is proper in this Court under N.C. Gen. Stat. § 1-82; and that it has *in personam* jurisdiction over Defendants under N.C. Gen. Stat. §§ 1-75.3 and 1-75.4.

2. Finding and declaring that DEQ issued the permit dated March 28, 2018 in violation of applicable statutes and regulations, exceeded its statutory authority and duties, and that DEQ's actions were arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

3. Finding and declaring that the permit dated March 28, 2018, is void, *ab initio*, and ordering DEQ to revoke the permit and accompanying site plan map in their entirety, as well as any other subsequent permit and site plan renewals or modifications incorporating and/or based upon the 2018 modifications to Condition 3 and/or Condition 5.B.

4. Finding and declaring that the permit terms that went into effect on December 1, 2017 remain in force;

5. Awarding to Plaintiff its costs, including an award of reasonable attorney's fees; and

6. Ordering and granting any such other and further relief as the Court deems just and proper.

[Signature on the following page]

This the 28th day of December, 2022.



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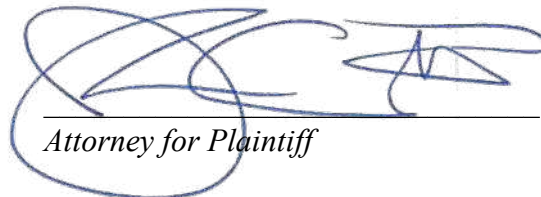
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT and PETITION FOR WRIT OF CERTIORARI on all of the existing parties *via* email transmission to their counsel of record, and via Certified Mail return receipt requested to Wake Stone Property Company's registered agent on this 28th day of December, 2022, addressed as follows:

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Exhibit 1

March 29, 2018

Memorandum

To: File

From: S. Daniel Smith, Interim Director 
Division of Energy Mineral and Land Resources

Subject: Clarification Memorandum to File
Wake Stone Corporation
Permit No. 92-10
Wake County

The Umstead Coalition, in a letter received dated December 17, 2018, requested the following: "NC DEQ Reverse permit 92-10 modification dated March 28, 2018 and return the Condition 5.B. text to 1981 permit wording which remained correct through the December 2017 Permit."

A DEQ file review confirmed that the 1981 Final Agency Decision from the Mining Commission used the word "later" and did not use the term "sooner" in the final agency decision.

The purpose of this Clarification Memorandum is to identify and correct the term "modification" as it relates to Condition 5. B. This was a ministerial correction made to conform the language of the permit with the 1981 decision of the Mining Commission. This was not a permit "modification" as defined in the Mining Act. What did occur was a ministerial correction to the permit. This ministerial correction to the permit was in response to an email request received by Wake Stone dated February 26, 2018.

Accordingly, a ministerial correction to the permit occurred by removing the word "sooner" and replacing that word with "later" in Reclamation Condition No. 5. B. in Permit 92-10, in keeping with the final agency decision.

ADAMS, SARGENT AND HINTON
ATTORNEYS AT LAW
1701 EXECUTIVE DRIVE
P. O. BOX 19471
RALEIGH, NORTH CAROLINA 27609
(919) 876-8140

THOMAS F. ADAMS, JR.
WILLIAM C. SARGENT III
CHARLES L. HINTON III

February 4, 1980

Mr. J. K. Sherron, Director
State Property Office
North Carolina Department of
Administration
116 West Jones Street
Raleigh, North Carolina 27611

Dear Mr. Sherron:

The purpose of this letter is to outline the proposal of my client concerning the use and disposition of property located at the northwest corner of the intersection of I-40 and Harrison Avenue.

The total area of the tract of land at this location is approximately 225 acres. On behalf of my client, I hold options on approximately 195 acres. The 195 acre tract has a common boundary with Umstead Park on the east side of approximately 3,000 feet, and on the north side (along the Crabtree Creek) of about 2,800 feet. It lies on the north side of Interstate Hwy. No. 40, having a frontage of about 4,000 feet.

The intended use of the property is the development of the northern area as a rock quarry and the southern portion for other commercial uses. The commencement point of development will be about 2,200 feet north of I-40. Up to this date, no core drilling has been done in order to accurately assess the quantity and quality of the stone. However, based on rock outcrops, my client believes that the rock deposit is extensive and that it is reasonable to expect that quarrying will be feasible.

Let me point out that I have no personal interest in this property. My client is experienced in quarry operations. The method of operation of two existing quarries in which he participates demonstrates his interest and concern for others in the immediate community. Ample proof of this was demonstrated recently when it was sought to have additional land in Wake County rezoned to accommodate the future expansion of this quarry. Not even one neighbor objected to the requested rezoning and there was not even a request from a neighbor for a buffer area. It is also noteworthy that one adjacent property owner

Mr. J. K. Sherron
Page Six
February 4, 1980

The objective in following a contour as opposed to providing a buffer of a designated width is to provide a natural vertical screen which is so high that the quarrying of stone will not be visible to persons on the Park property.

As to the buffer along the creek, we would need to reserve easements to cross for such purposes as connecting to any utility lines which are installed or required by any lawful authority, provide drainage and to withdraw water from the creek in the unlikely event that this should be necessary.

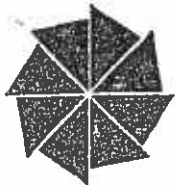
Whenever the quarrying of stone on our property is completed, my client will have no further need for the quarry area. At that time, my client will donate to the State for use as a part of Umstead Park all of those tracts of land shown on the enclosed map which are encompassed by an orange line and which consist of approximately 75 acres. We would provide that this gift would occur at the end of 50 years or 10 years after quarrying operations have ceased without having been resumed, whichever is later.

In order to protect and assure our ability to borrow money to finance the establishment of the quarry and to finance the expansion and upgrading of facilities from time to time, we would need to provide that the obligation to make the gift is subordinate to any bona fide encumbrances to which the property may be subjected from time to time.

The creation of the buffer zones and the obligation to make the gift of the property as above outlined would be provided for in a binding contract between the property owner and the State of North Carolina. This contract would be recorded and would run with the land whereby it would bind all subsequent owners of the property. Conditions for the creation of the buffer zones will be the acquisition of the property by me or my client and the rezoning of the property to an industrial classification. A condition of the gift will be the development of the property as a quarry.

It has been the experience of the quarrying industry that an abandoned quarry fills with pure ground water. The result is a beautiful lake with an abundant supply of clear water. A striking example of this is the lake in Lakestone Subdivision, one of Raleigh's best residential areas. Chapel Hill is now using a quarry lake to boost its overtaxed water supply. I am sure you can think of many more examples.

We believe that the lake site resulting from quarrying plus the additional land which we propose to donate will be a valuable addition to Umstead Park. Equally attractive, it will be provided without the substantial cost which the State would incur if it purchases our property.



North Carolina Department of Natural
Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF
LAND RESOURCES

Stephen G. Conrad, Director

Box 27687, Raleigh 27611
Telephone 919 733-3833

August 22, 1980

Mr. John Bratton
Wake Stone Corporation
Box 190
Knightdale, North Carolina 27545

Dear Mr. Bratton:

A detailed evaluation has been made of your application for a mining permit for the Cary quarry in accordance with G.S. 74-51.

The evaluation consisted of site inspection, engineering analyses and several discussions between you and members of my staff. Based on this evaluation, I find that the proposed quarry operation would have a significantly adverse effect on the purposes of a publically owned park, forest, or recreation area and your permit application is hereby ~~denied~~. (G.S. 74-51 (5)).

The combined effects of noise, sedimentation, dust, traffic and blasting vibration associated with the proposed quarry operation would produce primary impacts on William B. Umstead State Park in the form of noise intrusion and deterioration of visual resources. Our evaluation of your permit application further indicates there are no feasible modifications that can be made to the application that would make it acceptable.

In accordance with G.S. 74-61 you may appeal this decision to the North Carolina Mining Commission, provided such appeal is made within 60 days after receipt of this notice. Your request for a hearing should be addressed to Dr. Henry B. Smith, Chairman, North Carolina Mining Commission, 3405 Caldwell Drive, Raleigh, North Carolina 27607, with a copy to this office.

Very truly yours,

Stephen G. Conrad

Stephen G. Conrad, Director

SGC/ps

Wake Stone Corporation

Locations at
U. S. 64 East, Raleigh, N. C.
U. S. 1 at Deep River, Moncure, N. C.

Phone:
919/266-9266 — Knightdale
919/775-7349 — Moncure

Home Office Address:
P. O. Box 190
Knightdale, N. C. 27545

September 16, 1980

Dr. Henry B. Smith, Chairman, N. C. Mining Commission
N. C. State University
225 Riddick Building
Raleigh, N. C. 27607

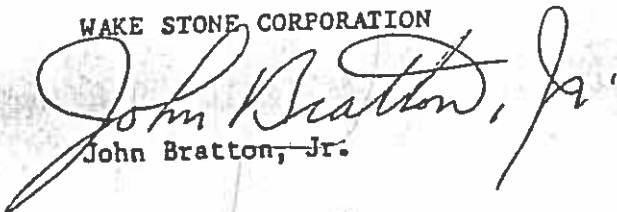
Dear Dr. Smith:

On behalf of Wake Stone Corporation I hereby request a hearing before the N. C. Mining Commission to appeal a denial for a mining permit dated August 22, 1980 by Mr. Stephen G. Conrad, Director, Division of Land Resources. The date of the application for the permit was May 26, 1980 and additional information was provided on April 9, 1980.

We would appreciate the hearing being held as expeditiously as possible.

Yours truly,

WAKE STONE CORPORATION


John Bratton, Jr.

JB, JR/pw

cc: Mr. Stephen G. Conrad, Director
N.C.D.N.R.C.D.
Box 27687
Raleigh, N. C. 27611

BEFORE THE MINING COMMISSION

In the Matter of Denial of)
Permit Application of the)
Wake Stone Corporation)

Findings of Fact, Con-
clusions, and Decision

This cause was heard before the Mining Commission on November 6 and 7 and December 16 and 17, 1980, pursuant to NCGS 74-61 and NCGS 150A-23 et seq., to consider the denial by the Division of Land Resources, Department of Natural Resources and Community Development (hereinafter the Department), of Wake Stone Corporation's application for a permit.

Preliminary Statement

Wake Stone Corporation (hereinafter the Petitioner) has options to purchase various parcels of land, some of which adjoin Umstead State Park (hereinafter the park). It seeks a permit to quarry stone there. The Department denied Petitioner's request for a permit. The Petitioner then appealed this decision to the Mining Commission.

Issue

The issue in this case is whether the proposed quarry would have a significant adverse effect on the purposes of the park.

Statutes

The Department is empowered to issue a permit to quarry stone "conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objective of this Article." NCGS 74-61. The Department may deny a permit if "the operation would

have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area." NCGS 74-61(5). An applicant may appeal the Department's action to the Mining Commission, which may "affirm, affirm with modifications, or overrule the decision of the Department and may direct the Department to take such action as may be required to effectuate its decision."

NCGS 74-61.

Background Information

The park consists of 5,217 acres in Wake County, along the eastern edge of the Piedmont Plateau, between Raleigh and Durham. The master plan developed for the park in 1974 sets forth its history:

Until 1934, the land now occupied by Umstead Park was a farm community--houses, mills, and fields in various stages of use and abandonment. Poor agricultural techniques, such as one crop farming, primarily cotton, led to the loss of topsoil and subsequently, a submarginal existence. Second-growth timber was then removed from some upland areas, which expedited the erosion process.

During the great depression, the United States Resettlement Division began a program of purchasing sub-marginal farm land, and in 1935 a proposal to acquire and develop a recreational demonstration project was instigated generally within the area now known as Umstead Park. The development of this area was jointly supervised by the National Park Service and the Department of Conservation and Development and until 1943, all development and land acquisition was financed by Federal money.

In addition to the development of four group camps, a lake, temporary roads and utility systems, the CCC Work Force was responsible for important conservation measures such as tree planting and the construction of check dams, which aided the stabilization of the soil.

World War II forced the abandonment of Federal activities and on April 6, 1943, the United States deeded to the State of North Carolina, for the sum of one dollar, 5,088 acres to serve "public park, recreation, and conservation purposes". This land was officially designated as Crabtree Creek State Park. In 1947 and 1949, public use facilities including picnic areas, tent and trailer campgrounds, and utilities were financed by the General Assembly's first State Parks Division appropriation.

The master plan also describes the present and projected use of the surrounding land:

Umstead Park lies in a highly urbanized area of the State and, as in the past, is currently under pressure from adjacent development. Suburban Raleigh is rapidly moving westward and recent development, in fact, abuts the eastern edge of the Park. With the development of Crabtree Valley Shopping Center and Interstate 40, land values have risen enormously so that a setting for residential and industrial growth in very close proximity to the Park has developed. City and county land use zoning has set the stage for both of these types of uses so that the only inhibiting factor at present is the lack of sanitary sewer and water lines. While it is only a matter of time before these utilities are provided, the exact location of the utility easements has not yet been pinpointed as it relates to the Park. Specifically, the land adjacent to the northeast between the Park and Highway 70 and that land between I-40 and the park boundary is currently under considerable pressure for building In addition, the Raleigh thoroughfare plan indicates the construction of a new road linking I-40 and the Duraleigh Road as an extension of the Southern Belt-line which, without control measures, will most certainly create similar development pressure.

Raleigh-Durham Airport lies adjacent to Umstead Park's western boundary and presently has two runways; one for commercial airlines runs parallel to the Park in a northeast/southwest direction and the other, for small craft use, lies perpendicular to the Park in an east-west direction. The Airport Authority is currently in advanced stages of planning a new runway and enlarged facilities. The proposed runway would lie perpendicular to the Park south of the Airport's existing facilities and service commercial flights.

Thus, Highway 70, Interstate 40, and Raleigh-Durham Airport bound the park on three sides. Of these three neighboring land uses, the airport has the most pronounced effect on the day-to-day uses of the park. The map on page 9 of the master plan depicts two broad swaths, covering about one-half of the park, as "airport impact zones." The plan states:

Noise emanating from the airport as well as the major roads, I-40, Highway 70, and proposed roads, is important not only to the location of overnight facilities in the Park but also those areas of daytime use where a greater degree of tranquility is required. Flight zones over the Park from the existing

small craft runway and proposed runway impact the park not only due to noise but also visually so that, in these zones, the location of uses requires considerable scrutiny.

In summary, Umstead Park is not today, nor will it ever again be, a primeval wilderness.

Stipulations

In the Prehearing Order, Wake Stone Exhibit #3, the parties stipulate as follows:

1. The only contested matters are blasting, dust, traffic, noise, and visibility.
2. Blasting will occur eight to twelve times per month and at vibration and air blast levels within the Department's guidelines.
3. The Petitioner's dust control plan has a permit to operate proposed air pollution abatement facilities for controlling dust.
4. The Division of Highways has determined that a coincidence of projected peak traffic for the park and the quarry will not create unsafe conditions.

Findings of Fact

A. Chronology of Events

1. On March 21, 1980, Wake Stone Corporation, operator of several stone quarries in North Carolina, applies for a permit to quarry stone on 195 acres situated north of Interstate 40, south of the airport, at the southwest corner of the park. Wake Stone Exhibit #1.
2. By letter dated August 22, 1980, Mr. Stephen G. Conrad, Director, Division of Land Resources, Department of Natural Resources and Community Development, denies the permit. State Exhibit #18.
3. By letter dated September 16, 1980, the Petitioner requests a hearing before the Mining Commission to appeal the denial. State Exhibit #19.

4. On October 31, 1980, Mr. Daniel C. Oakley, Assistant Attorney General, appearing on behalf of the Department, and Mr. James M. Kimzey, Esquire, appearing on behalf of the Petitioner, hold a prehearing conference and file a Prehearing Order. Wake Stone Exhibit #3.

5. On November 6 and 7 and December 16 and 17, 1980, the Mining Commission hears the appeal.

B. Evidence

1. A summary of the important objective evidence on the matters of blasting, noise, and visibility is as follows:

a. On blasting, the Department puts into evidence documents showing that the southern area of the park is an "airport impact zone." Department Exhibit #20, pp. 8-9.

For the Petitioner, Phillip Berger testifies that the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151, and that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2.

b. The testimony of the noise experts for each party is in substantial accord. Bruce G. Leonard testifies for the Petitioner that the ambient noise level in the pertinent section of the park is about 45 decibels on an A weighted scale (dB(A)), Tr. p. 227, and the projected noise level of equipment and trucks, measured at various points in the park, ranges from 46 to 55 dB(A), Tr. pp. 228-39. He also testifies that the Federal Highway Administration standard for traffic noise in parks is 57 dB Ldn or Leq, Tr. p. 224, and that the Division of Parks and Recreation has proposed a guideline for noise levels in parks of 55 dB Ldn or Leq.

For the Department James D. Simons testifies that the ambient noise level in the southwestern part of the park is about 45 dB(A), Tr. p. 414, and

the projected noise level of equipment and trucks ranges from 51 to 55 dB(A), Tr. p. 496 (see also pp. 497-516). Documentary evidence introduced by the Department indicates that most of the southern half of the park is a flight zone for aircraft taking off and landing. Department Exhibit #20, pp. 8-9.

c. The testimony on visibility reveals little agreement among the experts. For the Petitioner, Earl Harbison testifies that, due to topography and vegetation, the crushing equipment at the proposed site would generally not be visible from the park. Tr. pp. 158-98.

Richard Hazard testifies for the Department that, during the summer, the equipment could be visible from a few areas in the park, and, during the winter, it would be visible "from a good area within the southern half" of the park. Tr. pp. 776-8.

2. The purposes of the park are to preserve natural resources and to make them available to the public for recreation and wildlife interpretation. Tr. p. 912 (testimony of Stephen G. Conrad for the Department).

Conclusions

The Mining Commission makes the following conclusions:

1. Blasting - Based on:

a. the stipulation by the parties that vibration and air blast levels generated by proposed blasting are within the Department's guidelines, Wake Stone Exhibit #3, p. 2;

b. documentary evidence that the southern area of the park is an "airport impact zone" (i.e. a flight zone for incoming and outgoing airplanes), Department Exhibit #20, pp. 8-9;

c. Phillip Berger's testimony that

i. the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151; and

ii. that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2,
the Commission concludes that blasting will not have a significant adverse effect on the purposes of the park.

2. Based on:

a. the stipulation by the parties that the Petitioner's dust control plan is designed to meet Department standards, Wake Stone Exhibit #3, p. 2; and on

b. James D. Simons's testimony that the dust from blasting is not a concern of the Department in this case, Tr. p. 490,
the Commission concludes that dust from the quarry and roads will not have a significant adverse effect on the purposes of the park.

3. Based on the stipulation by the parties that the Division of Highways has determined that, even with a coincidence of projected peak traffic for the park and the quarry, there would be no unsafe traffic conditions, the Commission determines that traffic generated by the quarry would not have a significant adverse effect on the purposes of the park.

4. Based on:

a. testimony of Bruce G. Leonard, Phillip Berger, and James D. Simons about an existing noise level of about 45 dB(A), Tr. pp. 227 and 414, and projected noise levels ranging from 46 to 55 dB(A);

b. the absence of a noise level standard for equipment near parks such as this one; and

c. the analogous, though not dispositive, Federal Highway Administration standard for traffic noise in parks of 57 dB Ldn or Leq, Tr. pp. 224-5; and

d. testimony by Bruce G. Leonard that the Division of Parks and Recreation has proposed a guideline of 55 dB Ldn or Leq, Tr. p. 224, the Commission concludes that the noise from the quarry machinery and traffic will not have a significant adverse effect on the purposes of the park.

5. The Commission concludes from the conflicting testimony of Earl Harbison and Richard Hazard that, while the crusher may be visible from certain places in the park, such visibility will not have a significant adverse effect on the purposes of the park.

Decision

The Commission feels strongly that the Department has acted in a conscientious and responsible manner, and had a reasonable basis to believe that the denial of the permit was correct. The Department had to reach a conclusion on a major issue--noise--without standards or guidelines applicable to parks. To make matters more complex, the area around the park reflects a checkerboard of land use plans by various state and local government units. Thus, although the Commission reverses the Department's action in this case, it wishes to commend the Department for its diligence and dedication.

In order to protect the park from any possible adverse effects of the quarrying operation, the permit should be issued, subject to the Commission's final approval, with the terms and conditions outlined below.

1. The Division and Wake Stone shall develop a plan to be incorporated in the permit to require utilization of state-of-the-art techniques to minimize noise, dust, and other possible adverse effects on the park.

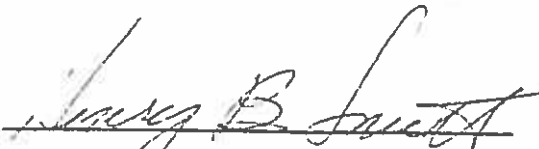
2. The Division and Wake Stone shall develop a plan for the optimum location of processing and stockpiling facilities and roads to minimize possible effects on the park.

3. The Division and Wake Stone shall develop an adequate buffer zone plan for the area between the quarry and the park.

4. The Division shall require Wake Stone to construct a berm or berms between the quarry and the park.

5. Pursuant to Wake Stone's proposal that, as part of its reclamation plan, it donate the quarry to the State for park use on termination of the operation, the Commission requests that counsel for Wake Stone meet with Mr. Daniel C. Oakley, Assistant Attorney General, and Ms. Becky R. French, Director, Office of Administrative Hearings, to reach an agreement, to be submitted to the Commission, on the best method to transfer the land.

This the 27th day of January 1981.


Dr. Henry B. Smith, Chairman
North Carolina Mining Commission

BEFORE THE MINING COMMISSION

In the Matter of Denial of
Permit Application of
Wake Stone Corporation

FINAL DECISION

In accordance with this Commission's initial Findings of Fact, Conclusions, and Decision of January 27, 1981, as amended and corrected, and with the March 12, 1981 Agreement of Wake Stone Corporation and the Division of Land Resources, Department of Natural Resources and Community Development, concerning the Conditions enumerated below as 1, 2, 4, and 5; and upon consideration of the supplementary arguments of the parties concerning Condition 3, *infra*, the Mining Commission hereby orders that the Division of Land Resources grant to Wake Stone Corporation the permit applied for with the following conditions:

Condition No. 1 - Minimize noise, dust, and other possible adverse effects.

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.

5. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. Only such blasting techniques as minimize noise shall be employed.
7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday through Friday and shall not be operated on State-recognized holidays.

Dust

1. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.
5. Drill hole dust shall be controlled by wetting or other means.
6. Dust control shall be maintained by the use of water sprays.
7. A water spray shall be provided for highway haul trucks.
8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2 - Optimize processing and stockpiling facilities to minimize possible effects on the park.

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to screen the park from the sight and sound of the operation, reduce erosion, and shield the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The stockpiles shall be located close to the quarry entrance roads.
4. The plant and stockpile area shall be close to the intersection of SR.1790 and SR 1654.
5. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. The purpose of this relocation is to aid erosion and sediment control.
6. The new location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment - i.e. compressor and drill, shovels, and trucks - can be placed below the surrounding land at the initial phases of quarrying.

Condition No. 3 - Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Exceptions 2, 3, and 4 listed on Page 2 of Wake Stone Corporation's memorandum of March 10, 1981, except all of the area north of the ten-year buffer line shall be left as a natural buffer

The terms and conditions of the option shall be as follows:

A. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between the Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.

① WHEN
② CHALKY
B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is sooner, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

C. Until the option has expired Wake Stone Corporation will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone Corporation's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the Council of State and the ascertaining that the offer is in accord with the laws of the State and lawful adopted rules and regulations. Further, the Department's analysis of the condition of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment and Development of State Parks, State Recreation Areas and State Natural Areas."

Permit issued this the 13th day of May, 1981.

BY: Stephen G. Conrad

Stephen G. Conrad, Director
Division of Land Resources

By Authority of the Secretary

Of the Department of Natural Resources and Community Development

zone and not be developed or altered for commercial purposes.

Condition No. 4 - Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown, except the berm shall not encroach on the permanent buffer zone.
3. The sideslopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.

Condition No. 5 - Donation of Quarry to the State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan, the terms and conditions of the offer and acceptance shall be set forth in the reclamation plan as follows.

The term, "quarry site", shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides (see the reclamation plan for the requirements applying to the slope), and a reasonable area to connect the pit and surrounding strip to Umstead Park, constituting a total area of at least 75 acres.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The Mining Commission concludes from the evidence submitted in this case that the operation of the quarry, under the conditions set forth in this decision, will not have a significant adverse effect on the purposes of the park.

For the unanimous Mining Commission, this the APR day of 3 1981, 1981.

Original signed by

Henry B. Smith, Chairman

Original signed by

T.W. Tysinger

Original signed by

W.W. Woodhouse

Commissioners Barkalow and Long took no part in the disposition of the case.

Vegetation: Sericea Lespedeza and/or Weeping lovegrass will be established on the site to provide ground cover and erosion control. When using Sericea Lespedeza, scarified seed will be applied when reclamation is conducted during spring months and unscarified seed will be used during the fall.

Application will be in a uniform manner either by machine or hand at the rate of 50 pounds of lovegrass, Lespedeza, or combination per acre. Seed will be covered to a depth of 1/8 to 1/4 inch and the soil then firmed with a cultipacker or similar equipment. Mulch consisting of dry, unchopped small grain straw or similar type material will be spread evenly over the surface at the rate of 1 to 2 tons per acre or until about 75 percent of the soil is hidden. Loblolly pine seedlings will be planted at selected sites to provide a view screen to provide revegetation. Spacing will be about 4' X 4' for revegetation purposes.

Maintenance: Plant replacement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site will be carried out until vegetation is properly established.

4. Reclamation Schedule

Some reclamation activities, particularly those relating to control of erosion, will be conducted simultaneously with mining activities. Diversion channels or terraces that may be required to control surface runoff on the property will be established and revegetated as soon as they are constructed. Portions of berms will be revegetated as completed. Final reclamation activities will be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area, and in all instances reclamation activities will be completed within two years after completion or termination of mining.

5. Donation to State

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

WHAT
IS BEING
OFFERED

The term, "quarry site," shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

The right of the State to exercise its option shall be subject to:

A. Wake Stone Corporation not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing Wake Stone Corporation's property all quarryable stone which is outside the buffer zone referred to in condition 3, page 4. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

B. The operation of a quarry on Wake Stone Corporation's property for a minimum period of five years.

STATE
OPTION

The conveyance of the quarry site, if approved by the State, shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

The method by which the quarry site may be donated to the State is as follows: Upon acquisition of the land by Wake Stone Corporation (by the exercise of its options to purchase), Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

Wake Stone Quarry and Umstead Park, Wake County.

Wake Stone Quarry Corporation. Wake Stone Quarry Corporation owns a mine known as Triangle Quarry. This mine is active. This quarry is located between Umstead Park on the East and Interstate 40 on the west, at Harrison Avenue exit. This mine was originally permitted by Division of Energy Mineral and Land Resources (DEMLR) on May 13, 2081 Permit was renewed in 1991 and 2001 and 2011.

On February 26, 2018, Wake Stone Quarry requested a permit modification to correct errors in the permit. This modification request included: 1) several corrections to project buffers and site maps to match property boundary footprint, and 2) correction to Reclamation condition no. 5B.

Reclamation condition No. 5B states the following:

*If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 year after quarrying operations have ceased without having been resumed, whichever is ***later** and notices shall be exchanged at the that time in the same manner and the with same time limitation as set forth in paragraph A above.*

*Note. In the original mining proposal from 1980 and in the agency decision to issue the permit in 1981 the term “later” was used. However, this permit text that was issued used the term “sooner”. The February 26, 2018 modification requested this to be changed to “later”. This modification was approved on March 28, 2018.

Umstead Coalition. In a letter dated November 14, 2018, The Umstead Coalition requested permit modification be reversed (back to “sooner”). The permit modification changed the above mentioned permit text to “later” from “sooner”.

With respect to this letter, DEMLR staff called Department of NC Parks (Natural and Cultural Resources (DNCR)) to ensure they understood file and the modification to permit. It is the intention to DEMLR to set up a meeting with DNCR to further discuss this matter.

Danny Smith, Interim Director of DEMLR has contact The Umstead Coalition and explained that their request and file is under review and DEMLR will be seeking to seclude a meeting with the Umstead Coalition to discuss this matter.

News Article. The News and Observer reported on November 13, 2018 Wake Stone Corporation has made a new proposal for developing a quarry on 105 acres owned by Raleigh-Durham Internal Airport to the Wake County commissioners. This tract is located between Reedy Creek and Crabtree Creek in is adjacent to the current mine and Umstead Park.

RDU has agreed to lease parcels to wake county for and , but has not decide whether to allow wake stone Corporation to develop a quarry pon parcel which is know the Odd Fellow Tract.

Mining expansion request.

- So far, we have no formal information about an expansion from the Umstead -Wake Stone Cary Quarry facility.

- If permittee chooses to expand their facility/mining footprint notification must be given to any new adjoining land owners and the County Manager. (We route all new and expanding applications that add land to mining footprint to the Department of Natural and Cultural Resources for their review and comment)
- Any project expansion will have to be reviewed and approved through normal mining permitting review processes.





Energy, Mineral &
Land Resources
ENVIRONMENTAL QUALITY

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM E. (TOBY) VINSON, JR.
Interim Director

March 28, 2018

Mr. David F. Lee
Wake Stone Corporation
PO Box 190
Knightsdale, North Carolina 27545

RE: Permit No. 92-10
Triangle Mine
Wake County
Neuse River Basin

Dear Mr. Lee:

Your recent request to have the above referenced mining permit modified has been approved. The modification includes the correction of discrepancies on the mine map and in several mining permit conditions. A copy of the modified permit is enclosed.

The conditions in the modified permit were based primarily upon the initial application. Modifications were made as indicated by the modification request and as required to insure compliance with The Mining Act of 1971. The expiration date, mine name and permit number shall remain the same as before the modification. I would like to draw your particular attention to the following conditions where minor additions or changes were made: Operating Condition Nos. 3 (C and D were removed, and E was relabel as C), 4B, 7A, 12B and 15 and Reclamation Condition No. 5B.

The issuance of a mining permit and/or any modification to it does not supersede local zoning regulations. The responsibility of compliance with any applicable zoning regulations lies with you.

As a reminder, your permitted acreage at this site is 223 acres and the amount of land you are approved to disturb is 164.45 acres.

Please review the modified permit and contact Judy Wehner, Assistant Mining Specialist, at (919) 707-9220 should you have any questions concerning this matter.

Sincerely,

David Miller, PE
State Mining Engineer

DM/jw

Enclosures

cc: Mr. Bill Denton, PE
Mr. William Gerring-Mine and Quarry Bureau, w/o enclosures

Nothing Compares

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF ENERGY, MINERAL AND LAND
RESOURCES

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G.S. 74-46 through 68, "The Mining Act of 1971," Mining Permit Rule 15A NCAC 5 B, and other applicable laws, rules and regulations

Permission is hereby granted to:

Wake Stone Corporation

Triangle Quarry

Wake County - Permit No. 92-10

for the operation of a

Crushed Stone Quarry

which shall provide that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

In accordance with the application for this mining permit, which is hereby approved by the Department of Environment and Natural Resources hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other security on file with the Department, and may survive the revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Modifications

April 1, 1991: This permit has been modified to include three pit expansions, the construction of a pit perimeter road, and the construction of the visual barrier berm along the 250 foot permanent buffer zone as indicated on the revised Site Plan and supplemental information dated February 14, 1991.

February 5, 1992: This permit has been modified to include and require compliance with the January 20, 1992 blast and rock slide investigative report prepared by Wake Stone Corporation in its entirety.

October 11, 1996: This permit has been modified to allow the shipping of material after 1:00 PM on Saturdays until such time as the Umstead State Park reopens or the repair of the Raleigh Outer Loop Project near RDU Airport is completed, whichever comes first.

November 24, 2010: This permit has been modified to increase the affected acreage at this site to 156.6 acres as indicated on the Site Plan Maps last revised November 22, 2010. The modification includes the construction of a stockpile area contiguous to the existing plant and stockpile yard and includes the installation and maintenance of all associated erosion and sediment control measures.

December 1, 2017: This permit has been legislatively modified to issue the permit for the life of the site or the duration of the lease term.

March 28, 2018: This permit has been modified to correct discrepancies on the mine map and in several mining permit conditions.

This permit is valid for the life of the site or life of lease, if applicable, as defined by Session Law 2017-209 and has no expiration date. However, all provisions of GS 74-51 and GS 74-52 still apply for new, transferred and modified mining permits.

Conditions

This Permit shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

OPERATING CONDITIONS:

1. Wastewater and Quarry Dewatering

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any storm water runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Division of Water Quality to secure any necessary storm water permits or other approval documents.

2. Air Quality and Dust Control

- A. Any mining related process producing air contaminant emissions including fugitive dust shall be subject to the requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. The provisions of Air Quality Permit No. 4386 shall be followed.

- C. The permanent access (plant entrance) road shall be paved from the scale house to SR 1790. During quarry operation, water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the permitted area.
- D. Dust suppression systems shall be used throughout the plant to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.
- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

3. Buffer Zones

- A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.
- B. Sufficient buffer shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- C. All buffer zones shown on the Site Plan Map revised February 26, 2018 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, shall remain undisturbed

4. Erosion and Sediment Control

- A. Adequate mechanical barriers including, but not limited to diversions, earthen dikes, check dams, sediment retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance and maintained to prevent sediment from discharging onto adjacent surface areas or into any lake, wetland or natural watercourse in proximity to the affected land.
- B. All mining activities, including the installation and maintenance of all erosion and sedimentation control measures, shall be conducted as indicated on the Site Plan Map revised February 26, 2018 and the supplemental information received on February 7, 2011.

- C. An erosion and sediment control plan(s) shall be submitted to the Department for approval prior to any land disturbing activities not indicated on the revised erosion control plan or mine maps submitted with the approved application for a mining permit and any approved revisions to it. Such areas include, but are not limited to, expansion outside of the approved pit area, creek crossings, or expansion of overburden or waste disposal areas.

5. Groundwater Protection

Groundwater monitoring wells shall be installed and monitored as deemed appropriate by the Department.

6. Noise Abatement

All reasonable precautions shall be taken to minimize the impacts of operational noise upon Umstead Park. Said measures shall include, but not be limited to the following:

- A. Noise barriers between the park boundary and the crushers and screening towers to minimize noise levels at the park shall be provided from the onset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles or natural terrain. In the event there is disagreement over the required noise control measure, the final design and placement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
- B. The plant shall be located at the lowest feasible elevation.
- C. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
- D. The chutes used in processing shall be rubberized.
- E. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
- F. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
- G. Conveyors rather than trucks shall be used for stockpiling material.

- H. The quarry and stone process operations shall be operated on Monday through Friday and shall not be operated on the following recognized holidays: New Years Day, Easter Monday, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. A reasonable amount of hauling of processed stone from the stockpile areas is permitted until 1:00 PM on Saturdays but hauling shall not be done at any other time on weekends or on holidays without prior approval from the Department.

7. Processing Plant Location

- A. The processing and stockpiling facilities shall be located as indicated on the Site Plan Map revised February 26, 2018.
- B. The plant shall be located to place the processing and stockpiling activities at the lowest possible elevation to reduce visibility and noise impacts on Umstead State Park.
- C. The location of the pit shall be such that once the overburden is removed, the quarry excavating equipment (i.e., compressor and drill, shovels, and trucks) can be placed at an elevation lower than the surrounding natural ground in the initial phases of quarrying.

8. Graded Slopes and Fills

- A. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measure, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause off-site damage because of siltation, shall be planted or otherwise provided with groundcover, devices or structures sufficient to restrain such erosion.
- B. Overburden cut slopes along the perimeter of the quarry opening shall be graded to a minimum 2 horizontal to 1 vertical or flatter and shall be stabilized within 60 days of completion. Furthermore, a minimum ten (10) foot wide horizontal safety bench shall be provided at the top of the rock and at the toe of any overburden slope.

9. Surface Drainage

The affected land shall be graded so as to prevent collection of pools of water that are, or likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

10. Blasting

The operator shall monitor each blast with a seismograph located at a distance no farther than the closest off site regularly occupied structure not owned or leased by the operator. A seismographic record including peak particle velocity, air overpressure, and vibration frequency levels shall be kept for each blast (except as provided under Operating Condition Nos. 8B and 8D of this permit). The following blasting conditions shall be observed by the mine operator to prevent hazard to persons and adjacent property from surface blasting:

A. Ground Vibration with Monitoring:

In all blasting operations, the maximum peak particle velocity of any component of ground motion shall not exceed Figure 1 (below) at the immediate location of any regularly occupied building outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building.

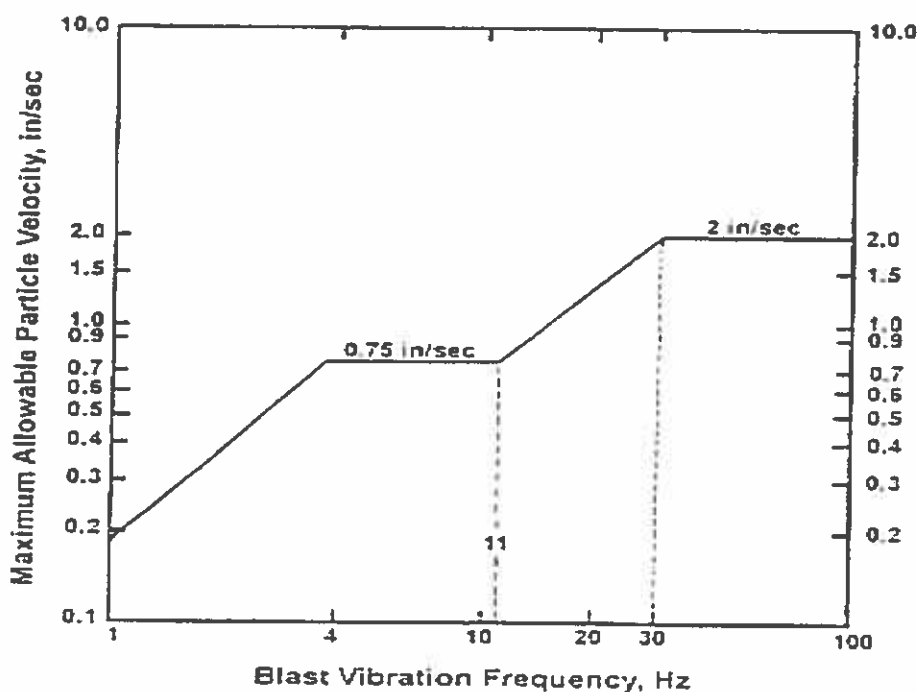


Figure 1 Alternative blasting level criteria
(Source modified from figure B-1, Bureau of Mines R18507)

B. Ground Vibration without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$W = (D/D_s)^2 \quad D_s = \frac{D}{W^{1/2}}$$

$$V = 160(D_s)^{-1.6}$$

W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).

D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).

D_s = Scaled distance factor.

V = Peak Particle Velocity (inches per second).

The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Section.

C. Air Blast with Monitoring:

Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at the immediate location of any regularly occupied building not owned or leased by the operator outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building, unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used:

Lower Frequency Limit of Measuring System, in Hz	Max Level, in dBL
0.1 Hz or lower-flat response	134 peak
2.0 Hz or lower-flat response	133 peak
6.0 Hz or lower-flat response	129 peak

D. Air Blast without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$U = 82 (D/W^{0.33})^{-1.2}$$

To convert U (psi) to P (dBL):

$$P = 20 \times \log (U/2.9 \times 10^{-9})$$

Confined Air blast/Overpressure (dBL)
for quarry situation:

$$A = P - 35$$

- U = Unconfined air overpressure (pounds per square inch).
- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
- D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
- P = Unconfined air overpressure (decibels).
- A = Air blast or air overpressure for typical quarry situations (decibels).

The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Section.

E. Record Keeping:

The operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes and delay of intervals; depth and size of holes; type and total pounds of explosives; maximum pounds per delay interval; amount of stemming and burden for each hole; blast location; distance from blast to closest offsite regularly occupied structure; and weather conditions at the time of the blast. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

F. Excessive Ground Vibration/Air Blast Reporting:

If ground vibration or Air blast limits are exceeded, the operator will immediately report the event with causes and corrective actions to the Department. Use of explosives at the blast site that produced the excessive reading shall cease until corrective actions approved by the Department are taken. However, blasting may occur in other approved areas within the permitted boundary. Authorization to blast at the blast site may be granted at the time of the verbal reporting of the high ground vibration or high air blast reading if the circumstances justify verbal approval. Failure to report will constitute a permit violation.

G. Flyrock Prevention:

The operator shall take all reasonable precautions to ensure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the Mining Permit.

H. Flyrock Reporting:

Should flyrock occur beyond the permitted and guarded areas, the operator shall immediately report the incident to the Department. Further use of explosives on the mine site shall be suspended until the following actions have been taken:

1. A thorough investigation as to the cause(s) of the incident shall be conducted.
2. A report detailing the investigation shall be provided to the Department within 10 days of the incident. The report shall, at a minimum, document the cause(s) of the incident along with technical and management actions that will be taken to prevent further incidents. The report shall meet with the approval of the Department before blasting may resume at the mine site.

I. Studies:

The operator shall provide to the Department a copy of the findings of any seismic studies conducted at the mine site in response to an exceedence of a level allowed by these blasting conditions. The operator shall make every reasonable effort to incorporate the studies' recommendations into the production blasting program.

J. Notice:

The operator shall, when requested by the Department, give 24-hour advanced notice to the Division of Energy, Mineral and Land Resources Regional Office prior to any blast during a period for which notice is requested.

- K. Regarding blasting activities conducted to lower the haul road along the western boundary of the "Pit Expansion Initiated During 1989" area and Crabtree Creek, all of the corrective actions/steps outlined in the blast and rock slide investigation report prepared by Wake Stone Corporation dated January 20, 1992 shall be followed. In addition, any areas disturbed as a result of the previous rock slide and its subsequent removal shall be restored to its natural, pre-disturbed state or an alternative acceptable to the Department.

11. High Wall Barrier

A physical barrier consisting of large boulders placed end-to-end, fencing or other acceptable barrier materials shall be maintained at all times along the perimeter of any highwall to prevent inadvertent public access. In addition, a minimum 10 foot wide horizontal safety bench shall be provided at the junction between the top of rock and the toe of any overburden cut slope.

12. Visual Screening

- A. Existing vegetation shall be maintained between the mine and public thoroughfares to screen the operation from the public. Additional screening methods, such as constructing earthen berms, shall be employed as deemed appropriate by the Department.
- B. Vegetated earthen berms shall be located and constructed as shown on the Site Plan Map revised February 26, 2018. In addition to grasses, long leaf and/or Virginia pines or other acceptable evergreen species shall be planted as deemed appropriate by the Department to improve visual and noise buffering.
- C. Other berms may be required as mining progresses to reduce the noise and visual impact upon Umstead State Park.

13. Plan Modification

The operator shall notify the Department in writing of the desire to delete, modify or otherwise change any part of the mining, reclamation, or erosion/sediment control plan contained in the approved application for a mining permit and any approved revisions to it. Approval to implement such changes must be obtained from the Department prior to on-site implementation of the revisions.

14. Refuse Disposal

- A. No on-site disposal of refuse or other solid waste that is generated outside of the mining permit area shall be allowed within the boundaries of the mining permit area unless authorization to conduct said disposal has first been obtained from both the Division of Waste Management and the Division of Energy, Mineral and Land Resources, Department of Environmental Quality. The method of disposal shall be consistent with the approved reclamation plan.
- B. Mining refuse as defined by G.S. 74-49 (14) of The Mining Act of 1971 generated on-site and directly associated with the mining activity may be disposed of in a designated refuse area. All other waste products must be disposed of in a disposal facility approved by the Division of Waste Management. No petroleum products, acids, solvents or their storage containers or any other material that may be considered hazardous shall be disposed of within the permitted area.
- C. For the purposes of this permit, the Division of Energy, Mineral and Land Resources considers the following materials to be "mining refuse" (in addition to those specifically listed under G.S. 74-49 (14) of the N.C. Mining Act of 1971):
 - 1. on-site generated land clearing debris
 - 2. conveyor belts
 - 3. wire cables

4. v-belts
5. steel reinforced air hoses
6. drill steel

D. If mining refuse is to be permanently disposed within the mining permit boundary, the following information must be provided to and approved by the Division of Energy, Mineral and Land Resources prior to commencement of such disposal:

1. the approximate boundaries and size of the refuse disposal area;
2. a list of refuse items to be disposed;
3. verification that a minimum of 4 feet of cover will be provided over the refuse;
4. verification that the refuse will be disposed at least 4 feet above the seasonally high water table; and
5. verification that a permanent vegetative groundcover will be established

15. Annual Reclamation Report and Annual Operating Fee Submittal

An Annual Reclamation Report and Annual Operating Fee of \$400.00 shall be submitted to the Department by July 1 of each year until reclamation is completed and approved for release by the Department.

16. Bonding

The security, which was posted pursuant to N.C.G.S. 74-54 in the form of a \$1,000,000.00 blanket bond, is sufficient to cover the operation as indicated in the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

17. Archaeological Resources

Authorized representatives of the Division of Archives and History shall be granted access to the site to determine the presence of significant archaeological resources.

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the terms of the Mining Permit.

The approved plan provides:

Minimum Standards as Provided By G.S. 74-53:

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the North Carolina Agricultural Experiment Station and the North Carolina Forest Service.
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, provide reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS:

1. Provided further, and subject to the Reclamation Schedule, the planned reclamation shall be to allow the quarry excavation to fill with water, provide a permanent barricade (fence) along the top of any high wall, and grade and revegetate any areas in unconsolidated material.
2. The specifications for surface gradient restoration to a surface suitable for the planned future use are as follows:

- A. All areas of unconsolidated material such as overburden or waste piles shall be graded to a 2 horizontal to 1 vertical or flatter slope and terraced as necessary to insure slope stability.
- B. Any settling ponds and sediment control basins shall be backfilled, graded, and stabilized or cleaned out and made into acceptable lake areas.
- C. The processing, stockpile, and other disturbed areas neighboring the mine excavation shall be leveled and smoothed.
- D. Compacted surfaces shall be disced, subsoiled or otherwise prepared before revegetation.
- E. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Conditions Nos. 14A through D.
- F. The affected land shall be graded to prevent the collection of noxious or foul water.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.

3. Revegetation Plan:

Disturbed areas shall be permanently revegetated according to the following provisions:

Site Preparation: The land surfaces shall be graded and/or shaped as necessary to create grades applicable to the subsequent use of the site, but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material and other obstructions that would interfere with the establishment of vegetation planned for the site shall be removed and either buried or properly disposed of off-site in accordance with Operating Condition Nos. 14A through D above. Surface runoff shall be controlled by terraces or diversions to allow discharge through protected outlets.

Lime and Fertilizer: Lime and fertilizer shall be applied in accordance with soil test result or at a rate of 2,000 lbs/acre of lime and 1000 lbs/acre of 10-20-20 fertilizer.

Seedbed Preparation: Lime and fertilizer shall be mixed with the soil to a depth of three to four inches where conventional equipment can be used. On slopes steeper than about 2:1, soils shall be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to seeding equipment, seed, nutrients and mulch, shall be applied by hand.

Revegetation: Typical seed mixtures to be utilized include fescue-rye, fescue-rye-lespedeza, and fescue-lespedeza, where the lespedeza used may be Korean or Kobe or Sericea. All rye species to be utilized shall be rye grain rather than rye grass. In fall or spring plantings, seeding mixtures shall utilize 100 lbs. Fescue and 50 lbs. Rye per acre to be planted. Late spring plantings in certain areas may contain up to 40 lbs. Kobe/Korean per acre where desirable to supplement natural deer browse. Sericea lespedeza shall be utilized at a rate of 20 to 40 lbs. per acre in combination with Fescue when planting excessively droughty soils or steep slopes. When using lespedeza species in fall plantings, non-scarified seed shall be utilized. Scarified seed shall be utilized in spring plantings. Newly seeded areas shall be mulched with unchopped small grain straw applied at a rate of 1.5 to 2 tons per acre, or until approximately 75% of the soil is hidden.

Loblolly pines (or other acceptable evergreen species) and red cedar seedlings shall be planted at selected sites to provide visual screens and revegetation. Evergreen seedling plantings shall be done on a staggered 4 feet by 4 feet pattern.

Maintenance: Plant placement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site shall be carried out until vegetation is properly established.

Whenever possible, disturbed areas should be vegetated with native warm season grasses such as switch grass, Indian grass, bluestem and gamma grass.

In addition, the permittee shall consult with a professional wildlife biologist with the N.C. Wildlife Resources Commission to enhance post-project wildlife habitat at the site.

4. Reclamation Plan:

Reclamation shall be conducted simultaneously with mining to the extent feasible. In any event, reclamation shall be initiated as soon as feasible after completion or termination of mining of any mine segment under permit. Final reclamation, including revegetation, shall be completed within two years of completion or termination of mining.

5. Donation to State:

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

The term "quarry site" shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides, and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

The method by which the quarry site may be donated to the State is as follows: Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligations to exercise its option to accept a conveyance of the quarry site. The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option has been recorded after the restoration of each such encumbrance.

The right of the State to exercise its option shall be subject to:

Wake Stone Corporation not being prohibited by the US Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any other court from removing from Wake Stone Corporation's property all quarryable stone which is outside of the buffer zones referred to in Operating Condition No.3 of this permit. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarrying shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

The conveyance of the quarry site, if approved by the State, shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The terms and conditions of the option shall be as follows:

- A. When all quarryable stone has been removed from all of the land and belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead State Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail and return receipt requested.

If the State fails to make election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall be thereupon terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.

- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in Paragraph A above.
- C. Until the option has expired, Wake Stone Corporation shall not encumber by mortgage or deed of trust of any of the area designated "BUFFER AREA" on Wake Stone Corporation's Site Plan last revised February 26, 2018 except for purchase money security interests.

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the conditions of the land to be transferred will be in accordance with the criteria identified in the "Principles' Governing the Establishment of Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

This permit, issued May 13, 1981, modified April 15, 1986, renewed and modified April 1, 1991, modified February 5, 1992 and October 11, 1996, renewed April 20, 2001, modified November 24, 2010, renewed March 30, 2011 and modified December 1, 2017, is hereby modified this 28th day of March, 2018 pursuant to G.S. 74-52.

By: 

William E. Vinson, Jr., Interim Director
Division of Energy, Mineral and Land Resources
By Authority of the Secretary
Of the Department of Environmental Quality

BEFORE THE MINING COMMISSION

In the Matter of Denial of
Permit Application of
Wake Stone Corporation

FINAL DECISION

In accordance with this Commission's initial Findings of Fact, Conclusions, and Decision of January 27, 1981, as amended and corrected, and with the March 12, 1981 Agreement of Wake Stone Corporation and the Division of Land Resources, Department of Natural Resources and Community Development, concerning the Conditions enumerated below as 1, 2, 4, and 5; and upon consideration of the supplementary arguments of the parties concerning Condition 3, *infra*, the Mining Commission hereby orders that the Division of Land Resources grant to Wake Stone Corporation the permit applied for with the following conditions:

Condition No. 1 - Minimize noise, dust, and other possible adverse effects.

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.

5. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. Only such blasting techniques as minimize noise shall be employed.
7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday through Friday and shall not be operated on State-recognized holidays.

Dust

1. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.
5. Drill hole dust shall be controlled by wetting or other means.
6. Dust control shall be maintained by the use of water sprays.
7. A water spray shall be provided for highway haul trucks.
8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2 - Optimize processing and stockpiling facilities to minimize possible effects on the park.

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to screen the park from the sight and sound of the operation, reduce erosion, and shield the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The stockpiles shall be located close to the quarry entrance roads.
4. The plant and stockpile area shall be close to the intersection of SR-1790 and SR 1654.
5. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. The purpose of this relocation is to aid erosion and sediment control.
6. The new location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment - i.e. compressor and drill, shovels, and trucks - can be placed below the surrounding land at the initial phases of quarrying.

Condition No. 3 - Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Exceptions 2, 3, and 4 listed on Page 2 of Wake Stone Corporation's memorandum of March 10, 1981, except all of the area north of the ten-year buffer line shall be left as a natural buffer

zone and not be developed or altered for commercial purposes.

Condition No. 4 - Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown, except the berm shall not encroach on the permanent buffer zone.
3. The side slopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.

Condition No. 5 - Donation of Quarry to the State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan, the terms and conditions of the offer and acceptance shall be set forth in the reclamation plan as follows.

The term, "quarry site", shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides (see the reclamation plan for the requirements applying to the slope), and a reasonable area to connect the pit and surrounding strip to Umstead Park, constituting a total area of at least 75 acres.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The Mining Commission concludes from the evidence submitted in this case that the operation of the quarry, under the conditions set forth in this decision, will not have a significant adverse effect on the purposes of the park.

For the unanimous Mining Commission, this the APR day of 3 1981, 1981.

Original signed by

Henry B. Smith, Chairman

Original signed by

T.W. Tysinger

Original signed by

W.W. Woodhouse

Commissioners Barkalow and Long took no part in the disposition of the case.

Wehner, Judy

From: Denton, Bill
Sent: Friday, March 09, 2018 3:24 PM
To: Wehner, Judy
Cc: Dupree, Joe
Subject: 92-10 Wake Stone Triangle Quarry

Judy:

I asked Joe to take a look at the information you routed to our office. Based on his review, the RRO has no additional comments. Thanks.

- Bill

William H. Denton, IV, PE
Regional Engineer – RRO
Division of Energy, Mineral, and Land Resources – Land Quality Section
Department of Environmental Quality

919 791 4200 office
bill.denton@ncdenr.gov

1628 Mail Service Center, Raleigh, North Carolina 27699



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

Wehner, Judy

From: Vinson, Toby
Sent: Monday, March 26, 2018 2:47 PM
To: Wehner, Judy; Miller, David
Subject: RE: [External] Triangle Quarry - Mining Permit 92-10

Please do.

tV

From: Wehner, Judy
Sent: Monday, March 26, 2018 2:34 PM
To: Miller, David <david.miller@ncdenr.gov>; Vinson, Toby <toby.vinson@ncdenr.gov>
Subject: FW: [External] Triangle Quarry - Mining Permit 92-10

Do you want me to make these corrections? I agree with everything but the first one on the buffers.

From: David Lee [<mailto:davidlee@wakestonecorp.com>]
Sent: Monday, March 26, 2018 2:24 PM
To: Wehner, Judy <judy.wehner@ncdenr.gov>
Cc: Sam Bratton <samuelbratton@wakestonecorp.com>; Cole Atkins <coleatkins@wakestonecorp.com>
Subject: [External] Triangle Quarry - Mining Permit 92-10

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Judy-

Cole forwarded to me the revised Permit 92-10 for our Triangle Quarry which he received via email earlier today. After reading the revised permit, we have discovered several editorial/typographical errors that should be corrected. I am attaching a PDF of pages 3, 4, 14, and 17 with those needed corrections noted in red pen.

- Under Operating Condition 3. Buffer Zones, conditions C and D are unnecessary, should be deleted, and Condition E re-lettered as "C". Condition E, which references the February 26, 2018 Site Plan Map, adequately addresses all buffers.
- Modification history section: The December 1, 2018 date for life of mine should be December 1, 2017 (Session Law 2017-209).
- Same section: "correction of" should be "correct" under the March 19, 2018 modification reference.
- Operating Condition 2 – formatting - need a space between 2A and 2B.
- Reclamation Condition 2E should reference 14A through D (not 12A through D).
- Reclamation Condition 3 under Site Preparation should also refer to 14A through D, not 12A through D.
- Reclamation Condition 5C should be updated to reference the Site Plan revised February 26, 2018 as this condition relates to "BUFFER AREA" (not the old February 4, 2011 map).
- The Division and Department name under the signature on the last page need to be updated.

If necessary, Cole and/or I can meet with you and David at your convenience to discuss these needed corrections. Please let he or I know if that would be beneficial. The easiest fix may be to simply send corrected pages to be slip-sheeted into our copy of the permit.

Wehner, Judy

From: David Lee <davidlee@wakestonecorp.com>
Sent: Friday, March 16, 2018 1:36 PM
To: Wehner, Judy
Subject: [External] FW: Triangle Quarry Permit Language Revisions
Attachments: Mining Commission Final Decision.pdf

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Judy-

Below is the original email I sent back in March 2011 concerning the Mining Commission's Final decision language. I'm resending this so that you have documentation.

Attached is a PDF of the Commission's final decision. Reclamation Condition 5B on Page 17 of the current permit should simply be changed to read "whichever is later", not "whichever is sooner", a simple one word change. I suggest cutting and pasting the following:

- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

Thanks!

Call Cole or I if you have any questions.

-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545
Office: 919-266-1100, ext. 134
website: www.wakestonecorp.com
Cell: 919-369-3449
Home: 919-553-4666

From: David Lee
Sent: Monday, March 07, 2011 3:21 PM
To: Judy Wehner <judy.wehner@ncmail.net>; Wehner, Judy <judy.wehner@ncdenr.gov>
Subject: Language

Judy-

Thanks for the opportunity to review the Triangle Quarry permit with you this morning by phone. I have spent some more time reviewing the permit since you and I last spoke by phone and believe the section on "Donation to State" would

benefit from some revision. The original permit for Triangle was issued before I joined Wake Stone so I'm not as familiar with offer to "donate to the State" as I probably should be. However, I've located the Mining Commission's FINAL DECISION document of April 3, 1981 (copy attached) and compared the "donation to the state" language there (pages 3-6) with what is in the current version of the permit (pages 18-19). The "donation to the state" language in the permit seems confusing to me - discussion of "option" before its even made know what the "option" is all about. I think it would be beneficial to incorporate the Commission's language more nearly verbatim.

I've taken the liberty of drafting suggested language you might consider in place of existing section 5. beginning on page 17 of the permit. Feel free to run it by Tracy and/or Jim and see what they think.

Let me know if you have any questions or need any additional information. I'm not trying to write my own permit, just trying to be helpful.

Thanks!

-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545
Office: 919-266-1100, ext. 134
Cell: 919-369-3449
Home: 919-553-4666

MINING CHECKLIST FOR ROUTING

Applicant's Name: Walker Stone Corp Project Name: Triangle Orange

Applic./ Permit No: 92-10 County: Watauga Date Received: 2/27/19

Reviewer: [Signature] River Basin Name: Neuse

- ☐ New
 ☐ Modification (inside permit boundaries)
 ☐ Modification (outside permit boundaries)
 ☐ Transfer
 ☐ Release
 ☐ Partial Release
 ☒ Additional Information
 ☐ Fee Needed: \$ _____
 ☐ Fee Received: \$ _____

Please route entire application package to :

☒ Regional Office (2 complete copies; attach the "LQS Regional Office Mining Application Review Checklist" to one copy and attach both the DAQ and DWR "Mining Application Review Form" to the other copy; send both copies to the Regional Engineer)

<input type="checkbox"/> Division of Water Resources	Date: Routed <u>2/28/19</u>	Rec'd _____
<input type="checkbox"/> NC Wildlife Resources Commission	Date: Routed _____	Rec'd _____
<input type="checkbox"/> US Fish & Wildlife Service	Date: Routed _____	Rec'd _____

(Only new applications and modification requests that add land to the permit)

Please route first 3 pages of the application and any location maps to:

<input type="checkbox"/> Division of Parks & Recreation	Date: Routed _____	Rec'd _____
<input type="checkbox"/> NC Geological Survey Section	Date: Routed _____	Rec'd _____
<input type="checkbox"/> Division of Marine Fisheries	Date: Routed _____	Rec'd _____
<input type="checkbox"/> Division of Soil & Water Conservation (plus LEA)	Date: Routed _____	Rec'd _____

(Only new applications and modifications requests that add land to the permit)

<input type="checkbox"/> Division of Archives & History (Only new applicants)	Date: Routed _____	Rec'd _____
<input type="checkbox"/> Other: _____	Date: Routed _____	Rec'd _____

** Suspense Date for Comments: ASAP (no later than 25 days from receipt)

☐ Please note the following:

Please review these
maps - the approved map is
not correct. these will replace them.
Let me know if you have any issues with
these -



Wake Stone Corporation

www.wakestonecorp.com

Quarry Phone Numbers:

919/266-9266 - Knightdale
919/677-0050 - Triangle
919/775-7349 - Moncure
252/985-4411 - Nash County
843/756-3400 - N. Myrtle Beach

Locations:

6811 Knightdale Blvd., Knightdale, N.C.
222 Star Lane, Cary, N.C.
9725 Stone Quarry Rd., Moncure, N.C.
7379 North Halifax Rd., Battleboro, N.C.
3990 Hwy 9 Business East, Loris, S.C.

Business Office Address:

P.O. Box 190
6821 Knightdale Blvd.
Knightdale, N.C. 27545
919/266-1100
Fax: 919/266-1149

February 26, 2018

Ms. Judith A. Wehner, Assistant State Mining Specialist
NC DEQ Division of Energy, Mineral, and Land Resources
Land Quality Section
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

RE: Wake Stone Corporation Triangle Quarry
Mining Permit 92-10
Wake County

Dear Ms. Wehner:

During a recent review of the referenced Mining Permit and approved Site Plan Map for the Triangle Quarry, we discovered that the current Site Plan Map does not properly delineate the property boundary as the centerline of Crabtree Creek. This is inconsistent with the enclosed copy of the Composite Property Plat recorded at Page 364 in Book of Maps No. 1982 of the Wake County Public Registry. It appears that this discrepancy occurred during our company's transition to digital mapping. This discrepancy is critical in that the permit stipulated buffers are to be measured from the Property Boundary/Mining Permit Boundary (which are one and the same).


By this letter, we request that Operating Condition No. 3 on Page 4 of our mining permit be administratively revised to require that all buffers be maintained as referenced on the enclosed Site Plan Map revised February 26, 2018. The enclosed Site Plan Map graphically illustrates the corrected buffers measured from the centerline of Crabtree Creek which is the Property Boundary/Mining Permit Boundary along the north and west boundaries of the mine site. Please note that there are no changes proposed to the mining operation and that this mapping adjustment does not change the currently approved permitted and affected acreage at this site (the acreage approved in the permit was based upon the mining permit boundary being located at the centerline of the creek).

RECEIVED
FEB 27 2018
LAND QUALITY
MINING PROGRAM

Ms. Judith Wehner
February 26, 2018
Page 2

As the requirements specified in Operating Conditions 3.C. and 3.D. are covered by Operating Condition 3.E.'s reference to such buffers on the approved Site Plan Map, we request that Operating Conditions 3.C. and 3.D. be removed from the permit and that Operating Condition 3.E. becomes the new Operating Condition 3.C. that reads as follows:

All buffer zones shown on the Site Plan Map revised February 26, 2018 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required erosion and sedimentation control measures and approved earthen berms, shall remain undisturbed.

As we are requesting that the mining permit document be updated to reflect these mapping adjustments, we assume that this administrative change to the mining permit is considered a mining permit modification. Please accept this letter ~~and the enclosed \$750 check~~ as our formal request to modify our mining permit. I assume that as there are no changes in the mining operation, this request can be reviewed internally by DEMLR's central and regional offices. 

Thank you for your consideration of this request. If you should have any questions or need additional information, please contact me at (919) 266-1100, ext. 134.

Sincerely,
Wake Stone Corporation


David F. Lee, Environmental Supervisor

Enclosures: As noted

Exhibit 2



North Carolina Department of Natural
Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF
LAND RESOURCES

Stephen G. Conrad, Director

Box 27687, Raleigh 27611
Telephone 919 733-3833

August 22, 1980

Mr. John Bratton
Wake Stone Corporation
Box 190
Knightdale, North Carolina 27545

Dear Mr. Bratton:

A detailed evaluation has been made of your application for a mining permit for the Cary quarry in accordance with G.S. 74-51.

The evaluation consisted of site inspection, engineering analyses and several discussions between you and members of my staff. Based on this evaluation, I find that the proposed quarry operation would have a significantly adverse effect on the purposes of a publically owned park, forest, or recreation area and your permit application is hereby denied. (G.S. 74-51 (5)).

The combined effects of noise, sedimentation, dust, traffic and blasting vibration associated with the proposed quarry operation would produce primary impacts on William B. Umstead State Park in the form of noise intrusion and deterioration of visual resources. Our evaluation of your permit application further indicates there are no feasible modifications that can be made to the application that would make it acceptable.

In accordance with G.S. 74-61 you may appeal this decision to the North Carolina Mining Commission, provided such appeal is made within 60 days after receipt of this notice. Your request for a hearing should be addressed to Dr. Henry B. Smith, Chairman, North Carolina Mining Commission, 3405 Caldwell Drive, Raleigh, North Carolina 27607, with a copy to this office.

Very truly yours,

Stephen G. Conrad

Stephen G. Conrad, Director

SGC/ps

Exhibit 3

BEFORE THE MINING COMMISSION

In the Matter of Denial of)
Permit Application of the)
Wake Stone Corporation)

Findings of Fact, Con-
clusions, and Decision

This cause was heard before the Mining Commission on November 6 and 7 and December 16 and 17, 1980, pursuant to NCGS 74-61 and NCGS 150A-23 et seq., to consider the denial by the Division of Land Resources, Department of Natural Resources and Community Development (hereinafter the Department), of Wake Stone Corporation's application for a permit.

Preliminary Statement

Wake Stone Corporation (hereinafter the Petitioner) has options to purchase various parcels of land, some of which adjoin Umstead State Park (hereinafter the park). It seeks a permit to quarry stone there. The Department denied Petitioner's request for a permit. The Petitioner then appealed this decision to the Mining Commission.

Issue

The issue in this case is whether the proposed quarry would have a significant adverse effect on the purposes of the park.

Statutes

The Department is empowered to issue a permit to quarry stone "conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objective of this Article." NCGS 74-61. The Department may deny a permit if "the operation would

have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area." NCGS 74-61(5). An applicant may appeal the Department's action to the Mining Commission, which may "affirm, affirm with modifications, or overrule the decision of the Department and may direct the Department to take such action as may be required to effectuate its decision."

NCGS 74-61.

Background Information

The park consists of 5,217 acres in Wake County, along the eastern edge of the Piedmont Plateau, between Raleigh and Durham. The master plan developed for the park in 1974 sets forth its history:

Until 1934, the land now occupied by Umstead Park was a farm community--houses, mills, and fields in various stages of use and abandonment. Poor agricultural techniques, such as one crop farming, primarily cotton, led to the loss of topsoil and subsequently, a submarginal existence. Second-growth timber was then removed from some upland areas, which expedited the erosion process.

During the great depression, the United States Resettlement Division began a program of purchasing sub-marginal farm land, and in 1935 a proposal to acquire and develop a recreational demonstration project was instigated generally within the area now known as Umstead Park. The development of this area was jointly supervised by the National Park Service and the Department of Conservation and Development and until 1943, all development and land acquisition was financed by Federal money.

In addition to the development of four group camps, a lake, temporary roads and utility systems, the CCC Work Force was responsible for important conservation measures such as tree planting and the construction of check dams, which aided the stabilization of the soil.

World War II forced the abandonment of Federal activities and on April 6, 1943, the United States deeded to the State of North Carolina, for the sum of one dollar, 5,088 acres to serve "public park, recreation, and conservation purposes". This land was officially designated as Crabtree Creek State Park. In 1947 and 1949, public use facilities including picnic areas, tent and trailer campgrounds, and utilities were financed by the General Assembly's first State Parks Division appropriation.

The master plan also describes the present and projected use of the surrounding land:

Umstead Park lies in a highly urbanized area of the State and, as in the past, is currently under pressure from adjacent development. Suburban Raleigh is rapidly moving westward and recent development, in fact, abuts the eastern edge of the Park. With the development of Crabtree Valley Shopping Center and Interstate 40, land values have risen enormously so that a setting for residential and industrial growth in very close proximity to the Park has developed. City and county land use zoning has set the stage for both of these types of uses so that the only inhibiting factor at present is the lack of sanitary sewer and water lines. While it is only a matter of time before these utilities are provided, the exact location of the utility easements has not yet been pinpointed as it relates to the Park. Specifically, the land adjacent to the northeast between the Park and Highway 70 and that land between I-40 and the park boundary is currently under considerable pressure for building In addition, the Raleigh thoroughfare plan indicates the construction of a new road linking I-40 and the Duraleigh Road as an extension of the Southern Belt-line which, without control measures, will most certainly create similar development pressure.

Raleigh-Durham Airport lies adjacent to Umstead Park's western boundary and presently has two runways; one for commercial airlines runs parallel to the Park in a northeast/southwest direction and the other, for small craft use, lies perpendicular to the Park in an east-west direction. The Airport Authority is currently in advanced stages of planning a new runway and enlarged facilities. The proposed runway would lie perpendicular to the Park south of the Airport's existing facilities and service commercial flights.

Thus, Highway 70, Interstate 40, and Raleigh-Durham Airport bound the park on three sides. Of these three neighboring land uses, the airport has the most pronounced effect on the day-to-day uses of the park. The map on page 9 of the master plan depicts two broad swaths, covering about one-half of the park, as "airport impact zones." The plan states:

Noise emanating from the airport as well as the major roads, I-40, Highway 70, and proposed roads, is important not only to the location of overnight facilities in the Park but also those areas of daytime use where a greater degree of tranquility is required. Flight zones over the Park from the existing

small craft runway and proposed runway impact the park not only due to noise but also visually so that, in these zones, the location of uses requires considerable scrutiny.

In summary, Umstead Park is not today, nor will it ever again be, a primeval wilderness.

Stipulations

In the Prehearing Order, Wake Stone Exhibit #3, the parties stipulate as follows:

1. The only contested matters are blasting, dust, traffic, noise, and visibility.
2. Blasting will occur eight to twelve times per month and at vibration and air blast levels within the Department's guidelines.
3. The Petitioner's dust control plan has a permit to operate proposed air pollution abatement facilities for controlling dust.
4. The Division of Highways has determined that a coincidence of projected peak traffic for the park and the quarry will not create unsafe conditions.

Findings of Fact

A. Chronology of Events

1. On March 21, 1980, Wake Stone Corporation, operator of several stone quarries in North Carolina, applies for a permit to quarry stone on 195 acres situated north of Interstate 40, south of the airport, at the southwest corner of the park. Wake Stone Exhibit #1.
2. By letter dated August 22, 1980, Mr. Stephen G. Conrad, Director, Division of Land Resources, Department of Natural Resources and Community Development, denies the permit. State Exhibit #18.
3. By letter dated September 16, 1980, the Petitioner requests a hearing before the Mining Commission to appeal the denial. State Exhibit #19.

4. On October 31, 1980, Mr. Daniel C. Oakley, Assistant Attorney General, appearing on behalf of the Department, and Mr. James M. Kimzey, Esquire, appearing on behalf of the Petitioner, hold a prehearing conference and file a Prehearing Order. Wake Stone Exhibit #3.

5. On November 6 and 7 and December 16 and 17, 1980, the Mining Commission hears the appeal.

B. Evidence

1. A summary of the important objective evidence on the matters of blasting, noise, and visibility is as follows:

a. On blasting, the Department puts into evidence documents showing that the southern area of the park is an "airport impact zone." Department Exhibit #20, pp. 8-9.

For the Petitioner, Phillip Berger testifies that the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151, and that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2.

b. The testimony of the noise experts for each party is in substantial accord. Bruce G. Leonard testifies for the Petitioner that the ambient noise level in the pertinent section of the park is about 45 decibels on an A weighted scale (dB(A)), Tr. p. 227, and the projected noise level of equipment and trucks, measured at various points in the park, ranges from 46 to 55 dB(A), Tr. pp. 228-39. He also testifies that the Federal Highway Administration standard for traffic noise in parks is 57 dB Ldn or Leq, Tr. p. 224, and that the Division of Parks and Recreation has proposed a guideline for noise levels in parks of 55 dB Ldn or Leq.

For the Department James D. Simons testifies that the ambient noise level in the southwestern part of the park is about 45 dB(A), Tr. p. 414, and

the projected noise level of equipment and trucks ranges from 51 to 55 dB(A), Tr. p. 496 (see also pp. 497-516). Documentary evidence introduced by the Department indicates that most of the southern half of the park is a flight zone for aircraft taking off and landing. Department Exhibit #20, pp. 8-9.

c. The testimony on visibility reveals little agreement among the experts. For the Petitioner, Earl Harbison testifies that, due to topography and vegetation, the crushing equipment at the proposed site would generally not be visible from the park. Tr. pp. 158-98.

Richard Hazard testifies for the Department that, during the summer, the equipment could be visible from a few areas in the park, and, during the winter, it would be visible "from a good area within the southern half" of the park. Tr. pp. 776-8.

2. The purposes of the park are to preserve natural resources and to make them available to the public for recreation and wildlife interpretation. Tr. p. 912 (testimony of Stephen G. Conrad for the Department).

Conclusions

The Mining Commission makes the following conclusions:

1. Blasting - Based on:

a. the stipulation by the parties that vibration and air blast levels generated by proposed blasting are within the Department's guidelines, Wake Stone Exhibit #3, p. 2;

b. documentary evidence that the southern area of the park is an "airport impact zone" (i.e. a flight zone for incoming and outgoing airplanes), Department Exhibit #20, pp. 8-9;

c. Phillip Berger's testimony that

i. the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151; and

ii. that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2,

the Commission concludes that blasting will not have a significant adverse effect on the purposes of the park.

2. Based on:

a. the stipulation by the parties that the Petitioner's dust control plan is designed to meet Department standards, Wake Stone Exhibit #3, p. 2; and on

b. James D. Simons's testimony that the dust from blasting is not a concern of the Department in this case, Tr. p. 490, the Commission concludes that dust from the quarry and roads will not have a significant adverse effect on the purposes of the park.

3. Based on the stipulation by the parties that the Division of Highways has determined that, even with a coincidence of projected peak traffic for the park and the quarry, there would be no unsafe traffic conditions, the Commission determines that traffic generated by the quarry would not have a significant adverse effect on the purposes of the park.

4. Based on:

a. testimony of Bruce G. Leonard, Phillip Berger, and James D. Simons about an existing noise level of about 45 dB(A), Tr. pp. 227 and 414, and projected noise levels ranging from 46 to 55 dB(A);

b. the absence of a noise level standard for equipment near parks such as this one; and

c. the analogous, though not dispositive, Federal Highway Administration standard for traffic noise in parks of 57 dB Ldn or Leq, Tr. pp. 224-5; and

d. testimony by Bruce G. Leonard that the Division of Parks and Recreation has proposed a guideline of 55 dB Ldn or Leq, Tr. p. 224, the Commission concludes that the noise from the quarry machinery and traffic will not have a significant adverse effect on the purposes of the park.

5. The Commission concludes from the conflicting testimony of Earl Harbison and Richard Hazard that, while the crusher may be visible from certain places in the park, such visibility will not have a significant adverse effect on the purposes of the park.

Decision

The Commission feels strongly that the Department has acted in a conscientious and responsible manner, and had a reasonable basis to believe that the denial of the permit was correct. The Department had to reach a conclusion on a major issue--noise--without standards or guidelines applicable to parks. To make matters more complex, the area around the park reflects a checkerboard of land use plans by various state and local government units. Thus, although the Commission reverses the Department's action in this case, it wishes to commend the Department for its diligence and dedication.

In order to protect the park from any possible adverse effects of the quarrying operation, the permit should be issued, subject to the Commission's final approval, with the terms and conditions outlined below.

1. The Division and Wake Stone shall develop a plan to be incorporated in the permit to require utilization of state-of-the-art techniques to minimize noise, dust, and other possible adverse effects on the park.

2. The Division and Wake Stone shall develop a plan for the optimum location of processing and stockpiling facilities and roads to minimize possible effects on the park.

3. The Division and Wake Stone shall develop an adequate buffer zone plan for the area between the quarry and the park.

4. The Division shall require Wake Stone to construct a berm or berms between the quarry and the park.

5. Pursuant to Wake Stone's proposal that, as part of its reclamation plan, it donate the quarry to the State for park use on termination of the operation, the Commission requests that counsel for Wake Stone meet with Mr. Daniel C. Oakley, Assistant Attorney General, and Ms. Becky R. French, Director, Office of Administrative Hearings, to reach an agreement, to be submitted to the Commission, on the best method to transfer the land.

This the 27th day of January 1981.

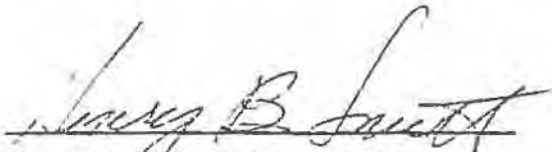

Dr. Henry B. Smith, Chairman
North Carolina Mining Commission

Exhibit 4

BEFORE THE MINING COMMISSION

In the Matter of Denial of)
Permit Application of the)
Wake Stone Corporation)

Findings of Fact, Con-
clusions, and Decision

This cause was heard before the Mining Commission on November 6 and 7 and December 16 and 17, 1980, pursuant to NCGS 74-61 and NCGS 150A-23 et seq., to consider the denial by the Division of Land Resources, Department of Natural Resources and Community Development (hereinafter the Department), of Wake Stone Corporation's application for a permit.

Preliminary Statement

Wake Stone Corporation (hereinafter the Petitioner) has options to purchase various parcels of land, some of which adjoin Umstead State Park (hereinafter the park). It seeks a permit to quarry stone there. The Department denied Petitioner's request for a permit. The Petitioner then appealed this decision to the Mining Commission.

Issue

The issue in this case is whether the proposed quarry would have a significant adverse effect on the purposes of the park.

Statutes

The Department is empowered to issue a permit to quarry stone "conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objective of this Article." NCGS 74-61. The Department may deny a permit if "the operation would

have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area." NCGS 74-61(5). An applicant may appeal the Department's action to the Mining Commission, which may "affirm, affirm with modifications, or overrule the decision of the Department and may direct the Department to take such action as may be required to effectuate its decision." NCGS 74-61.

Background Information

The park consists of 5,217 acres in Wake County, along the eastern edge of the Piedmont Plateau, between Raleigh and Durham. The Master Plan developed for the park in 1974, State Exhibit #20, sets forth its history:

Until 1934, the land now occupied by Umstead Park was a farm community--houses, mills, and fields in various stages of use and abandonment. Poor agricultural techniques, such as one crop farming, primarily cotton, led to the loss of topsoil and subsequently, a submarginal existence. Second-growth timber was then removed from some upland areas, which expedited the erosion process.

During the great depression, the United States Resettlement Division began a program of purchasing sub-marginal farm land, and in 1935 a proposal to acquire and develop a recreational demonstration project was instigated generally within the area now known as Umstead Park. The development of this area was jointly supervised by the National Park Service and the Department of Conservation and Development and until 1943, all development and land acquisition was financed by Federal money.

In addition to the development of four group camps, a lake, temporary roads and utility systems, the CCC Work Force was responsible for important conservation measures such as tree planting and the construction of check dams, which aided the stabilization of the soil.

World War II forced the abandonment of Federal activities and on April 6, 1943, the United States deeded to the State of North Carolina, for the sum of one dollar, 5,088 acres to serve "public park, recreation, and conservation purposes". This land was officially designated as Crabtree Creek State Park. In 1947 and 1949, public use facilities including picnic areas, tent and trailer campgrounds, and utilities were financed by the General Assembly's first State Parks Division appropriation.

The master plan also describes the present and projected use of the surrounding land:

Umstead Park lies in a highly urbanized area of the State and, as in the past, is currently under pressure from adjacent development. Suburban Raleigh is rapidly moving westward and recent development, in fact, abuts the eastern edge of the Park. With the development of Crabtree Valley Shopping Center and Interstate 40, land values have risen enormously so that a setting for residential and industrial growth in very close proximity to the Park has developed. City and county land use zoning has set the stage for both of these types of uses so that the only inhibiting factor at present is the lack of sanitary sewer and water lines. While it is only a matter of time before these utilities are provided, the exact location of the utility easements has not yet been pinpointed as it relates to the Park. Specifically, the land adjacent to the northeast between the Park and Highway 70 and that land between I-40 and the park boundary is currently under considerable pressure for building In addition, the Raleigh thoroughfare plan indicates the construction of a new road linking I-40 and the Duraleigh Road as an extension of the Southern Belt-line which, without control measures, will most certainly create similar development pressure.

Raleigh-Durham Airport lies adjacent to Umstead Park's western boundary and presently has two runways; one for commercial airlines runs parallel to the Park in a northeast/southwest direction and the other, for small craft use, lies perpendicular to the Park in an east-west direction. The Airport Authority is currently in advanced stages of planning a new runway and enlarged facilities. The proposed runway would lie perpendicular to the Park south of the Airport's existing facilities and service commercial flights.*

Thus, Highway 70, Interstate 40, and Raleigh-Durham Airport bound the park on three sides. Of these three neighboring land uses, the airport has the most pronounced effect on the day-to-day uses of the park. The map on page 9 of the master plan depicts two broad swaths, covering about one-half of the park, as "airport impact zones." The plan states:

Noise emanating from the airport as well as the major roads, I-40, Highway 70, and proposed roads, is important not only to the location of overnight facilities in the Park but also those areas of daytime use where a greater degree of tranquility is required. Flight zones over the Park from the existing

*The Mining Commission is aware of the more recent action of the Raleigh-Durham Airport authority regarding Plan 523L and the alignment of the proposed runway parallel to the western border of the park.

small craft runway and proposed runway impact the park not only due to noise but also visually so that, in these zones, the location of uses requires considerable scrutiny.

Stipulations

In the Prehearing Order, Wake Stone Exhibit #3, the parties stipulate as follows:

1. The only contested matters are blasting, dust, traffic, noise, and visibility.
2. Blasting will occur eight to twelve times per month and at vibration and air blast levels within the Department's guidelines.
3. The Petitioner's dust control plan meets all Department standards, and the Petitioner has a permit to operate proposed air pollution abatement facilities for controlling dust.
4. The Division of Highways has determined that a coincidence of projected peak traffic for the park and the quarry will not create unsafe conditions.

Findings of Fact

A. Chronology of Events

1. On March 21, 1980, Wake Stone Corporation, operator of several stone quarries in North Carolina, applies for a permit to quarry stone on 195 acres situated north of Interstate 40, south of the airport, at the southwest corner of the park. Wake Stone Exhibit #1.
2. By letter dated August 22, 1980, Mr. Stephen G. Conrad, Director, Division of Land Resources, Department of Natural Resources and Community Development, denies the permit. State Exhibit #18.
3. By letter dated September 16, 1980, the Petitioner requests a hearing before the Mining Commission to appeal the denial. State Exhibit #19.

4. On October 31, 1980, Mr. Daniel C. Oakley, Assistant Attorney General, appearing on behalf of the Department, and Mr. James M. Kimzey, Esquire, appearing on behalf of the Petitioner, hold a prehearing conference and file a Prehearing Order. Wake Stone Exhibit #3.

5. On November 6 and 7 and December 16 and 17, 1980, the Mining Commission hears the appeal.

B. Evidence

1. A summary of the important objective evidence on the matters of blasting, noise, and visibility is as follows:

a. On blasting, the Department puts into evidence documents showing that the southern area of the park is an "airport impact zone." Department Exhibit #20, pp. 8-9.

For the Petitioner, Phillip Berger testifies that the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151, and that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2.

b. The testimony of the noise experts for each party is in substantial accord. Bruce G. Leonard testifies for the Petitioner that the ambient noise level in the pertinent section of the park is about 45 decibels on an A weighted scale (d3(A)), Tr. p. 227, and the projected noise level of equipment and trucks, measured at various points in the park, ranges from 46 to 55 dB(A), Tr. pp. 228-39. He also testifies that the Federal Highway Administration standard for traffic noise in parks is 57 dB Ldn or Leq, Tr. p. 224, and that the Division of Parks and Recreation has proposed a guideline for noise levels in parks of 55 dB Ldn or Leq.

For the Department James D. Simons testifies that the ambient noise level in the southwestern part of the park is about 45 dB(A), Tr. p. 414, and

the projected noise level of equipment and trucks ranges from 51 to 55 dB(A), Tr. p. 496 (see also pp. 497-516). Documentary evidence introduced by the Department indicates that most of the southern half of the park is a flight zone for aircraft taking off and landing. Department Exhibit #20, pp. 8-9.

c. The testimony on visibility reveals little agreement among the experts. For the Petitioner, Earl Harbison testifies that, due to topography and vegetation, the crushing equipment at the proposed site would generally not be visible from the park. Tr. pp. 158-98.

Richard Hazard testifies for the Department that, during the summer, the equipment could be visible from a few areas in the park, and, during the winter, it would be visible "from a good area within the southern half" of the park. Tr. pp. 776-8.

2. The purposes of the park are to preserve natural resources and to make them available to the public for recreation and wildlife interpretation. Tr. p. 912 (testimony of Stephen G. Conrad for the Department).

Conclusions

The Mining Commission makes the following conclusions:

1. Based on:

a. the stipulation by the parties that vibration and air blast levels generated by proposed blasting are within the Department's guidelines, Wake Stone Exhibit #3, p. 2;

b. documentary evidence that the southern area of the park is an "airport impact zone" (i.e. a flight zone for incoming and outgoing airplanes), Department Exhibit #20, pp. 8-9;

c. Phillip Berger's testimony that

i. the sound of an airplane taking off over the southwestern corner of the park would muffle the sound of a blast, Tr. pp. 140, 151; and

ii. that projected blasts would be well within the Department's guidelines, Tr. pp. 131-2,

the Commission concludes that blasting will not have a significant adverse effect on the purposes of the park.

2. Based on:

a. the stipulation by the parties that the Petitioner's dust control plan is designed to meet Department standards, Wake Stone Exhibit #3, p. 2; and on

b. James D. Simons's testimony that the dust from blasting is not a concern of the Department in this case, Tr. p. 490, the Commission concludes that dust from the quarry and roads will not have a significant adverse effect on the purposes of the park.

3. Based on the stipulation by the parties that the Division of Highways has determined that, even with a coincidence of projected peak traffic for the park and the quarry, there would be no unsafe traffic conditions, the Commission determines that traffic generated by the quarry would not have a significant adverse effect on the purposes of the park.

4. Based on:

a. testimony of Bruce G. Leonard, Phillip Berger, and James D. Simons about an existing noise level of about 45 dB(A), Tr. pp. 227 and 414, and projected noise levels ranging from 46 to 55 dB(A);

b. the absence of a noise level standard for equipment near parks such as this one; and

c. the analogous, though not dispositive, Federal Highway Administration standard for traffic noise in parks of 57 dB Ldn or Leq, Tr. pp. 224-5; and

d. testimony by Bruce G. Leonard that the Division of Parks and Recreation has proposed a guideline of 55 dB Ldn or Leq, Tr. p. 224, the Commission concludes that the noise from the quarry machinery and traffic will not have a significant adverse effect on the purposes of the park.

5. The Commission concludes from the conflicting testimony of Earl Harbison and Richard Hazard that, while the crusher may be visible from certain places in the park, such visibility will not have a significant adverse effect on the purposes of the park.

Decision

The Commission feels strongly that the Department has acted in a conscientious and responsible manner, and had a reasonable basis to believe that the denial of the permit was correct. The Department had to reach a conclusion on a major issue--noise--without standards or guidelines applicable to parks. To make matters more complex, the area around the park reflects a checkerboard of land use plans by various state and local government units. Thus, although the Commission reverses the Department's action in this case, it wishes to commend the Department for its diligence and dedication.

In order to protect the park from any possible adverse effects of the quarrying operation, the permit should be issued, subject to the Commission's final approval, with the terms and conditions outlined below.

1. The Division and Wake Stone shall develop a plan to be incorporated in the permit to require utilization of state-of-the-art techniques to minimize noise, dust, and other possible adverse effects on the park.

2. The Division and Wake Stone shall develop a plan for the optimum location of processing and stockpiling facilities and roads to minimize possible effects on the park.

3. The Division and Wake Stone shall develop an adequate buffer zone plan for the area between the quarry and the park.

4. The Division shall require Wake Stone to construct a berm or berms between the quarry and the park.

5. Pursuant to Wake Stone's proposal that, as part of its reclamation plan, it donate the quarry to the State for park use on termination of the operation, the Commission requests that counsel for Wake Stone meet with Mr. Daniel C. Oakley, Assistant Attorney General, and Ms. Becky R. French, Director, Office of Administrative Hearings, to reach an agreement, to be submitted to the Commission, on the best method to transfer the land.

This decision is not final. In no more than 45 days, unless the Commission grants an extension, the Division and Wake Stone shall, at a public hearing, present to the Commission the plans outlined above. At the hearing the Commission will not hear new evidence. At least 5 days before this hearing the parties shall deposit the plans with B. R. French for distribution to the Commission. Following the hearing the Commission shall render a final decision, from which the parties may appeal pursuant to NCGS 150A-1 et seq.

Date of original decision: January 27, 1981.

As amended and corrected, this the ~~APR~~ of ~~3~~ 1981, 1981.

Original signed by

Dr. Henry B. Smith, Chairman
North Carolina Mining Commission

Exhibit 5

BEFORE THE MINING COMMISSION

In the Matter of Denial of
Permit Application of
Wake Stone Corporation

FINAL DECISION

In accordance with this Commission's initial Findings of Fact, Conclusions, and Decision of January 27, 1981, as amended and corrected, and with the March 12, 1981 Agreement of Wake Stone Corporation and the Division of Land Resources, Department of Natural Resources and Community Development, concerning the Conditions enumerated below as 1, 2, 4, and 5; and upon consideration of the supplementary arguments of the parties concerning Condition 3, *infra*, the Mining Commission hereby orders that the Division of Land Resources grant to Wake Stone Corporation the permit applied for with the following conditions:

Condition No. 1 - Minimize noise, dust, and other possible adverse effects.

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.

5. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. Only such blasting techniques as minimize noise shall be employed.
7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday through Friday and shall not be operated on State-recognized holidays.

Dust

1. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.
5. Drill hole dust shall be controlled by wetting or other means.
6. Dust control shall be maintained by the use of water sprays.
7. A water spray shall be provided for highway haul trucks.
8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2 - Optimize processing and stockpiling facilities to minimize possible effects on the park.

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to screen the park from the sight and sound of the operation, reduce erosion, and shield the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The stockpiles shall be located close to the quarry entrance roads.
4. The plant and stockpile area shall be close to the intersection of SR-1790 and SR 1654.
5. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. The purpose of this relocation is to aid erosion and sediment control.
6. The new location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment - i.e. compressor and drill, shovels, and trucks - can be placed below the surrounding land at the initial phases of quarrying.

Condition No. 3 - Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Exceptions 2, 3, and 4 listed on Page 2 of Wake Stone Corporation's memorandum of March 10, 1981, except all of the area north of the ten-year buffer line shall be left as a natural buffer

zone and not be developed or altered for commercial purposes.

Condition No. 4 - Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown, except the berm shall not encroach on the permanent buffer zone.
3. The side slopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.

Condition No. 5 - Donation of Quarry to the State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan, the terms and conditions of the offer and acceptance shall be set forth in the reclamation plan as follows.

The term, "quarry site", shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides (see the reclamation plan for the requirements applying to the slope), and a reasonable area to connect the pit and surrounding strip to Umstead Park, constituting a total area of at least 75 acres.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The Mining Commission concludes from the evidence submitted in this case that the operation of the quarry, under the conditions set forth in this decision, will not have a significant adverse effect on the purposes of the park.

For the unanimous Mining Commission, this the APR day of 3 1981, 1981.

Original signed by

Henry B. Smith, Chairman

Original signed by

T.W. Tysinger

Original signed by

W.W. Woodhouse

Commissioners Barkalow and Long took no part in the disposition of the case.

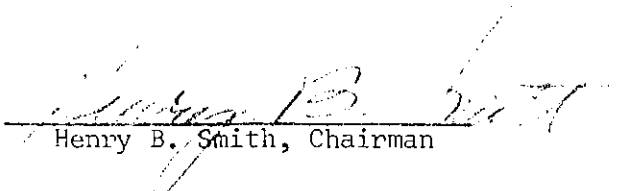
BEFORE THE MINING COMMISSION

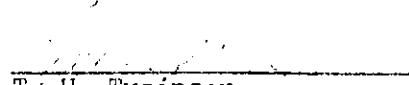
In the Matter of Denial of)
Permit Application of the)
Wake Stone Corporation)

Amendment to the
Final Decision

The 250' buffer area shown on the northern boundary and
the 100' buffer area on the eastern boundary of Wake Stone's pro-
perty is considered by the Commission the permanent buffer zone.

This the 3rd day of April 1981.


Henry B. Smith, Chairman


T. W. Tysinger

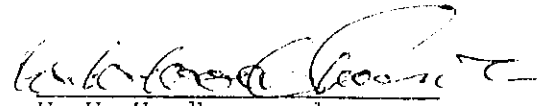

W. W. Woodhouse, Jr.

Exhibit 6

MEMORANDUM

TO: Mr. Steve Conrad
FROM: Mr. John Bratton
RE: Condition #3 - Buffers
DATE: March 10, 1981

Wake Stone's investment in land for which we have already contracted and our investment in plant equipment which will be incurred in the development of a quarry is so great that we must in some manner assure ourselves of the ability to mine the available stone on our site.

We have offered to provide a very wide buffer area adjacent to Umstead Park which we believe will, as a practical matter, avoid impact on Umstead Park.

As we have previously indicated to you, based on our present knowledge of the location and quality of rock deposits, we would expect to commence our quarry pit in the area shown on the layout last presented to you and to expand the pit by mining in a southwesterly and westerly direction.

You have requested that we accept an arrangement to the effect that during the first 10 years of operation we would confine our operation to the area mentioned above. Our response is that we are entirely willing to this arrangement with the one condition that mining in this area for the 10 year period is economically feasible. By this we mean to indicate that it is our desire to confine our mining operation to this area if the quantity and quality of stone are adequate to serve the market for stone. We believe they are adequate. If we knew that they were adequate, we would agree to this without any condition or hesitation.

However, there is some remote possibility that the stone deposit in this area will be inadequate as to quantity or quality, or both. In the unlikely event that this should be the case, we must then have the alternative to mine areas north of the initial pit area.

At this point, let us assume that the quality and quantity of stone in the area south and west of our initial pit would be adequate for the first 10 year period. In that event, we would propose that all of the area northeast of our initial pit

area and northeast of our plant area would remain in its present natural state and undisturbed during the first 10 years except as follows: [We would construct whatever structures are necessary to prevent sedimentation of the Crabtree Creek and we would use overburden to construct berms.]

At such time as the mining of stone is completed to the south and west of the initial pit area, it will be necessary for us to mine in the area north of the initial pit area. Long before that time, the jaw crusher will have been lowered into the pit and the noise from this part of our operation will have been reduced to a minimum. In fact, we do not believe that it will be audible from any point within the park.

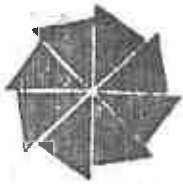
The buffer areas which we have proposed on our latest plan, as supplemented by berms which we propose to construct, will provide a barrier to vision and noise which, in general, is 50 feet or more above the bank of the Crabtree Creek. These berms will be constructed during the early years of our operation and planted with a dense cover of pines (or other trees and shrubs if preferred) at a time when the berms will not be needed for screening purposes. By the time the quarrying operation approaches the buffer area, the growth on these berms will have matured to a point that the berms will afford at least as much visual and noise protection to the park as the other areas of the buffer zone.

As previously indicated, these buffers will be undisturbed subject only to the following exceptions:

1. The construction of berms as above indicated.
2. The installation of drainage and sedimentation controls to protect the Crabtree Creek.
3. The removal of dead, dangerous and leaning trees which might make the area dangerous to persons wandering into the buffer area.
4. Such crossings as may be necessary in future years to accommodate the installation of utilities. (An illustration of the foregoing might be a situation such as the future construction of a sewer line down the Crabtree Creek. In such event, it is conceivable that in the distant future our property which is left after the quarry operation has been completed would be developed and there would be a need to cross the buffer area and connect to such sewer outfall line. In the absence of such available utilities, we would have no need to cross the buffer area with a utility line. We would note that this is not a new point since the reservation of this right has been expressed in our earliest correspondence with State officials concerning the donation of the quarry site.)

The buffering of the park during the early years of our quarrying operation, as well as the latter years, would offer a maximum of protection to Umstead Park while at the same time permitting us to remove and make available for public consumption an important and necessary natural resource.

Exhibit 7



North Carolina Department of Natural Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF
LAND RESOURCES

Stephen G. Conrad, Director

Box 27687, Raleigh 27611
Telephone 919 733-3833

March 12, 1981

Dr. Henry B. Smith, Chairman
North Carolina Mining Commission
208 Daniels Hall
N.C. State University
Raleigh, North Carolina 27650

Dear Dr. Smith:

The joint response of the Division of Land Resources and Wake Stone Corporation to the Mining Commission's January 27, 1981, Findings of Fact, Conclusion and Decision, has been transmitted to you by Ms. Becky French. This letter will serve as a supplement to that information.

In reaching the decision to deny the application by Wake Stone Corporation to operate a quarry adjacent to William B. Umstead State Park, the Division determined that the proposed quarry operation would have a significant adverse effect on the purposes of the park, principally in the form of noise intrusion and deterioration of visual resources. At the conclusion of the appeal hearings regarding the permit denial, the Mining Commission reversed the Division's decision and stated that the permit should be issued subject to the Commission's final approval, with certain terms and conditions specified by the Commission. After having met with Wake Stone Corporation a number of times during the past 45 days in an effort to carry out the Commission's order, the Division of Land Resources and the Department of Natural Resources and Community Development respectfully submit that it remains our position that the quarry permit should be denied for the reasons presented at the hearing.

As previously stated, during the past 45 days the Division of Land Resources and Wake Stone Corporation have met frequently in order to address the terms and conditions specified in your Findings of Fact, Conclusions and Decision. The attached document outlines the terms and conditions that the Division of Land Resources and Wake Stone Corporation have mutually agreed would serve to minimize the mining impact on William B. Umstead State Park should they be included in a mining permit.

During the process of arriving at these terms and conditions, I believe there was a conscientious effort on the part of both parties to carry out the intent of the Commission's order. From our initial meet-

Dr. Henry B. Smith, Chairman

Page - 2

March 12, 1981

ing, major concessions have been made by both parties in order to arrive at the mutually agreeable terms and conditions.

General agreement has been reached regarding noise and dust control measures, the buffer zone to be maintained during the initial permit period and construction of the berm adjacent to the western boundary of the park. However, there is a disagreement between the Division and Wake Stone Corporation as to the need to construct the berm proposed on the north side of Wake Stone's property adjacent to Crabtree Creek.

The proposed location of the plant site offers some advantages related to erosion control and visual impact and the Division has recognized certain property restrictions and economic restraints that Wake Stone contends prohibits the shifting of stockpile areas further from the park boundary. However, the Division of Parks and Recreation objects to the proposed plant site location and maintains this is not the optimum location of processing and stockpiling facilities to minimize possible effects on the park.

The Division of Land Resources has acted in a responsible manner to carry out the Mining Commission's order and has made every effort to provide maximum protection to the park, while at the same time recognizing the economic limitations that can reasonably be imposed on a competitive business. Despite our best efforts in complying with the Commission's order, there remains several points in which the Division could not agree with Wake Stone and we must defer to the Commission to exercise its judgement in resolving these differences and making a final determination as to whether a quarry can be operated at this site without having a significant adverse effect on the purposes of the park.

Very truly yours,

Stephen G. Conrad

Stephen G. Conrad, Director

SGC/ps

Exhibit 8

Condition #5 - Donation of Quarry to the State

As a part of its reclamation plan, Wake Stone will offer to donate to the State for park use on termination of the quarry operation the "quarry site" (as that term is defined herein) by the method and subject to conditions which Wake Stone has set forth in its memorandum to Dan Oakley dated March 12, 1981.

The Department expresses no opinion concerning the acceptability of the contents of the memorandum. The memorandum is being received to prescribe generally the boundaries of the Wake Stone offer. As such, the contents of the memorandum are subject to approval by the Department of Administration and the Council of State and the ascertaining that its contents are in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the condition of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment, Extension and Development of State Parks, State Recreation Areas and State Park Natural Areas."

The term, "quarry site", as used in this Condition #5 shall mean the entire pit area as it exists after quarrying has been completed, a 50 foot strip around the pit area and a reasonable area to connect the pit area to Umstead Park.

In order to permit the State to make a choice as to whether to accept the donation of the quarry site, Wake Stone will grant to the State an option containing the terms set forth in the aforementioned Wake Stone memorandum dated March 12, 1981.

Exhibit 9

MEMORANDUM

TO: Mr. Dan Oakley

FROM: Wake Stone Corporation

RE: Condition #5 - Donation of Quarry to the State

DATE: March 12, 1981

As a part of its reclamation plan, Wake Stone will offer to donate to the State for park use on termination of the quarry operation the "quarry site" (as that term is defined herein) by the method and subject to the conditions herein set forth.

The term, "quarry site", as used in this Condition #5 shall mean the entire pit area as it exists after quarrying has been completed, a 50 foot strip around the pit area and a reasonable area to connect the pit area to Umstead Park.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway #40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying

operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Wake Stone will not during the option period encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for such encumbrances as Wake Stone is entitled to place on this area pursuant to its purchase contracts.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, including, without limitation, providing security for the payment of any sums of money or the providing of any goods and/or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U. S. Government, State of North Carolina, Wake County, any municipality having jurisdiction or by any court from removing from Wake Stone's property all quarryable stone which is not located within the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years. (Wake Stone has explained that its purpose in specifying this condition is that there is always the possibility, however remote, that the proposed quarry will not be a successful operation for a variety of reasons. These might include such items as a discovery following further development that substantial portions of the stone deposit are unmarketable (making the quarry an unprofitable operation); the principals of the company might die in a common disaster; or the company may incur an unforeseeable economic disaster which destroys its financial ability to successfully develop the quarry. In any such event, and assuming no quarry is operating on the property, the reason for the donation would cease to exist. In this event, the property should be available for development for other appropriate uses. On the other hand, the option would bind Wake Stone's successor in title who is engaged in quarrying, whereby the option would be effective if the combined time of quarrying by Wake Stone

and its successor in title equalled 5 years. The five-year period would allow Wake Stone sufficient time to thoroughly test the rock deposit which is quarried initially, time to fully test the entire area and time for the quarry to become established as a successful venture.)

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. Such other terms as are mutually acceptable to the State and Wake Stone.

Exhibit 10



North Carolina Department of Natural Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF
LAND RESOURCES

Stephen G. Conrad, Director

Box 27687, Raleigh 27611
Telephone 919 733-3833

March 12, 1981

Ms. B.R. French
Administrative Hearing Officer
Department of Natural Resources
and Community Development
P.O. Box 27687
Raleigh, North Carolina 27611

For: Transmittal to Mining Commission
Re: In the matter of the Wake Stone Corporation
Administrative Hearing

Dear Ms. French:

Pursuant to the directives of the Mining Commission, Wake Stone Corporation and the Division of Land Resources submit the attached materials for consideration by the Commission as possible terms and conditions of a mining permit for Wake Stone Corporation. The parties, through discussions, have been able to agree that the attached terms and conditions comply with the Commission's request to provide protection for the park by minimizing adverse effects of the quarrying operation.

The parties have been unable to agree completely on some items and will address those concerns separately.

The attachments to this letter include:

1. Document consisting of eight (8) pages representing agreed-upon responses to the five conditions set out in the Commission's decision, dated January 27, 1981.
2. The revised site plan referred to in the response to Condition #2.
3. The Wake Stone Corporation memorandum, dated March 10, 1981, referred to in Condition #3.
4. Wake Stone Corporation memorandum dated March 12, 1981 referred to in Condition #5.

FOR THE DIVISION OF LAND RESOURCES

Stephen G. Conrad
Stephen G. Conrad, Director

FOR WAKE STONE CORPORATION

John R. Bratton
John R. Bratton

WAKE STONE INCORPORATED--CARY QUARRY

Condition No. 1-Minimize noise, dust, and other possible adverse effects

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided. Noise barriers may ? P. 450
be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.
5. Compressors with noise abatement enclosures (currently called whisperized compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. See Condition No. 4.

7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday-Friday and shall not be operated on State recognized holidays.

Dust

1. The access road to the quarry from the scale house to SR 1790 shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.

5. Drill hole dust shall be controlled by wetting or other means.


6. Dust control shall be maintained by the use of water sprays.

7. A water spray shall be provided for highway haul trucks.

8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2-Optimize processing and stockpiling facilities to
minimize possible effects on the park

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to better screen the park from noise and visual impact of the operation while optimizing erosion control opportunity and screening the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The new location of the stockpiles and plant permits the stone to be placed in the stockpiles by conveyor belts instead of trucks.
4. The stockpiles shall be located closer to the quarry entrance roads, resulting in less haul.
5. The plant and stockpile area shall be relocated closer to the intersection of SR 1790 and SR 1654 resulting in less highway haul.

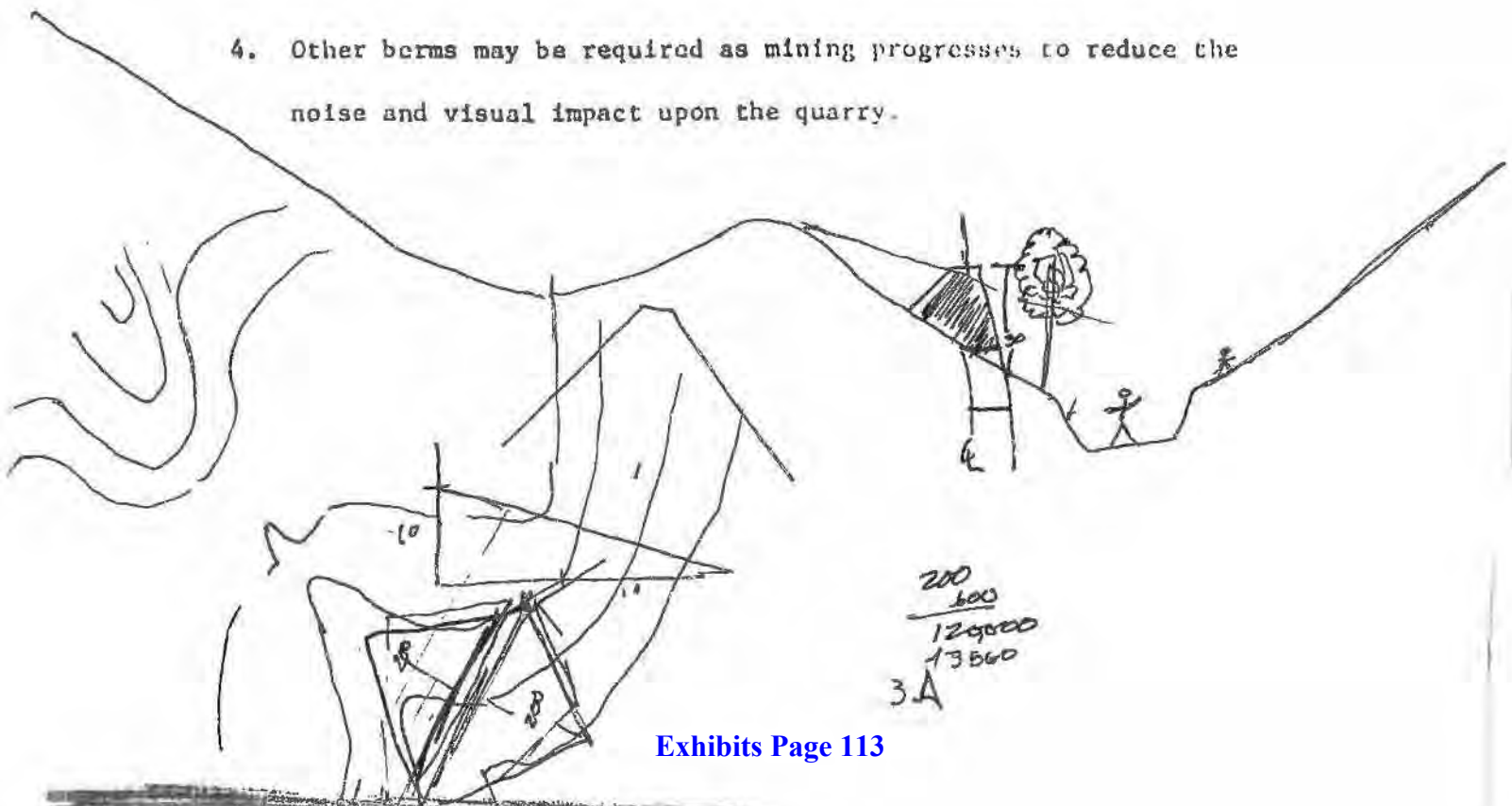
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6. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. This relocation will enable better erosion and sediment control.
 7. The new location of the quarry pit shall facilitate the relocation of the primary jaw crusher into the pit at the earliest possible time.
 8. The new location of the pit shall permit the quarry excavating equipment—ie compressor and drill, shovels, and trucks to be operating at lower elevation and below the surrounding land at the initial phase of quarrying once the overburden is removed.

Condition No. 3-Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Wake Stone Corporation's memorandum of March 10, 1981 except the Division objects to the north berm being built during the 10 year period and Wake Stone Corporation maintains it needs to be able to build the north berm during this period.

Condition No. 4-Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown.
3. The sideslopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.



Condition #5 - Donation of Quarry to the State

As a part of its reclamation plan, Wake Stone will offer to donate to the State for park use on termination of the quarry operation the "quarry site" (as that term is defined herein) by the method and subject to conditions which Wake Stone has set forth in its memorandum to Dan Oakley dated March 12, 1981.

The Department expresses no opinion concerning the acceptability of the contents of the memorandum. The memorandum is being received to prescribe generally the boundaries of the Wake Stone offer. As such, the contents of the memorandum are subject to approval by the Department of Administration and the Council of State and the ascertaining that its contents are in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the condition of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment, Extension and Development of State Parks, State Recreation Areas and State Park Natural Areas."

The term, "quarry site", as used in this Condition #5 shall mean the entire pit area as it exists after quarrying has been completed, a 50 foot strip around the pit area and a reasonable area to connect the pit area to Umstead Park.

In order to permit the State to make a choice as to whether to accept the donation of the quarry site, Wake Stone will grant to the State an option containing the terms set forth in the aforementioned Wake Stone memorandum dated March 12, 1981.

Exhibit 11



North Carolina Department of Natural Resources & Community Development

James B. Hunt, Jr., Governor

Howard N. Lee, Secretary

DIVISION OF
LAND RESOURCES

Stephen G. Conrad, Director

Box 27687, Raleigh 27611
Telephone 919 733-3833

May 13, 1981

Mr. John Bratton, Jr.
Wake Stone Corporation
P. O. Box 190
Knightsdale, North Carolina 27545

RE: Cary Quarry
Wake County

Dear Mr. Bratton:

The application for a mining permit for the Cary Quarry in Wake County has been found to meet the requirements of G.S. 74-51 of The Mining Act of 1971. Since your company already has a blanket bond on file sufficient to cover this application, I am enclosing the mining permit.

The conditions of the mining permit were based primarily upon information supplied in the application with conditions added as directed by the North Carolina Mining Commission necessary to insure compliance with The Mining Act of 1971 and to provide maximum possible protection to William B. Umstead State Park.

Please review the permit and notify this office of any objection or question concerning the terms of the permit.

Very truly yours,

Stephen G. Conrad, Director

SGC:pg

cc: ✓ John Holley

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

DIVISION OF LAND RESOURCES

LAND QUALITY SECTION

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G. S. 74-46 through 68, "The Mining Act of 1971", Mining Permitting Regulation 15 N.C.A.C. 5B, and other applicable laws, rules and regulations

Permission is hereby granted to:

WAKE STONE CORPORATION , permittee

for the operation of a CRUSHED STONE QUARRY

entitled, CARY QUARRY , permit no. 92-10

and located in WAKE County, which shall provide

that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

In accordance with the application for this mining permit, which is hereby approved by the Department of Natural Resources and Community Development, hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other securities on file with the Department, and may survive the expiration, revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Site Plan

The site plan referred to in this permit shall indicate the topographic site plan of the Wake Stone Corporation revised March 10, 1981, with the following exception:

The berm and associated disturbances located along the northern boundary shall not be constructed unless approved by the Department.

Park

Whenever used or referred to in this permit, the term "park" shall mean the William B. Umstead State Park.

Conditions

The permitted mining operation shall not violate standards of air quality, surface water quality, or ground water quality promulgated by the Environmental Management Commission.

This permit shall be effective from the date of its issuance until May 13, 1991 and shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

1. Wastewater Control

Any wastewater processing shall be in accordance with permit requirements and regulations promulgated by the Division of Environmental Management.

2. Dust Control

Any mining process producing air contaminant emissions shall be subject to the permitting requirements and regulations promulgated by the Division of Environmental Management. The operator will take whatever reasonable precautions necessary to prevent or minimize the fugitive dust from going offsite. Such measures include but are not limited to:

- A. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation shall cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
- B. The provisions of the air quality permit #4386 shall be followed.
- C. A water wagon with sprays shall be used for wetting roads to prevent dust.
- D. Sprays shall be used throughout the plant at transfer points to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.
- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

3. Buffer Zones

The dotted line labelled as buffer along the northern boundary and along the eastern boundary is the permanent buffer as designated by the Mining Commission. (Site plan dated March 10, 1981)

An undisturbed buffer of existing natural vegetation shall be maintained between the mining disturbance and Park property as indicated by the "10 year buffer" shown on the site plan dated March 10, 1981.

An undisturbed buffer zone of existing natural vegetation shall also be maintained between the top edge of the bank of Crabtree Creek and any mining disturbance within the 10 year permit area. The buffer zone shall be of sufficient width to prevent offsite sedimentation and to preserve the integrity of the natural watercourse. In any event, the buffer will meet U.S. Corps of Engineers requirements for Crabtree Creek Watershed.

The only exceptions to these undisturbed buffers of natural vegetation are:

- A. The construction of berms as approved by the Department for visual and noise screening.
- B. The installation of drainage and sedimentation controls to protect the Crabtree Creek.
- C. Such crossings as may be necessary in future years to accommodate the installation of utilities.

4. Erosion and Sediment Control

- A. Adequate mechanical barriers including but not limited to diversions, earthen dikes, brush barriers, silt check dams, silt retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance to prevent sediment from discharging onto adjacent surface areas or into any lake or natural watercourse in proximity to the affected land.
- B. The existing lakes shall be used to trap sediment from initial mining disturbances. The spillways of the existing lakes shall be further stabilized as necessary to prevent erosion of the spillway from runoff from the affected lands. The embankments of the existing lakes shall be improved if necessary to insure the stability of the embankments.

- C. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measures, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause offsite damage due to siltation, shall be planted or otherwise provided with ground cover, devices or structures sufficient to restrain such erosion.
- D. Drainage shall be provided either through or around any berms that would otherwise obstruct natural drainage.

5. Noise Abatement

All reasonable precautions shall be taken to minimize the impact of operational noise upon Umstead Park. Such measures shall include but not be limited to:

- A. Noise barriers between the park boundary and the crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
- B. The plant shall be located at the lowest feasible elevation.
- C. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
- D. The chutes used in processing shall be rubberized.
- E. Compressors with noise abatement enclosures (currently called whisperized compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
- F. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
- G. Conveyors rather than trucks shall be used for stockpiling material.
- H. The quarry and stone process operations shall be operated only on Monday through Friday and shall not be operated on the following recognized holidays: New Year's Day, Easter Monday, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. A reasonable amount of hauling of processed

stone from the stockpile areas is permitted until 1:00 P.M. on Saturdays, but hauling shall not be done at any other time on weekends or on holidays without prior approval by the Department.

6. Processing Plant Location

- A. The processing and stockpiling facilities shall be located as indicated on the Wake Stone Corporation site plan dated March 10, 1981.
- B. The plant shall be located to place the processing and stockpiling facilities at the lowest possible elevation to reduce visibility and noise impact on the park.
- C. The location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment-i.e. compressor and drill, shovels, and trucks-can be placed at an elevation lower than the surrounding natural ground in the initial phases of quarrying.

7. Prevention of Stagnant Pools

The affected land shall be graded so as to prevent collection of pools of water that are, or are likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

8. Blasting

The following blasting conditions shall be observed by the operator to prevent hazard to persons and adjacent property from thrown rock or vibrations:

- A. In all blasting operations, except as hereinafter otherwise provided, the maximum peak particle velocity of any component of ground motion shall not exceed 1 inch per second at the immediate location of any building regularly occupied by human beings such as dwelling house, church, school, public building, or commercial or institutional building. A smaller peak particle velocity may be required to protect neighboring structures or equipment vulnerable to vibrations less than 1 inch/second peak particle velocity.
- B. Airblast overpressure shall not exceed 128 decibels linear (dBL)-"warning," 132 dBL "caution," and 135 dBL "maximum" as measured at the immediate location of any dwelling house, church, school, public building, or commercial or institutional building.

- C. The operator shall take all reasonable precautions to insure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Should flyrock occur beyond the guarded area, it shall be reported to the Department immediately. The Department will conduct a thorough investigation to determine the cause. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the permit.
- D. Operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes; depth of holes; total pounds of explosives; maximum pounds per delay interval; amount of stemming and burden for each hole; and blast location. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

9. Visual Screening

The operation shall be situated to optimize natural screening of the operation from public view from Interstate 40 and the Park property. The visual screening plan shall include maintaining undisturbed buffer areas of natural vegetation as shown on the site plan dated March 10, 1981. Additionally, a vegetated earthen berm shall be constructed east of the processing plant and stock-pile area as shown on the revised site plan. Visual screening such as vegetated earthen berms and/or evergreen trees shall be placed as necessary to supplement natural screening.

Construction of Berms

- A. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the Park as shown on Wake Stone Corporation's site plan dated March 10, 1981.
- B. Berm dimensions shall be no less than indicated on Wake Stone Corporation's site plan dated March 10, 1981 and may be higher and longer than shown.
- C. The side slopes of the berm shall be graded to a stable grade or 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary. The alignment of the berm may vary from the approved site plan as is necessary to provide the 50 feet of undisturbed land between the park boundary and the toe of the berm and assuring an acceptable angle of repose for the slope of the berm.
- D. Other berms may be required as mining progresses to reduce the noise and visual impact upon the park.

10. Highwall Barrier

A physical barrier consisting of a fence or boulder barriers, etc. shall be maintained around the perimeter of any quarry highwall.

11. Annual Report

An Annual Reclamation Report shall be submitted on a form supplied by the Department on February 1 of each year until reclamation is completed and approved.

12. Surety Bond

The security which was posted pursuant to N.C.G.S. 74-54 in the form of \$25,000.00 Blanket Bond is sufficient to cover the crushed stone operation as indicated on the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the term of the Mining Permit.

The approved plan provides:

Minimum Standards As Provided By G. S. 74-53

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the N.C. Agricultural Experiment Station and the N.C. Forest Service.
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, initiation of reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS

1. Provided further, and subject to the Reclamation Schedule, the reclamation shall be to restore the affected lands to a condition suitable for wildlife and recreation.
2. Specifications for reclamation shall be as follows:
 - A. The process plant area shall be graded and smoothed.
 - B. Any sideslopes in unconsolidated material shall be graded to a 2 horizontal to 1 vertical grade or flatter.

- C. Suitable benches shall be left in the rock excavation to provide support where rock weakness could lead to collapse of high walls.
- D. Overburden shall be used for site grading or berm construction at approved locations.
- E. Settling ponds shall be drained and stabilized to prevent erosion.
- F. Oil, grease, scrap metal, wood and other debris shall be removed from the surface and delivered to scrap dealers or landfilled in an approved manner.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.
- H. The affected land shall be graded to prevent the collection of noxious or foul water.

3. Revegetation Plan

All reclaimed areas in unconsolidated material shall be re-vegetated utilizing the following provisions:

Site Preparation: The ground will be graded and/or shaped where necessary keeping in mind the ultimate use of the site, but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material, and other obstruction that will interfere with the establishment of vegetation planned for the site will be removed and/or buried. Surface runoff that might concentrate to cause undesirable erosion will be controlled by terraces or diversions diverting water to protect outlets.

Lime and Fertilizer: Liming and/or fertilizer will be conducted in accordance with soil test results and as required for vegetation planned for the site.

Seedbed Preparation: Lime and fertilizer will be mixed with the soil to a depth of 3 to 4 inches where conventional equipment can be used. On slopes steeper than about 2:1, soils will be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to machinery, seed and nutrients will be applied by hand.

Vegetation: Sericea Lespedeza and/or Weeping lovegrass will be established on the site to provide ground cover and erosion control. When using Sericea Lespedeza, scarified seed will be applied when reclamation is conducted during spring months and unscarified seed will be used during the fall.

Application will be in a uniform manner either by machine or hand at the rate of 50 pounds of lovegrass, Lespedeza, or combination per acre. Seed will be covered to a depth of 1/8 to 1/4 inch and the soil then firmed with a cultipacker or similar equipment. Mulch consisting of dry, unchopped small grain straw or similar type material will be spread evenly over the surface at the rate of 1 to 2 tons per acre or until about 75 percent of the soil is hidden. Loblolly pine seedlings will be planted at selected sites to provide a view screen to provide revegetation. Spacing will be about 4' X 4' for revegetation purposes.

Maintenance: Plant replacement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site will be carried out until vegetation is properly established.

4. Reclamation Schedule

Some reclamation activities, particularly those relating to control of erosion, will be conducted simultaneously with mining activities. Diversion channels or terraces that may be required to control surface runoff on the property will be established and revegetated as soon as they are constructed. Portions of berms will be revegetated as completed. Final reclamation activities will be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area, and in all instances reclamation activities will be completed within two years after completion or termination of mining.

5. Donation to State

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

The term, "quarry site," shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

The right of the State to exercise its option shall be subject to:

- A. Wake Stone Corporation not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing Wake Stone Corporation's property all quarryable stone which is outside the buffer zone referred to in condition 3, page 4. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.
- B. The operation of a quarry on Wake Stone Corporation's property for a minimum period of five years.

The conveyance of the quarry site, if approved by the State, shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

The method by which the quarry site may be donated to the State is as follows: Upon acquisition of the land by Wake Stone Corporation (by the exercise of its options to purchase), Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

- A. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between the Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.
- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is sooner, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.
- C. Until the option has expired Wake Stone Corporation will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone Corporation's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the Council of State and the ascertaining that the offer is in accord with the laws of the State and lawful adopted rules and regulations. Further, the Department's analysis of the condition of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment, Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

Permit issued this the 13th day of May, 1981.

BY: Stephen G. Conrad

Stephen G. Conrad, Director
Division of Land Resources
By Authority of the Secretary

Of the Department of Natural Resources and Community Development

Exhibit 12

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CV _____

THE UMSTEAD COALITION,)
)
Plaintiff,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
DIVISION OF ENERGY, MINERAL,)
AND LAND RESOURCES, AND WAKE)
STONE CORPORATION,)
Defendants.)
_____)

**AFFIDAVIT OF
RUFUS L. EDMISTEN**

Rufus L. Edmisten, being first duly sworn, deposes and says:

(1) I am over the age of 18, I have no disability, and I have personal knowledge of, and am competent to testify as to, the matters set forth herein. All matters stated herein are based upon my personal involvement in the events described, my recollections of the events, and my review of documents to refresh my recollection as necessary.

(2) I am a citizen and resident of Wake County, North Carolina.

(3) I am a graduate of the University of North Carolina at Chapel Hill with a degree in political science, and I obtained a J.D. degree from George Washington University Law Center. I served as the Attorney General of the State of North Carolina from 1975 – 1985, having previously served as our Secretary of State. I am now in private practice.

(4) During my tenure as the Attorney General of the State of North Carolina, I was familiar with the efforts of Wake Stone Corporation (“Wake Stone”) to obtain approval to engage in mining operations on a tract of property adjacent to William B. Umstead State Park (“Umstead Park”). I was also familiar with the original denial of a mining permit to Wake Stone by the North

Carolina Department of Natural Resources and Community Development (NRCD), now known as the Department of Environmental Quality (DEQ)¹ in 1980 and the appeal of the permit denial by Wake Stone to the North Carolina Mining Commission (“Mining Commission”). Finally, I was very familiar with the reversal of the denial of the mining permit by the Mining Commission and the subsequent issuance of a permit by DEQ in May of 1981.

(5) I am aware that Wake Stone asked for and received a change to its permit for the Umstead quarry in 2018, effectively removing the fifty-year Sunset Clause from the permit by modifying condition 5.B of the permit of May 13, 1981, to change the phrase “whichever is sooner” with “whichever is later.” For 37 years, the permit had required Wake Stone to donate the property to the State at the end of fifty years, or when quarrying had ceased and not resumed for a period of ten years, whichever is sooner. Replacing the word “sooner” with “later” completely removes any sunseting from the permit, giving Wake Stone instead the right to quarry for as long as it wishes, with the State not receiving the property for another ten years after the eventual cessation of quarrying activities. This is not what was intended.

(6) Governor James B. Hunt, Jr., Secretary of DEQ Howard N. Lee, and I were all publicly on record in 1980 and 1981 criticizing the Mining Commission’s decision, opposing the location of a quarry adjacent to Umstead Park, and considering a legal appeal of the Mining Commission’s reversal decision.

(7) During the timeframe leading up to the Mining Commission’s reversal, Wake Stone had made repeated public statements, as reflected in newspaper reports at the time, that it expected the life of the mine to be 50 years, after which it would be donated to the State.

¹ The name of the agency that was NRCD in 1981 and is now DEQ has changed several times in the past forty years, as have the names of the constituent divisions. Hereinafter, for simplicity and clarity, the current Departmental acronym “DEQ” will be used to refer to the agency, the relevant division, and their predecessors.

(8) It was the desire of DEQ and my office to try to reach a compromise with Wake Stone to avoid any further appeals or judicial disputes if possible. Negotiations occurred between the parties at the time in an effort to reach agreement regarding the terms of the permit to be issued, including, but not limited to, the wording of the conditions pertaining to the timing of Wake Stone's donation of the quarry property to the State of North Carolina.

(9) Wake Stone did not want any limits on the timing of donation of the property. The Governor and I, and others, did not want a permit to be issued for this mine at all. In the end, an agreement was reached to include verbiage to require a cessation of mining operations and trigger exercise of the State's option to acquire the quarry property in at most 50 years, *i.e.*, a 50-year sunset provision. In return for Wake Stone's agreement, DEQ and our office would refrain from appealing or otherwise challenging the Mining Commission's decision. As a result, the issued permit including the provision that the donation of the property would occur at the conclusion of 50 years if not before.

(10) I also find it difficult to believe Wake Stone would have accepted the permit if the use of the word "sooner" was an error. This was not a small or insignificant point.


(11) In the process of refreshing my recollection, I reviewed a variety of public records, including information relating to the basis for Wake Stone's 2018 request to modify condition 5.B of the permit of May 13, 1981, to change the phrase "whichever is sooner" with "whichever is later." Inclusion of the terms phrase "whichever is sooner" is consistent with my recollection of what was ultimately agreed upon at the time, since it insures a cessation of mining operations and exercise of the donation of quarry property option in no later than 50 years.

(12) Based on my review of certain public records, it is my understanding that over nearly a 37-year period of time since issuance of the Wake Stone permit on May 13, 1981, there

have been 8 different renewals of the permit. Each time the permit was renewed, Wake Stone had the opportunity to express a concern if there had been an error, but they never did until 2011. Wake Stone made the same claim of typographical error in 2011 in conjunction with a request for renewal. It was considered at that time by Director James Simons, who had firsthand knowledge of the original permit application in 1981. He saw no merit to the claim, and renewed the permit with the word 'sooner' intact, maintaining a 50-year time limit on the mine

(13) For the foregoing reasons, I do not believe that Stephen Conrad, who was Director of DEQ in 1980 and 1981, made a typographical error by including the phrase "whichever is sooner" as opposed to "whichever is later" in condition 5.B of the May 13, 1981, permit, and I further believe that the permit issued should speak for itself and be respected – particularly when the requested change would eliminate the very condition that was the key basis for approving the permit.

Further affiant sayeth not.



Rufus L. Edmisten

Dated this 19th day of May, 2022.

STATE OF NORTH CAROLINA

WAKE COUNTY

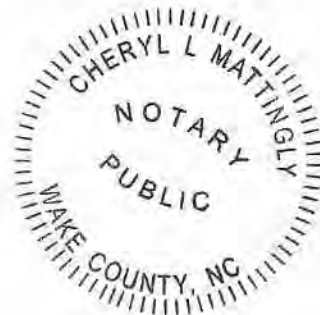
I certify that Rufus L. Edmisten personally appeared before me this day and executed the foregoing affidavit in my presence, having sworn to its truthfulness.

Dated this 19th day of May, 2022.

Cheryl L. Mattingly

Notary Public

(SEAL)



My commission expires: My Commission Expires 2/1/2023

Exhibit 13

26-13
216
February 4, 1981

MEMORANDUM

RECEIVED

TO: Secretary Howard N. Lee

FROM: Neil S. Grigg *NSG*

SUBJECT: Departmental Strategy for Wake Stone Permit Issue
in Umstead Park

NRCD OFFICE OF
ADMINISTRATION

I met with some key staff members February 3 to develop a recommended strategy for you on the Wake Stone permit issue. We discussed the matter at great length and offer you the recommendations contained in this memorandum.

The Department has a long-range objective and two short-range objectives. The long-range objective is to do everything possible to protect the park. This is consistent with your memorandum of February 2 to Governor Hunt and with our responsibilities to protect the park. The two short-range objectives are to follow the most orderly procedure possible since the Mining Commission has apparently reversed a Departmental decision. That is, if at all possible, we would like to avoid the appearance of being in disarray by disagreeing internally in the Department and using the appeal process. Our other short-range objective is to signal to the public at large and to the specific park supporters that the Department intends to do everything possible to protect Umstead Park.

The strategy we have developed is designed to achieve our long-range objective and both short-range objectives. In this strategy, we retain the right to appeal the Mining Commission's decision, but we recommend that you reject the option of an immediate direct appeal. The immediate appeal would have some public relations value in the near-term, but it would signal that the Department and the Commission were not working together in an orderly fashion. The two-part process we recommend is as follows. First, we suggest you follow a deliberate procedure to develop either the most stringent possible conditions for the quarry or to exercise further legal remedies, whatever they may be, if satisfactory conditions cannot be developed. Second, we recommend that NRCD develop a strong public information strategy considering all of the constitutencies of the Department to be implemented immediately.

The specifics of process we suggest are as follows:

1. At the present, we seek clarification from the Mining Commission as to whether their decision is a final or interim decision, contingent on whether satisfactory conditions can be worked out. I have already directed that this clarification be sought and the Attorney General's Office will pursue it right away.
2. The Division of Land Resources begin to discuss with Wake Stone what conditions would be satisfactory to both the Department and the company. If satisfactory conditions can be developed which would obviously protect the park and which could be supported by the public, we feel the

Page 2

Secretary Howard N. Lee

February 4, 1981

permit could be issued and the matter would be terminated. If no satisfactory agreement on conditions can be reached, we would refer the matter back to the Mining Commission with the recommendation that the permit be denied. At that time, if there was still not agreement between the Department and the Commission, the Department would evaluate and might choose to pursue other legal remedies such as an appeal.

I have asked Mrs. Anne Taylor to take the lead on the public involvement program and work with the Divisions and Offices of the Department that either have an interest in this matter or resources which can be devoted to it. Mrs. Taylor will also work with you directly to involve the environmental leaders that you have been meeting with to advise on this matter.

We recommend this strategy to you and stand ready to advise you at any time on this matter. The persons who were in attendance at the meeting and who concurred with the strategy are myself, Bill Ross, Anne Taylor, Jim Stevens, Steve Conrad, Sandy Babb and Dan Oakley.

If you approve, you might direct Jim Sheppard to prepare the appropriate press release.

NSG/ch

Exhibit 14

Wehner, Judy

From: David Lee [davidlee@wakestonecorp.com]
Sent: Monday, March 07, 2011 3:21 PM
To: Judy Wehner; Wehner, Judy
Subject: Language
Attachments: Mining Commission Final Decision.pdf; Language for Donation to State.doc

Judy-

Thanks for the opportunity to review the Triangle Quarry permit with you this morning by phone. I have spent some more time reviewing the permit since you and I last spoke by phone and believe the section on "Donation to State" would benefit from some revision. The original permit for Triangle was issued before I joined Wake Stone so I'm not as familiar with offer to "donate to the State" as I probably should be. However, I've located the Mining Commission's FINAL DECISION document of April 3, 1981 (copy attached) and compared the "donation to the state" language there (pages 3-6) with what is in the current version of the permit (pages 18-19). The "donation to the state" language in the permit seems confusing to me - discussion of "option" before its even made know what the "option" is all about. I think it would be beneficial to incorporate the Commission's language more nearly verbatim.

I've taken the liberty of drafting suggested language you might consider in place of existing section 5. beginning on page 17 of the permit. Feel free to run it by Tracy and/or Jim and see what they think.

Let me know if you have any questions or need any additional information. I'm not trying to write my own permit, just trying to be helpful.

Thanks!

[Mining Commission Final Decision.pdf](#) [Language for Donation to State.doc](#)

-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightsdale, North Carolina 27545
Office: 919-266-1100, ext. 134
Cell: 919-369-3449
Home: 919-553-4666

BEFORE THE MINING COMMISSION

In the Matter of Denial of
Permit Application of
Wake Stone Corporation

FINAL DECISION

In accordance with this Commission's initial Findings of Fact, Conclusions, and Decision of January 27, 1981, as amended and corrected, and with the March 12, 1981 Agreement of Wake Stone Corporation and the Division of Land Resources, Department of Natural Resources and Community Development, concerning the Conditions enumerated below as 1, 2, 4, and 5; and upon consideration of the supplementary arguments of the parties concerning Condition 3, infra, the Mining Commission hereby orders that the Division of Land Resources grant to Wake Stone Corporation the permit applied for with the following conditions:

Condition No. 1 - Minimize noise, dust, and other possible adverse effects.

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.

5. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. Only such blasting techniques as minimize noise shall be employed.
7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday through Friday and shall not be operated on State-recognized holidays.

Dust

1. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.
5. Drill hole dust shall be controlled by wetting or other means.
6. Dust control shall be maintained by the use of water sprays.
7. A water spray shall be provided for highway haul trucks.
8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2 - Optimize processing and stockpiling facilities to minimize possible effects on the park.

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to screen the park from the sight and sound of the operation, reduce erosion, and shield the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The stockpiles shall be located close to the quarry entrance roads.
4. The plant and stockpile area shall be close to the intersection of SR-1790 and SR 1654.
5. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. The purpose of this relocation is to aid erosion and sediment control.
6. The new location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment - i.e. compressor and drill, shovels, and trucks - can be placed below the surrounding land at the initial phases of quarrying.

Condition No. 3 - Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Exceptions 2, 3, and 4 listed on Page 2 of Wake Stone Corporation's memorandum of March 10, 1981, except all of the area north of the ten-year buffer line shall be left as a natural buffer

zone and not be developed or altered for commercial purposes.

Condition No. 4 - Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown, except the berm shall not encroach on the permanent buffer zone.
3. The side slopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.

Condition No. 5 - Donation of Quarry to the State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan, the terms and conditions of the offer and acceptance shall be set forth in the reclamation plan as follows.

The term, "quarry site", shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides (see the reclamation plan for the requirements applying to the slope), and a reasonable area to connect the pit and surrounding strip to Umstead Park, constituting a total area of at least 75 acres.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The Mining Commission concludes from the evidence submitted in this case that the operation of the quarry, under the conditions set forth in this decision, will not have a significant adverse effect on the purposes of the park.

For the unanimous Mining Commission, this the APR day of 3 1981, 1981.

Original signed by

Henry B. Smith, Chairman

Original signed by

T.W. Tysinger

Original signed by

W.W. Woodhouse

Commissioners Barkalow and Long took no part in the disposition of the case.

Donation to State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its final reclamation plan, Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey to the State a fee simple title to the quarry site. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The term "quarry site" shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides, and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the state elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six-month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six-month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.
2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.
3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.
4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.
5. The right of the State to exercise its option shall be subject to:

- (a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.
- (b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchaser, ad-valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easement as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the conditions of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment of Extension and Development of State Parks, State Recreation Areas and State Natural Areas".

Exhibit 15

David Lee

From: David Lee
Sent: Friday, March 16, 2018 1:36 PM
To: Wehner, Judy
Subject: FW: Triangle Quarry Permit Language Revisions

Judy-

Below is the original email I sent back in March 2011 concerning the Mining Commission's Final decision language. I'm resending this so that you have documentation.

Attached is a PDF of the Commission's final decision. Reclamation Condition 5B on Page 17 of the current permit should simply be changed to read "whichever is later", not "whichever is sooner", a simple one word change. I suggest cutting and pasting the following:

- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

Thanks!

Call Cole or I if you have any questions.



Mining
Commission Fin...

-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545
Office: 919-266-1100, ext. 134
website: www.wakestonecorp.com
Cell: 919-369-3449
Home: 919-553-4666

From: David Lee
Sent: Monday, March 07, 2011 3:21 PM
To: Judy Wehner <judy.wehner@ncmail.net>; Wehner, Judy <judy.wehner@ncdenr.gov>
Subject: Language

Judy-

Thanks for the opportunity to review the Triangle Quarry permit with you this morning by phone. I have spent some more time reviewing the permit since you and I last spoke by phone and believe the section on "Donation to State" would benefit from some revision. The original permit for Triangle was issued before I joined Wake Stone so I'm not as familiar with offer to "donate to the State" as I probably should be. However, I've located the Mining Commission's FINAL DECISION document of April 3, 1981 (copy attached) and compared the "donation to the state" language there (pages 3-

6) with what is in the current version of the permit (pages 18-19). The "donation to the state" language in the permit seems confusing to me - discussion of "option" before its even made know what the "option" is all about. I think it would be beneficial to incorporate the Commission's language more nearly verbatim.

I've taken the liberty of drafting suggested language you might consider in place of existing section 5. beginning on page 17 of the permit. Feel free to run it by Tracy and/or Jim and see what they think.

Let me know if you have any questions or need any additional information. I'm not trying to write my own permit, just trying to be helpful.

Thanks!

-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545
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Cell: 919-369-3449
Home: 919-553-4666

BEFORE THE MINING COMMISSION

In the Matter of Denial of
Permit Application of
Wake Stone Corporation

FINAL DECISION

In accordance with this Commission's initial Findings of Fact, Conclusions, and Decision of January 27, 1981, as amended and corrected, and with the March 12, 1981 Agreement of Wake Stone Corporation and the Division of Land Resources, Department of Natural Resources and Community Development, concerning the Conditions enumerated below as 1, 2, 4, and 5; and upon consideration of the supplementary arguments of the parties concerning Condition 3, *infra*, the Mining Commission hereby orders that the Division of Land Resources grant to Wake Stone Corporation the permit applied for with the following conditions:

Condition No. 1 - Minimize noise, dust, and other possible adverse effects.

Noise

1. Noise barriers between crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
2. The plant shall be located at a lower elevation as indicated on the required site plan.
3. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
4. The chutes used in processing shall be rubberized.

5. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
6. Only such blasting techniques as minimize noise shall be employed.
7. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
8. Conveyors rather than trucks shall be used for stockpiling material.
9. The quarry shall be operated only on Monday through Friday and shall not be operated on State-recognized holidays.

Dust

1. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation agrees to cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654.
2. The provisions of the air quality permit No. 4386 shall be followed.
3. A water wagon with sprays shall be used for wetting roads to prevent dust.
4. Sprays shall be used throughout the plant at transfer points to control dust.
5. Drill hole dust shall be controlled by wetting or other means.
6. Dust control shall be maintained by the use of water sprays.
7. A water spray shall be provided for highway haul trucks.
8. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

Condition No. 2 - Optimize processing and stockpiling facilities to minimize possible effects on the park.

1. The processing and stockpiling facilities shall be relocated as indicated on the Wake Stone revised site plan submitted February 18, 1981. The purpose of this relocation shall be to screen the park from the sight and sound of the operation, reduce erosion, and shield the operation from public view along Interstate 40.
2. The relocation shall place the processing and stockpiling facilities at a lower elevation to reduce visibility and noise.
3. The stockpiles shall be located close to the quarry entrance roads.
4. The plant and stockpile area shall be close to the intersection of SR 1790 and SR 1654.
5. The initial site disturbance from both quarry excavation and plant site development shall be confined to one drainage system, which is now already protected by ponds which will serve as sediment basins. The purpose of this relocation is to aid erosion and sediment control.
6. The new location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment - i.e. compressor and drill, shovels, and trucks - can be placed below the surrounding land at the initial phases of quarrying.

Condition No. 3 - Buffer Zone Plan

1. The extent of the completely undisturbed buffer zone to be maintained between the park boundary during the 10 year permit shall be as indicated on the revised plan and modified by Exceptions 2, 3, and 4 listed on Page 2 of Wake Stone Corporation's memorandum of March 10, 1981, except all of the area north of the ten-year buffer line shall be left as a natural buffer

zone and not be developed or altered for commercial purposes.

Condition No. 4 - Construction of Berms

1. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's revised site plan.
2. Berm dimensions shall be no less than indicated on Wake Stone Corporation's revised site plan and may be higher and longer than shown, except the berm shall not encroach on the permanent buffer zone.
3. The side slopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary.
4. Other berms may be required as mining progresses to reduce the noise and visual impact upon the quarry.

Condition No. 5 - Donation of Quarry to the State

Pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan, the terms and conditions of the offer and acceptance shall be set forth in the reclamation plan as follows.

The term, "quarry site", shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides (see the reclamation plan for the requirements applying to the slope), and a reasonable area to connect the pit and surrounding strip to Umstead Park, constituting a total area of at least 75 acres.

The method by which the quarry site will be donated to the State is as follows: Upon acquisition of the land by Wake Stone (by the exercise of its options to purchase), Wake Stone will grant to the State an option which, if exercised by the State, will require that Wake Stone convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

The terms and conditions of the option shall be as follows:

1. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead Park and Interstate Highway 40, it shall be the duty of Wake Stone to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone convey the quarry site to the State. If the State elects to have Wake Stone convey the quarry site to the State, it shall notify Wake Stone of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone shall have no further obligation to convey the quarry site to the State.

2. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph 1 above.

3. Until the option has expired Wake Stone will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

4. During the option period, Wake Stone shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

5. The right of the State to exercise its option shall be subject to:

(a) Wake Stone not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing from Wake Stone's property all quarryable stone which is outside of the BUFFER AREA referred to in paragraph 3 above. The requirement by the State that Wake Stone comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

(b) The operation of a quarry on Wake Stone's property for a minimum period of five years.

6. The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

7. The option may include such other terms as are mutually acceptable to the State and Wake Stone.

The Mining Commission concludes from the evidence submitted in this case that the operation of the quarry, under the conditions set forth in this decision, will not have a significant adverse effect on the purposes of the park.

For the unanimous Mining Commission, this the ^{APR} day of 3 1981, 1981.

Original signed by

Henry B. Smith, Chairman

Original signed by

T.W. Tysinger

Original signed by

W.W. Woodhouse

Commissioners Barkalow and Long took no part in the disposition of the case.

Exhibit 16

December 31, 1980

MEMORANDUM

NORTH CAROLINA
ATTORNEY GENERAL'S OFFICE

FEB 11 1981

TO: Mining Commission
FROM: Becky French
RE: Wake Stone

ENVIRONMENTAL PROTECTION SECTION
95011745

Facts

The Mining Commission is empowered to issue a mining permit "conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objectives of this Article." N.C. Gen. Stat. §74-51. In addition, it may deny a permit if "the operation would have a significantly adverse effect on the purposes of a publicly owned park, forests, or recreation area." N.C. Gen. Stat. §74-51(5).

Wake Stone owns some land and has an option to purchase other land adjoining Umstead State Park. It seeks a permit to quarry stone there. It has shown a willingness to deed to the State of North Carolina 78 acres which adjoin the park at the end of 50 years if it obtains the permit.

Question

Which is the best means for the State to permit Wake Stone to quarry stone for 50 years while assuring itself of good title to the 78 acres at the end of the term?

Answer

The State's interest is best protected if it owns the land in fee simple absolute and Wake Stone has the right to a profit a prendre in the stone for a term of years and on condition subsequent. Wake Stone should convey the land in fee to the State in consideration for which the State should grant Wake Stone the profit a prendre. This mutual exchange will help to assure the enforceability of covenants that Wake Stone makes as part of the transaction.

I

The right to a profit a prendre is closely analogous to an easement; in fact, the same rules apply to both in most cases. Webster, Real Estate Law in North Carolina §309 (1971) (hereinafter cited as Webster). The Restatement of Property in §450 describes a profit a prendre as a type of easement. Unlike an easement, however, a profit a

prendre "gives its owner the right to remove some specified product of the soil from the land." Webster, §309. A profit a prendre may be acquired by grant, reservation, or prescription; it may be in gross or appurtenant; and an appurtenant profit a prendre passes upon transfer of the dominant lands. Id. Finally, a profit a prendre may be created for a definite period at the end of which it expires automatically. Cf. Webster §306.

If the State in this case has a fee simple and Wake Stone has a profit a prendre, the State would have the most extensive interest possible while still permitting the operation of a quarry since its interest would be present and possessory. (The State cannot, of course, exercise its right to possession so as to conflict unreasonably with the profit a prendre. See Setzer v. Annas, 286 NC 534, 212 SE2d 154 (1975).) Wake Stone would acquire title to the stone by extracting it. Builders Supply Co. v. Gainey, 282 NC 261, 192 SE2d 449 (1972).

The main drawback to the State owning the land in fee and Wake Stone having a profit a prendre concerns liability for taxes. Generally, real property owned by the State is exempt from taxation, but only "if it is used wholly and exclusively for public purposes." N.C. Gen. Stat. §105-278.1(b)(1). Use of the land in question by a private entity for private purposes clearly falls outside of this exemption. Cf. In re North Carolina Forestry Foundation, 296 N.C. 330, 250 SE2d 236 (1974) (timberland owned by charitable foundation, and leased to paper company for 99 years for operation as a commercial timber farm, not exempt from property taxes even though the proceeds of the lease were used for educational purposes).

The State should grant the profit a prendre for 50 years "upon the express condition that" Wake Stone pays, in the manner described below, all property taxes. Thus, the grant is on condition subsequent with a power of termination in the State. Simes, The Law of Future Interests §14 (2d Edition, 1966) (hereinafter cited as Simes). This power of termination should be distinguished from the automatic termination which takes place at the end of the 50 years term.

N.C. Gen. Stat. §105-302(11) sets forth how the interests should be listed for tax purposes. It provides:

When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.

The interests should be listed separately in order to shield the State's fee simple from liability for Wake Stone's failure to pay taxes on its profit a prendre, and also to avoid the embarrassment of having a State interest directly involved in a foreclosure proceeding. (While the profit a prendre ceases to exist upon Wake Stone's failure to pay taxes

and the State's exercise of the power of termination, the taxing authority might still try to foreclose on it.) Each year Wake Stone should pay directly to the taxing authority whatever taxes are assessed on the profit a prendre, and pay to the State an amount equal to the taxes it owes on the remaining interest (which the State will then pay to the taxing authority). This payment to the State may constitute income for federal tax purposes under IRC §115. The federal income tax can be viewed as the price of certainty in acquiring good title.

Further conditions subsequent of the profit a prendre, or conditions of the permit, or both, should include (1) restrictions on quarrying or related activity within a set distance of the existing park boundary, the cutting of timber, and the use of explosives; and (2) the requirement that the Mining Commission or an engineer that it designates give prior approval of the location of open pits, other openings, waste material dumps, ponds, fluent ditches, roads, buildings, and machinery. Accompanying this fairly extensive regulation should be a means for settling disputes such as arbitration or appeal to the Mining Commission or to the NRCD. Finally, the deed should contain a covenant against assignment of Wake Stone's profit a prendre. This extensive detail in the deed would, of course, also be included in the actual permit itself.

II

Other means by which Wake Stone could quarry stone on the land for 50 years while attempting to assure the State of title to the land on or before the end of the term include a division of mineral and surface rights, a defeasable fee and an executory interest, a mining lease, a contract to convey, and a life estate and a remainder.

If Wake Stone were to retain the mineral rights but grant to the State the surface rights, it would in effect divide the ownership of the land horizontally. Each party would hold its interests in fee simple. *CF. Webster, §8.* The result would be unfavorable to the State because it could never be sure to acquire all rights in the tract and merge the separate interests.

If Wake Stone had a defeasable fee for 50 years and the State a springing executory interest (i.e. a fee simple estate to begin in 50 years), Wake Stone would "be able to commit such acts in impairment of the value of the premises as the owner of a fee simple may normally perform," and the State could probably "enjoin waste only if (Wake Stone's) acts were 'wanton or unconscionable'..." *Simes, §46.* *Simes* notes, however, that "there seems to be no authority on the point." *Id.* Thus, the law here is so murky that the State could not proceed with confidence.

The best alternative to the profit a prendre is a 50 year mining lease to Wake Stone, with the fee simple in the State. The mining "lease" would give Wake Stone fee simple title to the stone in place; that is, unlike in the case of a profit a prendre, ownership of the stone would not be contingent upon severance, at least during the term of the lease. *Burby, Real Property §22.* Only upon termination of the lease would the State become revested with ownership of the stone. *Id.* Furthermore, the "nature of the grant is not changed by the fact that

the transfer is called a 'lease.' Since the conveyance of a freehold estate is involved, a covenant against assignment is null and void." Id. Thus, a mining lease would give to Wake Stone a more substantial interest which would be harder for the State to control than a profit a prendre. It would also involve the same possibility of federal income tax consequences as a profit a prendre even though the payments to the State were described as rent. The State property tax results would also be the same.

A contractual undertaking by Wake Stone to convey the land in 50 years has a fair chance of just giving the State a lawsuit. Even if Wake Stone agreed to pay the costs of a suit brought to compel specific performance, its covenant would be worthless if it were insolvent. Moreover, N.C. Gen. Stat. §1-39 appears to cut off the State's right to enforce such a contract. It states:

No action for the recovery or possession of real property shall be maintained, unless it appears that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within twenty years before the commencement of the action, unless he was under the disabilities prescribed by law.

Finally, a life estate in the president of Wake Stone, with remainder to the State, seems particularly ill-suited to the facts of this case since the life tenant and his heirs and assigns could potentially be divested of a valuable interest tomorrow. I doubt if they would agree to it.

BF/dap

Exhibit 17

Correction of Reclamation Condition #5: "Donation to State"

1. *Please provide all documentation (emails, electronic documents, hardcopy documents) in your possession related to the 2011 and 2018 requests for modification of Condition 5.B. and the subsequent permit modification.*

Wake Stone believes the discrepancy in language ("later" vs "sooner") between the April 3, 1981 "Final Decision" of the Mining Commission and the language incorporated into the original mining permit was an error. Wake Stone staff became aware of this discrepancy during review of a draft renewal permit in early 2011 (at that time, all mining permits required a renewal application every 10 years).

In an email dated March 7, 2011 from David Lee to Ms. Judy Wehner, Assistant State Mining Specialist, Wake Stone requested that this error be corrected. This email never received a response, and the mining permit was reissued on March 30, 2011, without this correction. At that time Wake Stone estimated that mining would not be completed at Triangle Quarry for close to twenty years and that there would again be an opportunity to have this correction made in 2021, during the next ten-year renewal. However, in October 2017 the North Carolina General Assembly amended the Mining Act of 1971, removing the requirement for renewals every 10 years, incorporating an annual fee schedule instead.

In February 2018, in a continuing effort to get the existing mining permit and associated referenced maps as accurate and current as possible (based on improved mapping technologies and updated aerial photography), and to correct typographical errors, discrepancies, or outdated language in the permit, Wake Stone did a thorough review of the permit, including how buffers had been incorrectly illustrated on site maps. These suggested corrections were submitted to Ms. Judy Wehner, Assistant State Mining Specialist, for DEMLR consideration under the Department's Administrative Permit Modification procedures. The request was reviewed by DEMLR staff, and to our understanding, DEMLR's in-house legal counsel and staff of the NC Attorney General's Office. Wake Stone received a revised permit on March 26, 2018 which contained several editorial/typographical errors. These errors were brought to the attention of DEMLR staff, and the final corrected permit was signed by Acting Director Vinson and issued on March 28, 2018. We believe all requested corrections to the mining permit document were fully justified and thoroughly vetted by DEMLR.

Documents from our records that are responsive to your request concerning the 2011 and 2018 correction of Condition 5.B. of Permit 92-10, are attached.

2. *Please provide an explanation of how the modification requests described in item 1 relate to the current quarry expansion modification request for Permit 92-10. Specifically, how does the modification of Condition 5.B. effect the viability and long-term operation of the proposed quarry expansion?*

Wake Stone's 2011 request to have the permit language corrected to accurately reflect the Mining Commission's Final Decision predated the company's potential expansion of the Triangle Quarry onto the RDU property. Not until 2015 did such an expansion become a possibility.

As Wake Stone has previously stated, the 2018 modification request was intended to correct several errors and discrepancies in Mining Permit No. 92-10. **At the time of the 2018 modification, Wake Stone had begun investigating the viability of expanding the Triangle Quarry onto property controlled by RDU Airport under a mineral lease agreement. Careful review of the existing Mining Permit at that time suggested that two specific errors in the permit needed correcting prior to submittal of a permit modification application for the anticipated expansion, should negotiations with RDUA be successful.**

The errors in need of correction involved the inaccurate/inconsistent illustration of buffers on site maps, and correction of the Mining Commission stated language related to when the depleted pit would become available for possible donation to the State as described in the reclamation conditions (specifically, Condition 5.B.). Having the corrected permit language in place would provide Wake Stone ample time to be able to fully capture the stone reserves from the expansion site.

Wake Stone determined that to transport equipment efficiently and safely to and from the RDU-owned property (commonly referred to as the Odd Fellows tract) under its lease agreement with RDU, improvements to the existing Triangle Quarry northern perimeter road would be necessary. We recognized at that time the possible use of this perimeter road for hauling excavated material back to the existing primary crusher located in the original quarry pit. A thorough review of the history of the buffers, particularly the 100-foot and 250-foot buffers along the northern permit boundary, revealed that these buffers were intended to be “property” buffers rather than “riparian” buffers. Riparian buffers of 10-50 feet are typically considered sufficient to prevent offsite sedimentation and contain pollutants such as phosphorus, nitrogen, and pesticides. Since the property boundaries between the existing quarry and both Umstead State Park and RDU Airport are the centerline of Crabtree Creek, the buffers should have been illustrated as being measured from this boundary rather than from the OHWM (ordinary high-water mark, or “streambank”). These corrections were not critical to the viability of the potential future expansion but were desirable for safety and efficiency of transport along the northern perimeter of the Triangle Quarry pit and for having maps which accurately showed the permanent buffer lines.

The reclamation condition (Condition 5.B.) regarding the possible donation of the “quarry site” to the State referenced two different scenarios: A. “When all quarryable stone has been removed...” or B. “If all quarryable stone is not removed...”. The incorrect inclusion of the word “sooner” in the mining permit instead of “later” (in the Mining Commission’s final decision) in the second scenario could be interpreted as a condition that would force the operation to close by 2031. Wake Stone estimated that quarrying in the existing pit would be completed by 2031, but an expansion onto the RDU property would require additional time to allow capture of all available reserves. In recognizing that the 105-acre RDU tract could not be utilized for a stand-alone quarry, processing, and sales facility due to limited size of the tract and poor highway access, Wake Stone determined that if the language was corrected to that of the 1981 Final Decision of the Mining Commission, an expansion onto RDU property would be permissible under a modification of Permit 92-10.

At the time of the Mining Permit issuance Wake Stone had not purchased or leased the parcels which came to constitute the permitted quarry. In no language in the Final Decision nor in the Mining Permit is there a limitation to what parcels would be included. The Mining Commission’s final decision supports this position as it dictated when the potential donation to the State might occur, “when all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead State Park and Interstate Highway 40”. With the Odd Fellows 105-acre tract now under the control of Wake Stone, having the corrected permit language in place provides the permit protection necessary for Wake Stone to be able to fully capture the stone reserves from the expansion site which lies between Umstead State Park and I-40. Continued utilization of the existing pit (for overburden storage and primary crushing) will postpone Wake Stone’s earlier commitment to make portions of the original quarry site (pit plus 50’ surrounding area) available for donation to the State should the State decide to assume ownership and liability upon completion of mining. Wake Stone remains committed to the offer to make the original Triangle Quarry pit available for donation to the State once all quarrying operations are completed. We expect that to be no longer than 35 years from receiving the permit modification and beginning operations on the expansion site.

3. *Please describe any discussion or correspondence between Wake Stone and state official (other than the DEQ mining program) about the modification of Condition 5.B.. Please provide copies of any documents or other records of such discussions or correspondence.*

Since 2016, Wake Stone has had numerous meetings and discussions about the currently pending Mining Permit Modification Application with state officials, including but not limited to Governor Cooper, former DEQ Secretary Regan, current DNCR Secretary Wilson, AG Stein, and many members of the Wake County legislative delegation of senators and representatives. However, none were specifically about Condition 5B other than in response to some legislators who were bombarded by emails from the Umstead Coalition and members of Triangle Off Road Cyclists (plaintiffs in litigation against RDUAA and Wake Stone) and needed an explanation of the issue. There were no notes kept of those conversations. One email was sent to Senators Sydney Batch and Sarah Crawford, with the attachments of the 1981 Mining Commission Final Decision (with the critical word “later” underlined in Condition 5), as well as a copy of an email from the State Mining Engineer David Miller indicating to a citizen why the change was made and that it had been reviewed by the Attorney Generals’ office. A copy of the email (and attachments) is attached.

4. *What is the expected timeline for ceasing quarrying operations at the existing site?*

Wake Stone will maintain production of stone reserves from the existing Triangle Quarry pit until the opening of the expansion pit on the RDU property. Stone reserves in the existing pit are anticipated to be depleted in 2-4 years (depending on market conditions). During this period, site development work including bridge construction, fencing, installation of erosion control measures, logging, and construction of noise/visual barriers can be completed. Once the expansion pit is open, mining in the existing pit will cease. However, quarry operations (overburden storage, crushing and processing, stockpiling, and sales) will continue at the existing site until such time as all quarryable stone is removed from the expansion pit. Stone reserves on the expansion site are currently estimated to yield 25-35 years of production, although significant changes in market demand could greatly alter those projections.

Exhibit 18



Energy, Mineral &
Land Resources
ENVIRONMENTAL QUALITY

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM E. (TOBY) VINSON, JR.
Interim Director

March 28, 2018

Mr. David F. Lee
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545

RE: Permit No. 92-10
Triangle Mine
Wake County
Neuse River Basin

Dear Mr. Lee:

Your recent request to have the above referenced mining permit modified has been approved. The modification includes the correction of discrepancies on the mine map and in several mining permit conditions. A copy of the modified permit is enclosed.

The conditions in the modified permit were based primarily upon the initial application. Modifications were made as indicated by the modification request and as required to insure compliance with The Mining Act of 1971. The expiration date, mine name and permit number shall remain the same as before the modification. I would like to draw your particular attention to the following conditions where minor additions or changes were made: Operating Condition Nos. 3 (C and D were removed, and E was relabel as C), 4B, 7A, 12B and 15 and Reclamation Condition No. 5B.

The issuance of a mining permit and/or any modification to it does not supersede local zoning regulations. The responsibility of compliance with any applicable zoning regulations lies with you.

As a reminder, your permitted acreage at this site is 223 acres and the amount of land you are approved to disturb is 164.45 acres.

Please review the modified permit and contact Judy Wehner, Assistant Mining Specialist, at (919) 707-9220 should you have any questions concerning this matter.

Sincerely,

David Miller, PE
State Mining Engineer

DM/jw

Enclosures

cc: Mr. Bill Denton, PE
Mr. William Gerringer-Mine and Quarry Bureau, w/o enclosures

Nothing Compares

DEPARTMENT OF ENVIRONMENTAL QUALITY

**DIVISION OF ENERGY, MINERAL AND LAND
RESOURCES**

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G.S. 74-46 through 68, "The Mining Act of 1971," Mining Permit Rule 15A NCAC 5 B, and other applicable laws, rules and regulations

Permission is hereby granted to:

Wake Stone Corporation

Triangle Quarry

Wake County - Permit No. 92-10

for the operation of a

Crushed Stone Quarry

which shall provide that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

In accordance with the application for this mining permit, which is hereby approved by the Department of Environment and Natural Resources hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other security on file with the Department, and may survive the revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Modifications

April 1, 1991: This permit has been modified to include three pit expansions, the construction of a pit perimeter road, and the construction of the visual barrier berm along the 250 foot permanent buffer zone as indicated on the revised Site Plan and supplemental information dated February 14, 1991.

February 5, 1992: This permit has been modified to include and require compliance with the January 20, 1992 blast and rock slide investigative report prepared by Wake Stone Corporation in its entirety.

October 11, 1996: This permit has been modified to allow the shipping of material after 1:00 PM on Saturdays until such time as the Umstead State Park reopens or the repair of the Raleigh Outer Loop Project near RDU Airport is completed, whichever comes first.

November 24, 2010: This permit has been modified to increase the affected acreage at this site to 156.6 acres as indicated on the Site Plan Maps last revised November 22, 2010. The modification includes the construction of a stockpile area contiguous to the existing plant and stockpile yard and includes the installation and maintenance of all associated erosion and sediment control measures.

December 1, 2017: This permit has been legislatively modified to issue the permit for the life of the site or the duration of the lease term.

March 28, 2018: This permit has been modified to correct discrepancies on the mine map and in several mining permit conditions.

This permit is valid for the life of the site or life of lease, if applicable, as defined by Session Law 2017-209 and has no expiration date. However, all provisions of GS 74-51 and GS 74-52 still apply for new, transferred and modified mining permits.

Conditions

This Permit shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

OPERATING CONDITIONS:

1. Wastewater and Quarry Dewatering

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any storm water runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Division of Water Quality to secure any necessary storm water permits or other approval documents.

2. Air Quality and Dust Control

- A. Any mining related process producing air contaminant emissions including fugitive dust shall be subject to the requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. The provisions of Air Quality Permit No. 4386 shall be followed.

- C. The permanent access (plant entrance) road shall be paved from the scale house to SR 1790. During quarry operation, water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the permitted area.
- D. Dust suppression systems shall be used throughout the plant to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.
- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

3. Buffer Zones

- A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.
- B. Sufficient buffer shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- C. All buffer zones shown on the Site Plan Map revised February 26, 2018 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, shall remain undisturbed

4. Erosion and Sediment Control

- A. Adequate mechanical barriers including, but not limited to diversions, earthen dikes, check dams, sediment retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance and maintained to prevent sediment from discharging onto adjacent surface areas or into any lake, wetland or natural watercourse in proximity to the affected land.
- B. All mining activities, including the installation and maintenance of all erosion and sedimentation control measures, shall be conducted as indicated on the Site Plan Map revised February 26, 2018 and the supplemental information received on February 7, 2011.

- C. An erosion and sediment control plan(s) shall be submitted to the Department for approval prior to any land disturbing activities not indicated on the revised erosion control plan or mine maps submitted with the approved application for a mining permit and any approved revisions to it. Such areas include, but are not limited to, expansion outside of the approved pit area, creek crossings, or expansion of overburden or waste disposal areas.

5. Groundwater Protection

Groundwater monitoring wells shall be installed and monitored as deemed appropriate by the Department.

6. Noise Abatement

All reasonable precautions shall be taken to minimize the impacts of operational noise upon Umstead Park. Said measures shall include, but not be limited to the following:

- A. Noise barriers between the park boundary and the crushers and screening towers to minimize noise levels at the park shall be provided from the onset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles or natural terrain. In the event there is disagreement over the required noise control measure, the final design and placement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
- B. The plant shall be located at the lowest feasible elevation.
- C. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
- D. The chutes used in processing shall be rubberized.
- E. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
- F. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
- G. Conveyors rather than trucks shall be used for stockpiling material.

- H. The quarry and stone process operations shall be operated on Monday through Friday and shall not be operated on the following recognized holidays: New Years Day, Easter Monday, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. A reasonable amount of hauling of processed stone from the stockpile areas is permitted until 1:00 PM on Saturdays but hauling shall not be done at any other time on weekends or on holidays without prior approval from the Department.

7. Processing Plant Location

- A. The processing and stockpiling facilities shall be located as indicated on the Site Plan Map revised February 26, 2018.
- B. The plant shall be located to place the processing and stockpiling activities at the lowest possible elevation to reduce visibility and noise impacts on Umstead State Park.
- C. The location of the pit shall be such that once the overburden is removed, the quarry excavating equipment (i.e., compressor and drill, shovels, and trucks) can be placed at an elevation lower than the surrounding natural ground in the initial phases of quarrying.

8. Graded Slopes and Fills

- A. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measure, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause off-site damage because of siltation, shall be planted or otherwise provided with groundcover, devices or structures sufficient to restrain such erosion.
- B. Overburden cut slopes along the perimeter of the quarry opening shall be graded to a minimum 2 horizontal to 1 vertical or flatter and shall be stabilized within 60 days of completion. Furthermore, a minimum ten (10) foot wide horizontal safety bench shall be provided at the top of the rock and at the toe of any overburden slope.

9. Surface Drainage

The affected land shall be graded so as to prevent collection of pools of water that are, or likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

10. Blasting

The operator shall monitor each blast with a seismograph located at a distance no farther than the closest off site regularly occupied structure not owned or leased by the operator. A seismographic record including peak particle velocity, air overpressure, and vibration frequency levels shall be kept for each blast (except as provided under Operating Condition Nos. 8B and 8D of this permit). The following blasting conditions shall be observed by the mine operator to prevent hazard to persons and adjacent property from surface blasting:

A. Ground Vibration with Monitoring:

In all blasting operations, the maximum peak particle velocity of any component of ground motion shall not exceed Figure 1 (below) at the immediate location of any regularly occupied building outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building.

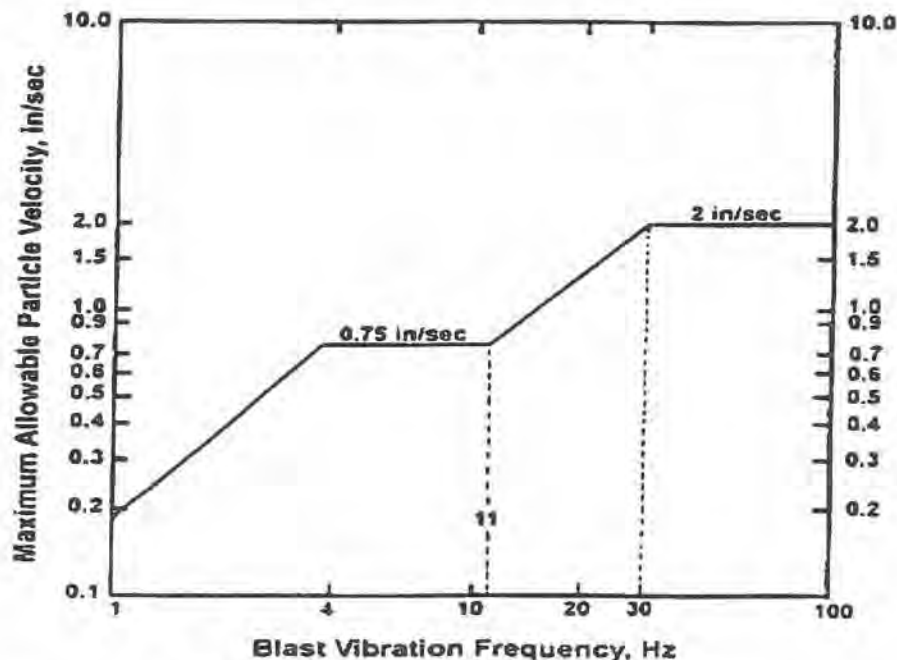


Figure 1 Alternative blasting level criteria
(Source modified from figure B-1. Bureau of Mines R18507)

B. Ground Vibration without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$W = (D/D_s)^2 \quad D_s = \frac{D}{W^{1/2}}$$

$$V = 160(D_s)^{-1.6}$$

W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).

D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).

D_s = Scaled distance factor.

V = Peak Particle Velocity (inches per second).

The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Section.

C. Air Blast with Monitoring:

Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at the immediate location of any regularly occupied building not owned or leased by the operator outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building, unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used:

<u>Lower Frequency Limit of Measuring System, in Hz</u>	<u>Max Level, in dBL</u>
0.1 Hz or lower-flat response	134 peak
2.0 Hz or lower-flat response	133 peak
6.0 Hz or lower-flat response	129 peak

D. Air Blast without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$U = 82 (D/W^{0.33})^{-1.2}$$

To convert U (psi) to P (dBL):

$$P = 20 \times \log (U/2.9 \times 10^{-9})$$

Confined Air blast/Overpressure (dBL)
for quarry situation:

$$A = P - 35$$

- U = Unconfined air overpressure (pounds per square inch).
- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
- D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
- P = Unconfined air overpressure (decibels).
- A = Air blast or air overpressure for typical quarry situations (decibels).

The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Section.

E. Record Keeping:

The operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes and delay of intervals; depth and size of holes; type and total pounds of explosives; maximum pounds per delay interval; amount of stemming and burden for each hole; blast location; distance from blast to closest offsite regularly occupied structure; and weather conditions at the time of the blast. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

F. Excessive Ground Vibration/Air Blast Reporting:

If ground vibration or Air blast limits are exceeded, the operator will immediately report the event with causes and corrective actions to the Department. Use of explosives at the blast site that produced the excessive reading shall cease until corrective actions approved by the Department are taken. However, blasting may occur in other approved areas within the permitted boundary. Authorization to blast at the blast site may be granted at the time of the verbal reporting of the high ground vibration or high air blast reading if the circumstances justify verbal approval. Failure to report will constitute a permit violation.

G. Flyrock Prevention:

The operator shall take all reasonable precautions to ensure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the Mining Permit.

H. Flyrock Reporting:

Should flyrock occur beyond the permitted and guarded areas, the operator shall immediately report the incident to the Department. Further use of explosives on the mine site shall be suspended until the following actions have been taken:

1. A thorough investigation as to the cause(s) of the incident shall be conducted.
2. A report detailing the investigation shall be provided to the Department within 10 days of the incident. The report shall, at a minimum, document the cause(s) of the incident along with technical and management actions that will be taken to prevent further incidents. The report shall meet with the approval of the Department before blasting may resume at the mine site.

I. Studies:

The operator shall provide to the Department a copy of the findings of any seismic studies conducted at the mine site in response to an exceedence of a level allowed by these blasting conditions. The operator shall make every reasonable effort to incorporate the studies' recommendations into the production blasting program.

J. Notice:

The operator shall, when requested by the Department, give 24-hour advanced notice to the Division of Energy, Mineral and Land Resources Regional Office prior to any blast during a period for which notice is requested.

- K. Regarding blasting activities conducted to lower the haul road along the western boundary of the "Pit Expansion Initiated During 1989" area and Crabtree Creek, all of the corrective actions/steps outlined in the blast and rock slide investigation report prepared by Wake Stone Corporation dated January 20, 1992 shall be followed. In addition, any areas disturbed as a result of the previous rock slide and its subsequent removal shall be restored to its natural, pre-disturbed state or an alternative acceptable to the Department.

11. High Wall Barrier

A physical barrier consisting of large boulders placed end-to-end, fencing or other acceptable barrier materials shall be maintained at all times along the perimeter of any highwall to prevent inadvertent public access. In addition, a minimum 10 foot wide horizontal safety bench shall be provided at the junction between the top of rock and the toe of any overburden cut slope.

12. Visual Screening

- A. Existing vegetation shall be maintained between the mine and public thoroughfares to screen the operation from the public. Additional screening methods, such as constructing earthen berms, shall be employed as deemed appropriate by the Department.
- B. Vegetated earthen berms shall be located and constructed as shown on the Site Plan Map revised February 26, 2018. In addition to grasses, long leaf and/or Virginia pines or other acceptable evergreen species shall be planted as deemed appropriate by the Department to improve visual and noise buffering.
- C. Other berms may be required as mining progresses to reduce the noise and visual impact upon Umstead State Park.

13. Plan Modification

The operator shall notify the Department in writing of the desire to delete, modify or otherwise change any part of the mining, reclamation, or erosion/sediment control plan contained in the approved application for a mining permit and any approved revisions to it. Approval to implement such changes must be obtained from the Department prior to on-site implementation of the revisions.

14. Refuse Disposal

- A. No on-site disposal of refuse or other solid waste that is generated outside of the mining permit area shall be allowed within the boundaries of the mining permit area unless authorization to conduct said disposal has first been obtained from both the Division of Waste Management and the Division of Energy, Mineral and Land Resources, Department of Environmental Quality. The method of disposal shall be consistent with the approved reclamation plan.
- B. Mining refuse as defined by G.S. 74-49 (14) of The Mining Act of 1971 generated on-site and directly associated with the mining activity may be disposed of in a designated refuse area. All other waste products must be disposed of in a disposal facility approved by the Division of Waste Management. No petroleum products, acids, solvents or their storage containers or any other material that may be considered hazardous shall be disposed of within the permitted area.
- C. For the purposes of this permit, the Division of Energy, Mineral and Land Resources considers the following materials to be "mining refuse" (in addition to those specifically listed under G.S. 74-49 (14) of the N.C. Mining Act of 1971):
 - 1. on-site generated land clearing debris
 - 2. conveyor belts
 - 3. wire cables

4. v-belts
5. steel reinforced air hoses
6. drill steel

D. If mining refuse is to be permanently disposed within the mining permit boundary, the following information must be provided to and approved by the Division of Energy, Mineral and Land Resources prior to commencement of such disposal:

1. the approximate boundaries and size of the refuse disposal area;
2. a list of refuse items to be disposed;
3. verification that a minimum of 4 feet of cover will be provided over the refuse;
4. verification that the refuse will be disposed at least 4 feet above the seasonally high water table; and
5. verification that a permanent vegetative groundcover will be established

15. Annual Reclamation Report and Annual Operating Fee Submittal

An Annual Reclamation Report and Annual Operating Fee of \$400.00 shall be submitted to the Department by July 1 of each year until reclamation is completed and approved for release by the Department.

16. Bonding

The security, which was posted pursuant to N.C.G.S. 74-54 in the form of a \$1,000,000.00 blanket bond, is sufficient to cover the operation as indicated in the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

17. Archaeological Resources

Authorized representatives of the Division of Archives and History shall be granted access to the site to determine the presence of significant archaeological resources.

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the terms of the Mining Permit.

The approved plan provides:

Minimum Standards as Provided By G.S. 74-53:

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the North Carolina Agricultural Experiment Station and the North Carolina Forest Service.
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, provide reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS:

1. Provided further, and subject to the Reclamation Schedule, the planned reclamation shall be to allow the quarry excavation to fill with water, provide a permanent barricade (fence) along the top of any high wall, and grade and revegetate any areas in unconsolidated material.
2. The specifications for surface gradient restoration to a surface suitable for the planned future use are as follows:

- A. All areas of unconsolidated material such as overburden or waste piles shall be graded to a 2 horizontal to 1 vertical or flatter slope and terraced as necessary to insure slope stability.
- B. Any settling ponds and sediment control basins shall be backfilled, graded, and stabilized or cleaned out and made into acceptable lake areas.
- C. The processing, stockpile, and other disturbed areas neighboring the mine excavation shall be leveled and smoothed.
- D. Compacted surfaces shall be disced, subsoiled or otherwise prepared before revegetation.
- E. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Conditions Nos. 14A through D.
- F. The affected land shall be graded to prevent the collection of noxious or foul water.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.

3. Revegetation Plan:

Disturbed areas shall be permanently revegetated according to the following provisions:

Site Preparation: The land surfaces shall be graded and/or shaped as necessary to create grades applicable to the subsequent use of the site, but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material and other obstructions that would interfere with the establishment of vegetation planned for the site shall be removed and either buried or properly disposed of off-site in accordance with Operating Condition Nos. 14A through D above. Surface runoff shall be controlled by terraces or diversions to allow discharge through protected outlets.

Lime and Fertilizer: Lime and fertilizer shall be applied in accordance with soil test result or at a rate of 2,000 lbs/acre of lime and 1000 lbs/acre of 10-20-20 fertilizer.

Seedbed Preparation: Lime and fertilizer shall be mixed with the soil to a depth of three to four inches where conventional equipment can be used. On slopes steeper than about 2:1, soils shall be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to seeding equipment, seed, nutrients and mulch, shall be applied by hand.

Revegetation: Typical seed mixtures to be utilized include fescue-rye, fescue-rye-lespedeza, and fescue-lespedeza, where the lespedeza used may be Korean or Kobe or Sericea. All rye species to be utilized shall be rye grain rather than rye grass. In fall or spring plantings, seeding mixtures shall utilize 100 lbs. Fescue and 50 lbs. Rye per acre to be planted. Late spring plantings in certain areas may contain up to 40 lbs. Kobe/Korean per acre where desirable to supplement natural deer browse. Sericea lespedeza shall be utilized at a rate of 20 to 40 lbs. per acre in combination with Fescue when planting excessively droughty soils or steep slopes. When using lespedeza species in fall plantings, non-scarified seed shall be utilized. Scarified seed shall be utilized in spring plantings. Newly seeded areas shall be mulched with unchopped small grain straw applied at a rate of 1.5 to 2 tons per acre, or until approximately 75% of the soil is hidden.

Loblolly pines (or other acceptable evergreen species) and red cedar seedlings shall be planted at selected sites to provide visual screens and revegetation. Evergreen seedling plantings shall be done on a staggered 4 feet by 4 feet pattern.

Maintenance: Plant placement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site shall be carried out until vegetation is properly established.

Whenever possible, disturbed areas should be vegetated with native warm season grasses such as switch grass, Indian grass, bluestem and gamma grass.

In addition, the permittee shall consult with a professional wildlife biologist with the N.C. Wildlife Resources Commission to enhance post-project wildlife habitat at the site.

4. Reclamation Plan:

Reclamation shall be conducted simultaneously with mining to the extent feasible. In any event, reclamation shall be initiated as soon as feasible after completion or termination of mining of any mine segment under permit. Final reclamation, including revegetation, shall be completed within two years of completion or termination of mining.

5. Donation to State:

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

The term "quarry site" shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides, and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

The method by which the quarry site may be donated to the State is as follows: Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligations to exercise its option to accept a conveyance of the quarry site. The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option has been recorded after the restoration of each such encumbrance.

The right of the State to exercise its option shall be subject to:

Wake Stone Corporation not being prohibited by the US Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any other court from removing from Wake Stone Corporation's property all quarryable stone which is outside of the buffer zones referred to in Operating Condition No.3 of this permit. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarrying shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

The conveyance of the quarry site, if approved by the State, shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The terms and conditions of the option shall be as follows:

- A. When all quarryable stone has been removed from all of the land and belonging to or under the control of Wake Stone Corporation during the period of it quarrying operations and which lies between Umstead State Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail and return receipt requested.

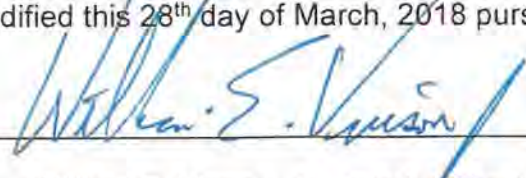
If the State fails to make election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall be thereupon terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.

- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in Paragraph A above.
- C. Until the option has expired, Wake Stone Corporation shall not encumber by mortgage or deed of trust of any of the area designated "BUFFER AREA" on Wake Stone Corporation's Site Plan last revised February 26, 2018 except for purchase money security interests.

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the conditions of the land to be transferred will be in accordance with the criteria identified in the "Principles' Governing the Establishment of Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

This permit, issued May 13, 1981, modified April 15, 1986, renewed and modified April 1, 1991, modified February 5, 1992 and October 11, 1996, renewed April 20, 2001, modified November 24, 2010, renewed March 30, 2011 and modified December 1, 2017, is hereby modified this 28th day of March, 2018 pursuant to G.S. 74-52.

By: _____



William E. Vinson, Jr., Interim Director
Division of Energy, Mineral and Land Resources
By Authority of the Secretary
Of the Department of Environmental Quality

Exhibit 19



Division of Parks and Recreation
NC Department of Natural and Cultural Resources

Governor Roy Cooper

Secretary D. Reid Wilson

November 18, 2021

Mr. Brian Wrenn, Director
NC Division of Energy, Minerals, and Land Resources
Department of Environmental Quality
Via email: brian.wrenn@ncdenr.gov

Dear Mr. Wrenn:

Thank you for this opportunity to provide comments from the North Carolina Division of Parks and Recreation (DPR) related to Wake Stone Corporation's suggested modifications to their requested expansion of Triangle Quarry, submitted on August 12, 2021. DPR remains opposed to the expansion of the existing quarry for the reasons detailed in our letters of February 12, 2021 and May 8, 2020, attached [enclosed] for your reference. We continue to believe our mission of conservation, recreation, and education for the people of North Carolina would be best served by permanently protecting this property, and that expanded quarry operations will have a significantly adverse effect on the purposes of William B. Umstead State Park. The specific purpose of this letter is to express our concerns with the updated proposals by Wake Stone, which appears to reduce the buffer proximate to the park and would employ concrete sound barriers instead of earthen berms between the quarry and the park.

We are opposed to the buffer reduction and replacing the earthen berms with concrete barriers for the following reasons:

- Updated site plans show only a 25-foot buffer from the park property line to the proposed concrete wall and perimeter access road. Prior site plans from April 2020 indicate a 100-foot buffer from the property line to the start of excavation. The reduced buffer to 25 feet appears to increase the size of the excavation area in the proposed quarry and bring the pit significantly closer to park visitors and wildlife.
- The main purpose of the barriers, earthen or otherwise, is sound abatement. We are concerned that a concrete barrier will be less effective at reducing sound levels than an earthen berm.
- A park visitor's expectation is to see natural substances comparable to what would typically occur in that location (i.e., soil and plants). Concrete is an inadequate replacement for the vegetative and earthen barrier that would be provided by berm construction.

Dwayne Patterson, Director
NC Division of Parks and Recreation
1615 MSC - Raleigh, NC 27699-1615
919.707.9300 / ncparks.gov

NORTH CAROLINA STATE PARKS
Naturally Wonderful

- Regardless of its initial appearance as designed and constructed, with time a concrete wall will deteriorate, resulting in an even more jarring view from the park. A concrete barrier will likely last the life of this permit, but its deterioration will be there for all to see for a very long time.
- A concrete wall does not allow for water infiltration. The wall and its supporting foundation will increase water runoff on both sides of the wall including onto park property. We are particularly concerned about any additional runoff that will eventually reach Crabtree Creek, which serves as part of the park's boundary with the existing quarry and then flows into the park. This concern is heightened by the recent listing of the Neuse River Waterdog (*Necturus lewisi*) as "threatened" by the U.S. Fish and Wildlife Service, and the potential presence of this species in the area.
- A concrete wall acts as an absolute barrier to terrestrial wildlife, reducing access to available food and shelter. The proposed quarry expansion comes at a time when there is a growing consensus among biologists of the important role that large tracts of urban wildlife habitat such as Umstead State Park play as corridors for migrating species, and the impact that land conversion and fragmentation have on our ability to serve that role effectively.¹

Changes to the application that expand the mining areas and reduce buffers only exacerbate and do not mitigate the likely negative effects on the park. These effects include our previously expressed concerns: noise impacts, sedimentation/water quality, dust/air quality, truck traffic and blasting, loss of wildlife corridors, and loss of potential park expansion. We also believe several other issues related to recent public comments and regulatory action require further investigation by the State or Wake Stone, including the growing concern from the public that fly rock from blasting could become a danger to park visitors and those using adjacent trails, and the need for an environmental assessment that addresses the direct, secondary, and cumulative impacts of the proposed quarry.

Finally, we note that in its response regarding the permit modification and how it would impact eventual land donation to the State, Wake Stone quoted the Mining Commission when arguing that donation was only to occur when all quarryable stone was removed from "all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarry operations." Yet in the very next sentence, the company acknowledges that the Odd Fellows tract is only now under its control and presumably was not at the time of the Mining Commission decision. We ask that when weighing the various proposals regarding this matter and interpreting prior decisions of the Commission, you consider whether such a significant expansion of the quarry was ever contemplated. As far as DPR is concerned, we have always – since our then-Director reviewed a draft permit including the "sooner" language in 1981 – relied upon the plain language of the permit

¹ While the public is most familiar with our recreational mission, DPR also plays an important natural resources stewardship role, including the protection of wildlife habitat. One of our primary partners in managing wildlife habitat is the N.C. Wildlife Resources Commission, which addressed the impacts of mining and quarrying in its 2015 Wildlife Action Plan (with a 2020 Addendum) as follows:

The primary direct impacts to wildlife resources from mining and quarries (not instream mining) relate to land conversion. Additional impacts can result if stormwater runoff is discharged offsite to surface waters. New and expanded mines and quarries may impact high-quality terrestrial uplands, wetlands, or streams. Water quality can be impacted if water from a mining site is discharged before it is appropriately treated to remove pollutants (page 694).

and planned for the land donation to occur at the “sooner” date of 2031 or the exhaustion of quarryable stone at the existing quarry.

Thank you again for this opportunity to comment, and please let us know if we can provide any additional information or other assistance.

Sincerely,

A handwritten signature in black ink that reads "Dwayne Patterson". The signature is written in a cursive, flowing style.

Dwayne Patterson
Director, NC Division of Parks and Recreation

Enclosures

cc: Jeff Michael, Deputy Secretary, DNCR
Phillip Feagan, General Counsel, DNCR
Brian Strong, Deputy Director, DPR

Exhibit 20

DIVISION OF PARKS AND RECREATION

May 11, 1981

MEMORANDUM

TO: Steve Conrad

FROM: Jim Stevens

SUBJECT: Recommended Changes to Draft Permit
for Wake Stone Corporation

- p. 2, para. 5 - Rewrite Site Plan section to read:
The site plan referred to in this permit shall indicate the topographic site plan of the Wake Stone Corporation revised March 10, 1981, with the following exceptions:
- 1) The berm and associated disturbances located along the northern boundary shall not be constructed unless approved by the Department.
 - 2) The dotted line labelled as buffer along the northern boundary and along the eastern boundary south to the 10 year buffer line shall be deleted.
- p. 4, para. 1, Line 1 - and para. 2, Line 1 - The following statement after "undisturbed buffer" and "undisturbed buffer zone" respectively:
... of existing natural vegetation ...
- p. 4, para. 3 - Rewrite para. to read:
The only exceptions to these undisturbed buffers of natural vegetation are:
- p. 4, Section C. - Delete this section. It is unnecessary and potentially harmful. The property owner has every right to post his property against wanderers. Any statement regarding removal of trees leaves the door open to potentially drastic changes in forest cover. This could lead to adverse effect on park.
- p. 4, para. 3, Section D - Accommodate misspelled
- p. 5, Section 5, H - Add Memorial Day
- p. 6, Section 8, A Line 6 - Change to read:
Building, commercial or institutional building, park picnic shelter or park trail.
- p. 6, Section 8, B Line 4 - Change to read:
Church, school, public building, commercial or institutional building, park picnic shelter or park trail

- p. 7, Section 9, Line 4 - Change to read:
taining undisturbed buffer areas of natural vegetation
- p. 7, Section 9, Construction of Berms Subsection C. Add the following sentence at end of subsection C:
The alignment of the berm may vary from the approved site plan as is necessary to provide the 50 feet of undisturbed land between the park boundary and the toe of the berm and assuring an acceptable angle of repose for the slope of the berm.
- p. 9, Reclamation Conditions, Section 1, Line 3 - Change to read:
A condition suitable for those wildlife populations that existed prior to site disturbances and for those types of outdoor recreation that are compatible with maintaining those populations.
- p. 10, Section 3, Seedbed Preparation:
Some statement needs to be made here regarding protection against runoff into surrounding or adjacent watercourses.
- p. 11, para. 2, Line 10 - Change to read:
Spacing will be 4' on center for revegetation purposes.
- p. 11, para. 6, Line 5 - Constituting instead of constitution.
- p. 12, para. 3, Line 1 - Rewrite to read:
The conveyance of the quarry site, if approved by the State, shall be ...
- p. 12, para. 5, Line 1 - Insert the word "may" for "will".

JSS,jr/ARE/cam

EAKES

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

DIVISION OF LAND RESOURCES

LAND QUALITY SECTION

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G. S. 74-46 through 68,
"The Mining Act of 1971", Mining Permitting Regulation 15
N.C.A.C. 5B, and other applicable laws, rules and regulations

Permission is hereby granted to:

WAKE STONE CORPORATION, permittee

for the operation of a CRUSHED STONE QUARRY

entitled, CARY QUARRY, permit no.

and located in WAKE County, which shall provide,

that the usefulness, productivity and scenic values of all lands

and waters affected by this mining operation will receive the

greatest practical degree of protection and restoration.

- 5 -

In accordance with the application for this mining permit, which is hereby approved by the Department of Natural Resources and Community Development, hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other securities on file with the Department, and may survive the expiration, revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Site Plan

The site plan referred to in this permit shall indicate the topographic site plan of the Wake Stone Corporation revised March 10, 1981, except the berm located along the northern boundary shall not be constructed unless approved by the Department. *WHAT ABOUT DOTTED LINE ALONG NORTHERN BOUNDARY? - WHAT ABOUT ADDITION OF BUFFER ALONG WEST-Park ERM BOUNDARY OF CREEK?*

Whenever used or referred to in this permit, the term "park" shall mean the William B. Umstead State Park.

Conditions

The permitted mining operation shall not violate standards of air quality, surface water quality, or ground water quality promulgated by the Environmental Management Commission.

?
YRS.
This permit shall be effective from the date of its issuance until and shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

1. Wastewater Control

Any wastewater processing shall be in accordance with permit requirements and regulations promulgated by the Division of Environmental Management.

2. Dust Control

Any mining process producing air contaminant emissions shall be subject to the permitting requirements and regulations promulgated by the Division of Environmental Management. The operator will take whatever reasonable precautions necessary to prevent or minimize the fugitive dust from going offsite. Such measures include but are not limited to: ?

- A. The access road to the quarry, from the scale house to SR 1790, shall be paved. Wake Stone Corporation shall cooperate with the Department of Transportation in paving SR 1790 from the entrance to the quarry to the intersection with SR 1654. *WHAT ABOUT REDESIGN OF INTERSECTION ?
(NOTHING TO DO w/ DUST CONTROL)*
- B. The provisions of the air quality permit #4386 shall be followed.
- C. A water wagon with sprays shall be used for wetting roads to prevent dust.
- D. Sprays shall be used throughout the plant at transfer points to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.
- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

CHECK PLAN →

OK

3. Buffer Zones

EXISTING NATURAL VEGETATION
OF ~~HA~~

An undisturbed buffer shall be maintained between the mining disturbance and Park property as indicated by the "10 year buffer" shown on the site plan dated March 10, 1981.

~~AND ALONG THE WESTERN BOUNDARY OF CRABTREE CREEK~~

WHAT DOES
"UNDISTURBED"
MEAN? - VEG-
RATION INTER?

An undisturbed buffer zone ^{as above} shall also be maintained between the top edge of the bank of Crabtree Creek and any mining disturbance within the 10 year permit area. The buffer zone shall be of sufficient width to prevent offsite sedimentation and to preserve the integrity of the natural watercourse. In any event, the width of the buffer shall not be less than 100 feet, measured from the top of the nearest stream bank.

THE ONLY EXCEPTIONS TO THESE UNDISTURBED BUFFERS OF NATURAL
Both buffers will be disturbed subject only to the following exceptions: VEGETATION ARE:

A. The construction of berms as approved by the Department for visual and noise screening.

B. The installation of drainage and sedimentation controls to protect the Crabtree Creek.

The removal of dead, dangerous and leaning trees which might make the area dangerous to persons wandering into the buffer area.

WHY? TOO MUCH LATITUDE

D. Such crossings as may be necessary in future years to accommodate the installation of utilities.

accommodate

1. Erosion and Sediment Control

A. Adequate mechanical barriers including but not limited to diversions, earthen dikes, brush barriers, silt check dams, silt retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance to prevent sediment from discharging onto adjacent surface areas or into any lake or natural watercourse in proximity to the affected land.

B. The existing lakes shall be used to trap sediment from initial mining disturbances. The spillways of the existing lakes shall be further stabilized as necessary to prevent erosion of the spillway from runoff from the affected lands. The embankments of the existing lakes shall be improved if necessary to insure the stability of the embankments.

THIS CONDITION IS
IF NECESSARY
GIVE THE OWNER
THE RIGHT
TO HIS PROPERTY
→
ALSO LEAVES
DOES OPEN FOR
REWORK
TING, ETC.

???

C. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measures, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause offsite damage due to siltation, shall be planted or otherwise provided with ground cover, devices or structures sufficient to restrain such erosion.

D. Drainage shall be provided either through or around any berms that would otherwise obstruct natural drainage.

5. Noise Abatement

All reasonable precautions shall be taken to minimize the impact of operational noise upon ~~the~~ ^{the} park. Such measures shall include but not be limited to:

A. Noise barriers between the park boundary and the crushers and screening towers to minimize noise levels at the park shall be provided from the outset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles, or natural terrain. In the event there is disagreement over the required noise control measures, the final design and emplacement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.

B. The plant shall be located at the lowest feasible elevation.

C. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.

D. The chutes used in processing shall be rubberized.

E. Compressors with noise abatement enclosures (currently called whisperized compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.

F. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.

G. Conveyors rather than trucks shall be used for stockpiling material.

H. The quarry and stone process operations shall be operated only on Monday through Friday and shall not be operated on the following recognized holidays: New Year's Day, Easter Monday, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. A reasonable amount of hauling of processed

*SHOULD HAVE
EXCLUDED THE
WEDNESDAY OR FRIDAY
CLOSEST TO THESE
15 - ALSO - MEM-
ORAL DAY*

CHECK W/
WEBSTER

stone from the stockpile areas is permitted until noon on Saturdays, but hauling shall not be done at any other time on weekends or on holidays without prior approval by the Department.

6. Processing Plant Location

- A. The processing and stockpiling facilities shall be located as indicated on the Wake Stone Corporation site plan dated March 10, 1981 *AS AMENDED HEREIN*.
- B. The plant shall be located to place the processing and stockpiling facilities at the lowest possible elevation to reduce visibility and noise impact on the park.
- C. The location of the pit shall be such that, once the overburden is removed, the quarry excavating equipment-i.e. compressor and drill, shovels, and trucks-can be placed at an elevation lower than the surrounding natural ground in the initial phases of quarrying.

7. Prevention of Stagnant Pools

The affected land shall be graded so as to prevent collection of pools of water that are, or are likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

8. Blasting

The following blasting conditions shall be observed by the operator to prevent hazard to persons and adjacent property from thrown rock or vibrations:

- A. In all blasting operations, except as hereinafter otherwise provided, the maximum peak particle velocity of any component of ground motion shall not exceed 1 inch per second at the immediate location of any building regularly occupied by human beings such as dwelling house, church, school, public building, or commercial or institutional building. A smaller peak particle velocity may be required to protect neighboring structures or equipment vulnerable to vibrations less than 1 inch/second peak particle velocity.
- B. Airblast overpressure shall not exceed 128 decibels linear (dBL)-"warning," 132 dBL "caution," and 135 dBL "maximum" as measured at the immediate location of any dwelling house, church, school, public building, or commercial or institutional building.

PICNIC SHELTER?
PARK TRAILS

✓ C. The operator shall take all reasonable precautions to insure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Should flyrock occur beyond the guarded area, it shall be reported to the Department immediately. The Department will conduct a thorough investigation to determine the cause. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the permit.

✓ D. Operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes; depth of holes; total pounds of explosives, maximum pounds per delay interval; amount of stemming and burden for each hole; and blast location. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

9. Visual Screening *IF NATURAL VEGETATION*

???
IS AMENDED
HEREIN
The operation shall be situated to optimize natural screening of the operation from public view from Interstate 40 and the Park property. The visual screening plan shall include maintaining undisturbed buffer areas as shown on the site plan dated March 10, 1981. Additionally, a vegetated earthen berm shall be constructed east of the processing plant and stockpile area as shown on the revised site plan. Visual screening such as vegetated earthen berms and/or evergreen trees shall be placed as necessary to supplement natural screening.

Construction of Berms

GENERALLY
A. A vegetated earthen berm shall be constructed between the Wake Stone Corporation plant and the western boundary of the park as shown on Wake Stone Corporation's site plan dated March 10, 1981. *AS AMENDED HEREIN.*

B. Berm dimensions shall be no less than indicated on Wake Stone Corporation's site plan dated March 10, 1981 and may be higher and longer than shown. *AS AMENDED HEREIN*

C. The side slopes of the berm shall be graded to a stable grade of 2 horizontal to 1 vertical grade or flatter and revegetated on the sides and top with grasses and evergreen trees. The toe of the berm shall not encroach on the park property boundary and shall be at least 50 feet from the boundary. ↗

D. Other berms may be required as mining progresses to reduce the noise and visual impact upon the park.

THE ALIGNMENT OF THE BERM MAY VARY FROM THE APPROVED SITE PLAN AS IS NECESSARY TO PROVIDE THE 50 FEET OF UNDISTURBED LAND BETWEEN THE PARK BOUNDARY AND THE TOE OF THE BERM. ~~THE SLOPES SUITABLE~~ AND ASSURING AN ACCEPTABLE ~~WE OF PROPOSE~~ FOR THE SLOPE OF THE BERM.

10. Highwall Barrier

How High?

A physical barrier consisting of a fence or boulder barriers, etc. shall be maintained around the perimeter of any quarry highwall.

11. Annual Report

✓ An Annual Reclamation Report shall be submitted on a form supplied by the Department on February 1 of each year until reclamation is completed and approved.

12. Surety Bond

✓ The security which was posted pursuant to N.C.G.S. 74-54 in the form of \$25,000.00 Blanket Bond is sufficient to cover the crushed stone operation as indicated on the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

\$25,000 PRESCRIBED BY LAW - CANNOT ALTER

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the term of the Mining Permit.

The approved plan provides:

Minimum Standards As Provided By G. S. 74-53

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
HOW DOES ONE PREDETERMINE WHAT THAT USE IS?
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land. *?*
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the N.C. Agricultural Experiment Station and the N.C. Forest Service. *WHAT ARE THE SPECIFIC REFERENCES?*
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, initiation of reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS

1. Provided further, and subject to the Reclamation Schedule, the reclamation shall be to restore the affected lands to a condition suitable for wildlife and recreation. *AMBIGUOUS*
2. Specifications for reclamation shall be as follows: *RECREATION*
NATIVE POPULATIONS EXISTING PRIOR TO SITE DISTURBANCES AND FOR VARIOUS TYPES OF OUTDOOR
CONSISTENT WITH MAINTAINING WILDLIFE POPULATIONS.
 - A. The process plant area shall be graded and smoothed.
 - B. Any sideslopes in unconsolidated material shall be graded to a 2 horizontal to 1 vertical grade or flatter.

- C. Suitable benches shall be left in the rock excavation to provide support where rock weakness could lead to collapse of high walls.
- D. Overburden shall be used for site grading or berm construction at approved locations.
- E. Settling ponds shall be drained and stabilized to prevent erosion.
- F. Oil, grease, scrap metal, wood and other debris shall be removed from the surface and delivered to scrap dealers or landfilled in an approved manner.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.
- H. The affected land shall be graded to prevent the collection of noxious or foul water.

3. Revegetation Plan

All reclaimed areas in unconsolidated material shall be re-vegetated utilizing the following provisions:

Site Preparation: The ground will be graded and/or shaped where necessary ~~keeping in mind the ultimate use of the site,~~ but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material, and other obstruction that will interfere with the establishment of vegetation planned for the site will be removed and/or buried. Surface runoff that might concentrate to cause undesirable erosion will be controlled by terraces or diversions diverting water to protect outlets.

Lime and Fertilizer: Liming and/or fertilizer will be conducted in accordance with soil test results and as required for vegetation planned for the site.

Seedbed Preparation: Lime and fertilizer will be mixed with the soil to a depth of 3 to 4 inches where conventional equipment can be used. On slopes steeper than about 2:1, soils will be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to machinery, seed and nutrients will be applied by hand.

ATTENTION ABOUT
RUNOFF!

NEED TO DEFINE "REVEGETATION" — IN QUANTITATIVE & QUALITATIVE TERMS

*USE OF
FESCUE
INSTEAD OF
LESPEDeza*

Vegetation: Sericea Lespedeza and/or Weeping lovegrass will be established on the site to provide ground cover and erosion control. When using Sericea Lespedeza, scarified seed will be applied when reclamation is conducted during spring months and unscarified seed will be used during the fall.

*WHERE?
HOW PLANTED?*

Application will be in a uniform manner either by machine or hand at the rate of 50 pounds of lovegrass, Lespedeza, or combination per acre. Seed will be covered to a depth of 1/8 to 1/4 inch and the soil then firmed with a cultipacker or similar equipment. Mulch consisting of dry, unchopped small grain straw or similar type material will be spread evenly over the surface at the rate of 1 to 2 tons per acre or until about 75 percent of the soil is hidden. Loblolly pine seedlings will be planted at selected sites to provide a view screen to provide revegetation. Spacing will be ~~about 4' X 4'~~ 4' ON CENTER for revegetation purposes.

Maintenance: Plant replacement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site will be carried out until vegetation is properly established.

4. Reclamation Schedule

Some reclamation activities, particularly those relating to control of erosion, will be conducted simultaneously with mining activities. Diversion channels or terraces that may be required to control surface runoff on the property will be established and revegetated as soon as they are constructed. Portions of berms will be revegetated as completed. Final reclamation activities will be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area, and in all instances reclamation activities will be completed within two years after completion or termination of mining.

5. Donation to State

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

The term, "quarry site," shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option had been recorded after the recordation of each such encumbrance.

The right of the State to exercise its option shall be subject to:

A. Wake Stone Corporation not being prohibited by the U.S. Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any court from removing Wake Stone Corporation's property all quarryable stone which is outside the buffer zone referred to in condition 3, page 4. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarries shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

B. The operation of a quarry on Wake Stone Corporation's property for a minimum period of five years.

IF APPROVED BY THE STATE
The conveyance of the quarry site shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

MAY
The method by which the quarry site ~~will~~ be donated to the State is as follows: Upon acquisition of the land by Wake Stone Corporation (by the exercise of its options to purchase), Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligation to exercise its option to accept a conveyance of the quarry site.

DOESN'T THIS
STATEMENT, IN
EFFECT, AGREE
BEFORE THE FACT
A REAPPLICATION
HAT ALL OF THE
PROPERTY MAY BE
QUARRIED W/OUT
SIGNIF. ADVERSE
EFFECT ON PARK?

The terms and conditions of the option shall be as follows:

- A. When all quarryable stone has been removed from all of the land belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between the Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail with return receipt requested. If the State fails to make an election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall thereupon terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.
- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is sooner, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.
- C. Until the option has expired Wake Stone Corporation will not encumber by mortgage or deed of trust any of the area designated "BUFFER AREA" on Wake Stone Corporation's site plan dated February 17, 1981, revised March 10, 1981, except for purchase money security interests.

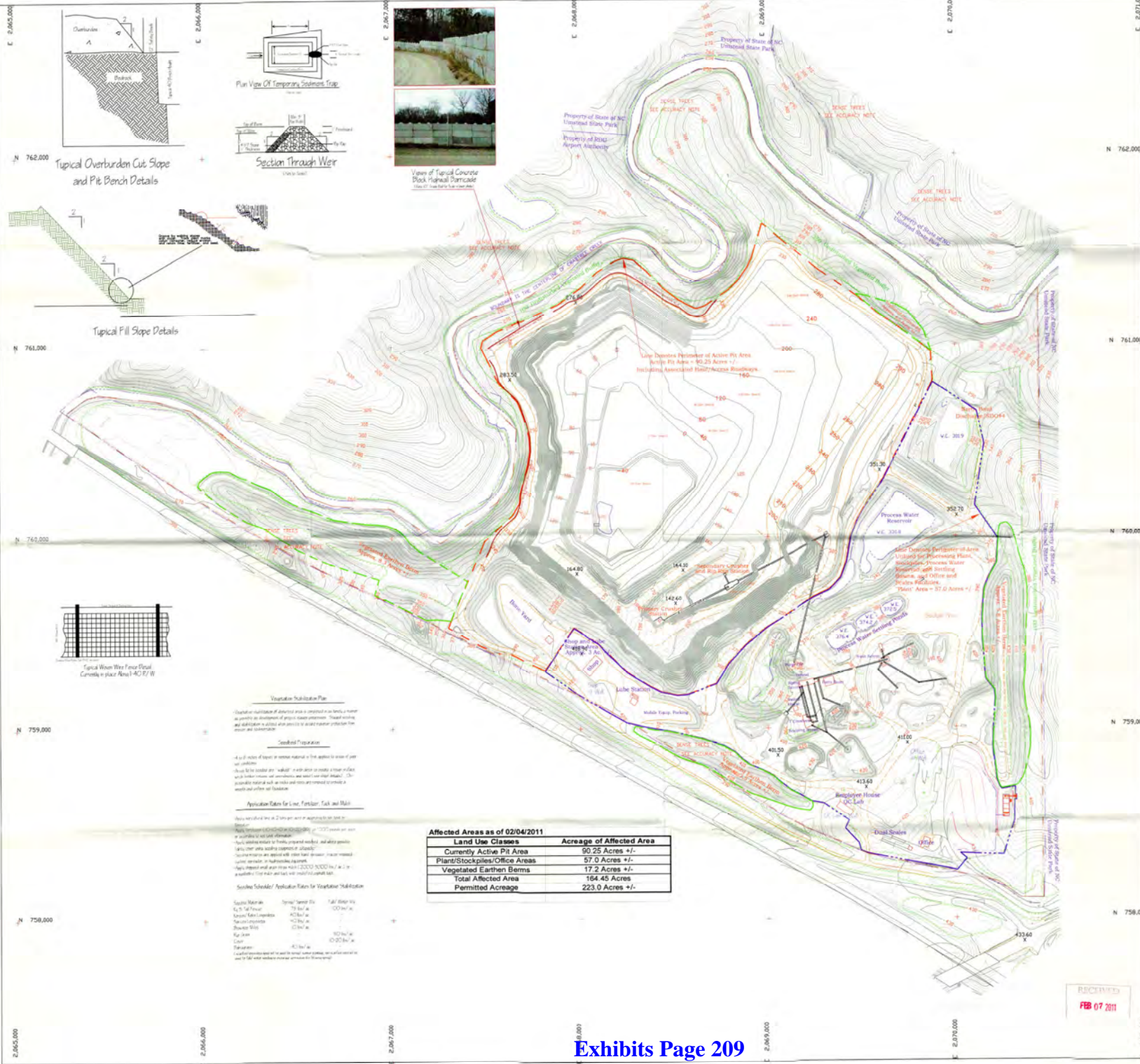
The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the Council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the condition of the land to be transferred will be in accordance with the criteria identified in the "Principles Governing the Establishment, Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

Permit issued this the _____ day of _____, 19_____.

BY: _____

Stephen G. Conrad, Director
Division of Land Resources
By Authority of the Secretary
Of the Department of Natural Resources and Community Development.

Exhibit 21



LEGEND

- FENCE LINE
- WATER COURSE
- TREE LINE
- SINGLE TREES
- LIMIT LINE / BOUNDARY
- PAVED ROAD W/D CURB
- UNPAVED ROAD
- WALL
- GARE RAIL
- RAILROAD
- BUILDING
- HEADWALL/VALVE
- CATCH BASIN
- SHOP INLET
- MANHOLE
- POWER POLE
- LIGHT POLE
- STREET LAMP
- GUY WIRE
- TRANSFORMER
- SCENE 1 & 2 POST
- HYDRANT
- VEHICULAR OBJECTS
- INDEX CONTOUR
- INTERMEDIATE CENTER
- SPOT ELEVATION
- G.P.S. SURVEY MONUMENT
- STANDING WATER
- DRAIN CONTROL

NOTES:
 1. Accuracy: Surveying
 2. Contours: 1' vertical interval of elevations determined from the 2011 topographic map of the Wake Stone Quarry. Contours are shown at 1' intervals. Contours are shown at 1' intervals. Contours are shown at 1' intervals.
 3. The map was created by Blue Ridge Engineering, Inc. using photogrammetry. Contours are shown at 1' intervals. Contours are shown at 1' intervals. Contours are shown at 1' intervals.
 4. Buildings are shown as footprints only.



SCALE: 1" = 200'

COMPILED BY PHOTOGRAMMETRIC METHODS
 WAKE STONE CORPORATION
 P.O. BOX 100
 WAKE FOREST, NC 27876
 919-264-1000

Wake Stone Corporation
 Triangle Quarry
 Mining Permit No. 92-10
 Site Plan Map

Permit Renewal - February 2011
 February 4, 2011

DATE OF PHOTOGRAPH: 02-05-09 REVISION NO:
 JOB NO. T-11-1593-02 SHEET NO. 1

Affected Areas as of 02/04/2011

Land Use Classes	Acres of Affected Area
Currently Active Pit Area	90.25 Acres +/-
Plant/Stockpiles/Office Areas	57.0 Acres +/-
Vegetated Earthen Berms	17.2 Acres +/-
Total Affected Area	164.45 Acres
Permitted Acreage	223.0 Acres +/-

Vegetation Rehabilitation Plan
 Detailed description of vegetation rehabilitation plan, including methods for seedling propagation, application rates for lime, fertilizer, and herbicide, and specific schedules for application.

Seedling Propagation
 A 4 x 8 inch section of paper or material is first applied to the soil in the seedbed. The seedbed is then covered with a layer of soil. The seedbed is then covered with a layer of soil. The seedbed is then covered with a layer of soil.

Application Rates for Lime, Fertilizer, Herbicide
 Apply 200 lbs per acre of lime, 100 lbs per acre of fertilizer, and 100 lbs per acre of herbicide. Apply 200 lbs per acre of lime, 100 lbs per acre of fertilizer, and 100 lbs per acre of herbicide.

Specific Schedule / Application Rates for Vegetation Rehabilitation
 Apply 200 lbs per acre of lime, 100 lbs per acre of fertilizer, and 100 lbs per acre of herbicide. Apply 200 lbs per acre of lime, 100 lbs per acre of fertilizer, and 100 lbs per acre of herbicide.

Exhibit 22



Wake Stone Corporation

www.wakestonecorp.com

Quarry Phone Numbers:

919/266-9266 - Knightdale
919/677-0050 - Triangle
919/775-7349 - Moncure
252/985-4411 - Nash County
843/756-3400 - N. Myrtle Beach

Locations:

6811 Knightdale Blvd., Knightdale, N.C.
222 Star Lane, Cary, N.C.
9725 Stone Quarry Rd., Moncure, N.C.
7379 North Halifax Rd., Battleboro, N.C.
3990 Hwy 9 Business East, Loris, S.C.

Business Office Address:

P.O. Box 190
6821 Knightdale Blvd.
Knightdale, N.C. 27545
919/266-1100
Fax: 919/266-1149

February 26, 2018

Ms. Judith A. Wehner, Assistant State Mining Specialist
NC DEQ Division of Energy, Mineral, and Land Resources
Land Quality Section
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

RE: Wake Stone Corporation Triangle Quarry
Mining Permit 92-10
Wake County

Dear Ms. Wehner:

During a recent review of the referenced Mining Permit and approved Site Plan Map for the Triangle Quarry, we discovered that the current Site Plan Map does not properly delineate the property boundary as the centerline of Crabtree Creek. This is inconsistent with the enclosed copy of the Composite Property Plat recorded at Page 364 in Book of Maps No. 1982 of the Wake County Public Registry. It appears that this discrepancy occurred during our company's transition to digital mapping. This discrepancy is critical in that the permit stipulated buffers are to be measured from the Property Boundary/Mining Permit Boundary (which are one and the same).

By this letter, we request that Operating Condition No. 3 on Page 4 of our mining permit be administratively revised to require that all buffers be maintained as referenced on the enclosed Site Plan Map revised February 26, 2018. The enclosed Site Plan Map graphically illustrates the corrected buffers measured from the centerline of Crabtree Creek which is the Property Boundary/Mining Permit Boundary along the north and west boundaries of the mine site. Please note that there are no changes proposed to the mining operation and that this mapping adjustment does not change the currently approved permitted and affected acreage at this site (the acreage approved in the permit was based upon the mining permit boundary being located at the centerline of the creek).

Ms. Judith Wehner
February 26, 2018
Page 2

As the requirements specified in Operating Conditions 3.C. and 3.D. are covered by Operating Condition 3.E.'s reference to such buffers on the approved Site Plan Map, we request that Operating Conditions 3.C. and 3.D. be removed from the permit and that Operating Condition 3.E. becomes the new Operating Condition 3.C. that reads as follows:

All buffer zones shown on the Site Plan Map revised February 26, 2018 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required erosion and sedimentation control measures and approved earthen berms, shall remain undisturbed.

As we are requesting that the mining permit document be updated to reflect these mapping adjustments, we assume that this administrative change to the mining permit is considered a mining permit modification. Please accept this letter and the enclosed \$750 check as our formal request to modify our mining permit. I assume that as there are no changes in the mining operation, this request can be reviewed internally by DEMLR's central and regional offices.

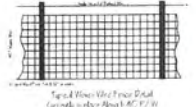
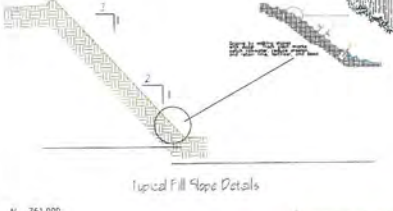
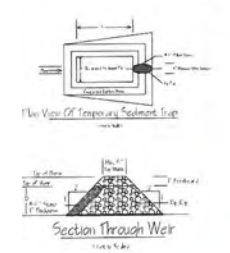
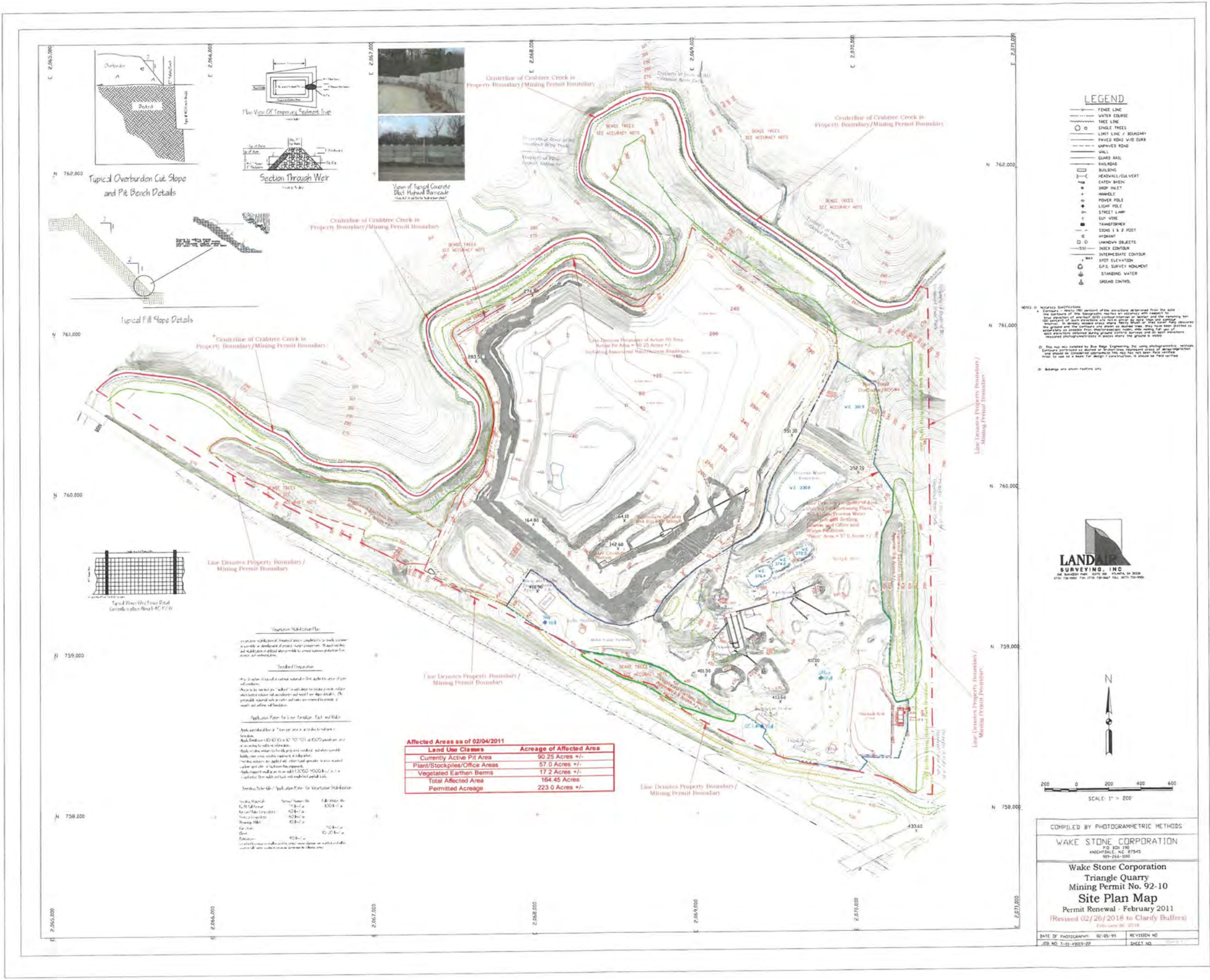
Thank you for your consideration of this request. If you should have any questions or need additional information, please contact me at (919) 266-1100, ext. 134.

Sincerely,
Wake Stone Corporation



David F. Lee, Environmental Supervisor

Enclosures: As noted



Vegetation Rehabilitation Plan

Vegetation Rehabilitation Plan

Application Form for Mine Rehabilitation, Earth and Water

Application Form for Mine Rehabilitation, Earth and Water

Affected Areas as of 02/04/2011	
Land Use Classes	Acres of Affected Area
Currently Active Pit Area	90.25 Acres +/-
Plant/Stockpiles/Office Areas	57.0 Acres +/-
Vegetated Earthen Berms	17.2 Acres +/-
Total Affected Area	164.45 Acres
Permitted Acreage	223.0 Acres +/-

- LEGEND**
- FENCE LINE
 - WATER COURSE
 - TRAIL LINE
 - LIMIT LINE / BOUNDARY
 - PAVED ROAD
 - UNPAVED ROAD
 - WALL
 - GUARD RAIL
 - RAILROAD
 - BUILDING
 - HEADWALL/CULVERT
 - CATCH BASIN
 - DROP INLET
 - MANHOLE
 - POWER POLE
 - LIGHT POLE
 - STREET LAMP
 - GUY WIRE
 - TRANSFORMER
 - ISSUE 1 & 2 POST
 - HYDRANT
 - UNKNOWN OBJECTS
 - INDEX CONTOUR
 - INTERMEDIATE CONTOUR
 - SPOT ELEVATION
 - GPS SURVEY MONUMENT
 - STANDING WATER
 - GROUND CONTROL

NOTES

1. Contours - 10' intervals, except where otherwise indicated.

2. This map was compiled by the Wake Stone Corporation using aerial photography, ground surveys, and other data.

3. All buildings are shown as footprints only.



SCALE: 1" = 200'

COMPILED BY PHOTOGRAHIC METHODS

WAKE STONE CORPORATION

Wake Stone Corporation
Triangle Quarry
Mining Permit No. 92-10
Site Plan Map
Permit Renewal - February 2011
(Revised 02/26/2018 to Clarify Buffers)

DATE OF PHOTOGRAPHY: 02-05-10 REVISION NO: 001
JOB NO. 1-01-0001-02 SHEET NO. 1

Exhibit 23

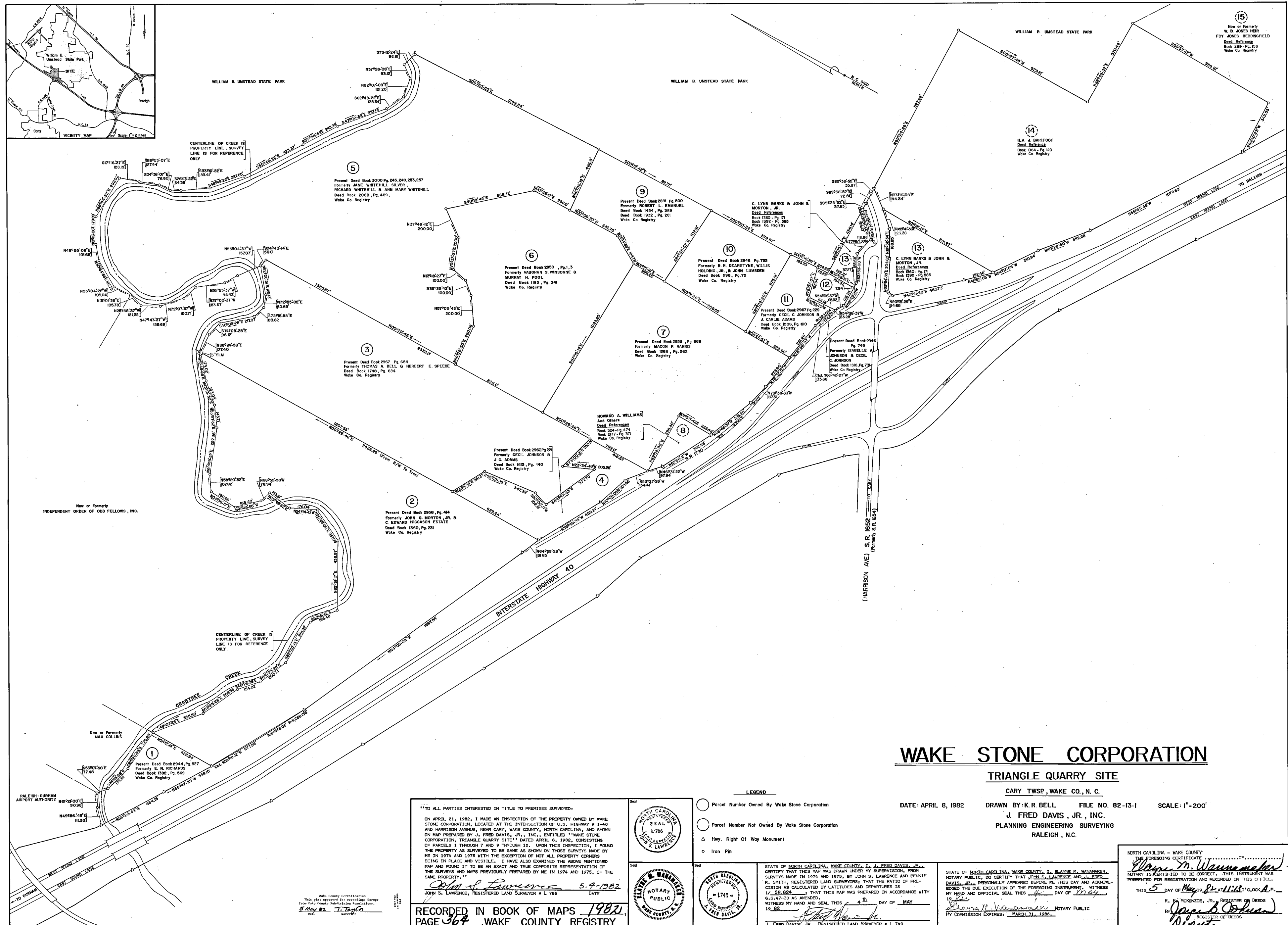


Exhibit 24



Energy, Mineral &
Land Resources
ENVIRONMENTAL QUALITY

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

TRACY DAVIS
Director

December 1, 2017

John Bratton
Wake Stone Corporation
P O Box 190
Knightdale, NC 27545

RE: Mining Permit No. 92-10
Cary (Triangle) Quarry
Wake County

Dear John Bratton:

This letter is to advise you of recent amendments to the North Carolina Mining Act of 1971 which impact the permit term of your existing mining permit. Pursuant to the passage of House Bill 56, which became law on October 4, 2017 as SL 2017-209, all existing mining permits and any newly issued mining permits are to be issued for the life of site or for the duration of the lease term. The "life of site" means the period from the initial receipt of a permit for the operation until the mining operation terminates and the required reclamation is completed.

Considering the above, this letter hereby modifies your existing mining permit to remove all references to the prior expiration date to convert your permit to a life of site or lease permit effective immediately. No action is required on your part for this modification to be effective. Please attach this letter to your existing mining permit for future reference. The mine name and permit number on the permit document, and all existing operating and reclamation conditions contained therein, shall remain in full force and effect. Furthermore, all provisions of GS §74-51 and GS §74-52 still apply to all new, transferred and modified mining permits.

In addition to the life of site or lease mining permit provision, SL 2017-209 also enacted a new annual mining permit operating fee of \$400 per mining permit number. By statute, the initial payment of this annual \$400 fee must be submitted to this office by December 31, 2017 – see the attached Invoice to remit the initial annual fee payment by this deadline. Beginning in 2018, the \$400 annual operating fee must be submitted by July 1 of each year with the required Annual Reclamation Report as required by GS §74-55. Failure to submit the fee by the required deadline will result in a \$50/month late fee and could result in the denial of future permit actions and/or revocation of your mining permit.

Lastly, pursuant to GS §74-54, the cap on reclamation bonds has been raised from \$500,000 to \$1 million. Any adjustments needed in existing bonds will be initiated by this office or addressed during your next requested permit action unless you contact this office with a written request to have your bond reevaluated.

The issuance of a mining permit and/or any modification to it does not supersede local zoning regulations. The responsibility of compliance with any applicable zoning regulations remains with you.

Thank you for your cooperation in this matter. If you have any questions on the above, please contact Ms. Judy Wehner, Assistant State Mining Specialist, or me at (919) 707-9220.

Sincerely,

William "Toby" Vinson, Jr., PE, CPM
Interim Director, DEMLR



North Carolina Department of Environment and Natural Resources
Division of Land Resources
Land Quality Section

James D. Simons, PG, PE
Director and State Geologist

Beverly Eaves Perdue, Governor
Dee Freeman, Secretary

March 30, 2011

Mr. David Lee
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545

RE: Permit No. 92-10
Triangle Mine
Wake County
Neuse River Basin

Dear Mr. Lee:

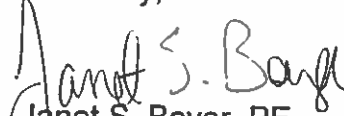
Your application for renewal of the above referenced mining permit has been approved. A copy of the renewed permit is enclosed. The new expiration date is March 30, 2021.

The conditions in the permit renewal were based primarily upon the initial application. Modifications were made as indicated by the renewal request and as required to insure compliance with The Mining Act of 1971. I would like to draw your particular attention to the following conditions where minor additions or changes were made: Operating Condition Nos. 3E, 4B, 7A, 11, and 12B and Reclamation Condition No. 5.

As a reminder, your permitted acreage at this site is 223 acres and the amount of land you are approved to disturb is 164.45 acres. A slight increase in the affected acreage at this site is because of more accurate mapping of the site.

Please review the renewed permit and contact Ms. Judy Wehner, Assistant State Mining Specialist, at (919) 733-4574 should you have any questions concerning this matter.

Sincerely,


Janet S. Boyer, PE
State Mining Specialist
Land Quality Section

JSB/jw
Enclosures

cc: Mr. John Holley, PE
Ms. Shannon Deaton-WRC, w/enclosures
Mr. William Gerringer-DOL, Mine and Quarry Bureau, w/o enclosures

DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

DIVISION OF LAND RESOURCES

LAND QUALITY SECTION

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G.S. 74-46 through 68, "The Mining Act of 1971," Mining Permit Rule 15A NCAC 5 B, and other applicable laws, rules and regulations

Permission is hereby granted to:

Wake Stone Corporation

Triangle Quarry

Wake County - Permit No. 92-10

for the operation of a

Crushed Stone Quarry

which shall provide that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

MINING PERMIT EXPIRATION DATE: March 30, 2021

In accordance with the application for this mining permit, which is hereby approved by the Department of Environment and Natural Resources hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other security on file with the Department, and may survive the expiration, revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Modifications

April 1, 1991: This permit has been modified to include three pit expansions, the construction of a pit perimeter road, and the construction of the visual barrier berm along the 250 foot permanent buffer zone as indicated on the revised Site Plan and supplemental information dated February 14, 1991.

February 5, 1992: This permit has been modified to include and require compliance with the January 20, 1992 blast and rock slide investigative report prepared by Wake Stone Corporation in its entirety.

October 11, 1996: This permit has been modified to allow the shipping of material after 1:00 PM on Saturdays until such time as the Umstead State Park reopens or the repair of the Raleigh Outer Loop Project near RDU Airport is completed, whichever comes first.

November 24, 2010: This permit has been modified to increase the affected acreage at this site to 156.6 acres as indicated on the Site Plan Maps last revised November 22, 2010. The modification includes the construction of a stockpile area contiguous to the existing plant and stockpile yard and includes the installation and maintenance of all associated erosion and sediment control measures.

Expiration Date

This permit shall be effective from the date of its issuance until March 30, 2021.

Conditions

This Permit shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

OPERATING CONDITIONS:

1. Wastewater and Quarry Dewatering

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any storm water runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Division of Water Quality to secure any necessary storm water permits or other approval documents.

2. Air Quality and Dust Control

- A. Any mining related process producing air contaminant emissions including fugitive dust shall be subject to the requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. The provisions of Air Quality Permit No. 4386 shall be followed.
- C. The permanent access (plant entrance) road shall be paved from the scale house to SR 1790. During quarry operation, water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the permitted area.
- D. Dust suppression systems shall be used throughout the plant to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.

- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

3. Buffer Zones

- A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.
- B. Sufficient buffer shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- C. A minimum buffer zone of 250 feet shall be maintained between any mining activity and Crabtree Creek along the north side of the mine site.
- D. A minimum buffer zone of 100 feet shall be maintained between any mining activity and both the Umstead Park property and adjoining property along the east and south sides of the mine site, respectively.
- E. All buffer zones shown on the Site Plan Map dated February 4, 2011 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, shall remain undisturbed.

4. Erosion and Sediment Control

- A. Adequate mechanical barriers including, but not limited to diversions, earthen dikes, check dams, sediment retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance and maintained to prevent sediment from discharging onto adjacent surface areas or into any lake, wetland or natural watercourse in proximity to the affected land.
- B. All mining activities, including the installation and maintenance of all erosion and sedimentation control measures, shall be conducted as indicated on the Site Plan Map dated February 4, 2011 and the supplemental information received by the Land Quality Section on February 7, 2011.

- C. An erosion and sediment control plan(s) shall be submitted to the Department for approval prior to any land disturbing activities not indicated on the revised erosion control plan or mine maps submitted with the approved application for a mining permit and any approved revisions to it. Such areas include, but are not limited to, expansion outside of the approved pit area, creek crossings, or expansion of overburden or waste disposal areas.

5. Groundwater Protection

Groundwater monitoring wells shall be installed and monitored as deemed appropriate by the Department.

6. Noise Abatement

All reasonable precautions shall be taken to minimize the impacts of operational noise upon Umstead Park. Said measures shall include, but not be limited to the following:

- A. Noise barriers between the park boundary and the crushers and screening towers to minimize noise levels at the park shall be provided from the onset of the operation. Noise barriers may be enclosures, walls, bins, structures, stockpiles or natural terrain. In the event there is disagreement over the required noise control measure, the final design and placement of noise barriers shall be determined by qualified noise and engineering consultants mutually agreed upon by both parties.
- B. The plant shall be located at the lowest feasible elevation.
- C. The plant shall be designed so that the primary crusher can be relocated in the pit at the earliest possible date.
- D. The chutes used in processing shall be rubberized.
- E. Compressors with noise abatement enclosures (currently called whispered compressors) shall be used with track drills to open the quarry. Once the quarry is opened, either hydraulic or down-in-the-hole drills shall be used to further reduce noise.
- F. Pit haul trucks shall be equipped to exhaust through the beds of the trucks to muffle engine noise.
- G. Conveyors rather than trucks shall be used for stockpiling material.

- H. The quarry and stone process operations shall be operated on Monday through Friday and shall not be operated on the following recognized holidays: New Years Day, Easter Monday, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. A reasonable amount of hauling of processed stone from the stockpile areas is permitted until 1:00 PM on Saturdays but hauling shall not be done at any other time on weekends or on holidays without prior approval from the Department.

7. Processing Plant Location

- A. The processing and stockpiling facilities shall be located as indicated on the Site Plan Map dated February 4, 2011.
- B. The plant shall be located to place the processing and stockpiling activities at the lowest possible elevation to reduce visibility and noise impacts on Umstead State Park.
- C. The location of the pit shall be such that once the overburden is removed, the quarry excavating equipment (i.e., compressor and drill, shovels, and trucks) can be placed at an elevation lower than the surrounding natural ground in the initial phases of quarrying.

8. Graded Slopes and Fills

- A. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measure, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause off-site damage because of siltation, shall be planted or otherwise provided with groundcover, devices or structures sufficient to restrain such erosion.
- B. Overburden cut slopes along the perimeter of the quarry opening shall be graded to a minimum 2 horizontal to 1 vertical or flatter and shall be stabilized within 60 days of completion. Furthermore, a minimum ten (10) foot wide horizontal safety bench shall be provided at the top of the rock and at the toe of any overburden slope.

9. Surface Drainage

The affected land shall be graded so as to prevent collection of pools of water that are, or likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

10. Blasting

The operator shall monitor each blast with a seismograph located at a distance no farther than the closest off site regularly occupied structure not owned or

leased by the operator. A seismographic record including peak particle velocity, air overpressure, and vibration frequency levels shall be kept for each blast (except as provided under Operating Condition Nos. 8B and 8D of this permit). The following blasting conditions shall be observed by the mine operator to prevent hazard to persons and adjacent property from surface blasting:

A. Ground Vibration With Monitoring:

In all blasting operations, the maximum peak particle velocity of any component of ground motion shall not exceed Figure 1 (below) at the immediate location of any regularly occupied building outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building.

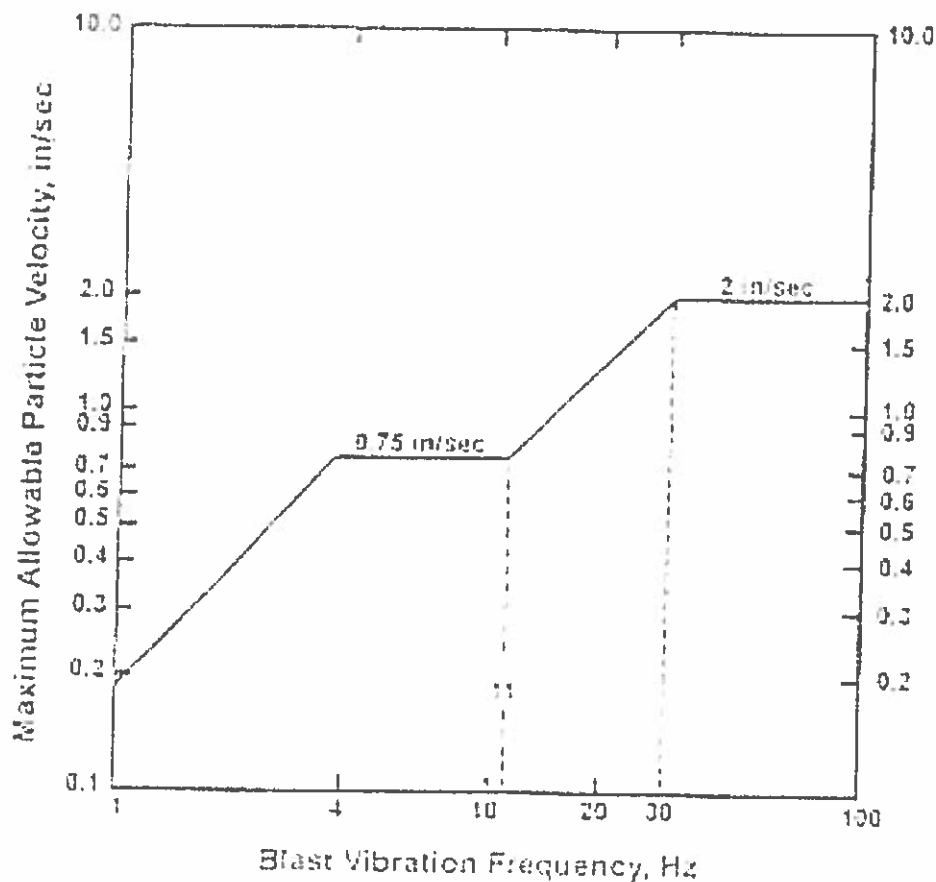


Figure 1. Alternative blasting level criteria
(Source modified from figure B-1, Bureau of Mines R13507)

B. Ground Vibration Without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$W = (D/D_s)^2 \quad D_s = \frac{D}{W^{1/2}}$$

$$V = 160(D_s)^{-1.6}$$

- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
 D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
 D_s = Scaled distance factor.
 V = Peak Particle Velocity (inches per second).

The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Section.

C. Air blast With Monitoring:

Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at the immediate location of any regularly occupied building not owned or leased by the operator outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building, unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used:

Lower Frequency Limit of Measuring System, in Hz	Max Level, in dBL
0.1 Hz or lower-flat response	134 peak
2.0 Hz or lower-flat response	133 peak
6.0 Hz or lower-flat response	129 peak

D. Air blast Without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$U = 82 (D/W^{0.33})^{-1.2}$$

To convert U (psi) to P (dBL):

$$P = 20 \times \log (U/2.9 \times 10^{-9})$$

Confined Air blast/Overpressure (dBL)
for quarry situation:

$$A = P - 35$$

- U = Unconfined air overpressure (pounds per square inch).
- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
- D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
- P = Unconfined air overpressure (decibels).
- A = Air blast or air overpressure for typical quarry situations (decibels).

The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Section.

E. Record Keeping:

The operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes and delay of intervals; depth and size of holes; type and total pounds of explosives; maximum pounds per delay interval; amount of stemming and burden for each hole; blast location; distance from blast to closest offsite regularly occupied structure; and weather conditions at the time of the blast. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

F. Excessive Ground Vibration/Air blast Reporting:

If ground vibration or Air blast limits are exceeded, the operator will immediately report the event with causes and corrective actions to the Department. Use of explosives at the blast site that produced the excessive reading shall cease until corrective actions approved by the Department are taken. However, blasting may occur in other approved areas within the permitted boundary. Authorization to blast at the blast site may be granted at the time of the verbal reporting of the high ground vibration or high air blast reading if the circumstances justify verbal approval. Failure to report will constitute a permit violation.

G. Flyrock Prevention:

The operator shall take all reasonable precautions to ensure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the Mining Permit.

H. Flyrock Reporting:

Should flyrock occur beyond the permitted and guarded areas, the operator shall immediately report the incident to the Department. Further use of explosives on the mine site shall be suspended until the following actions have been taken:

1. A thorough investigation as to the cause(s) of the incident shall be conducted.
2. A report detailing the investigation shall be provided to the Department within 10 days of the incident. The report shall, at a minimum, document the cause(s) of the incident along with technical and management actions that will be taken to prevent further incidents. The report shall meet with the approval of the Department before blasting may resume at the mine site.

I. Studies:

The operator shall provide to the Department a copy of the findings of any seismic studies conducted at the mine site in response to an exceedence of a level allowed by these blasting conditions. The operator shall make every reasonable effort to incorporate the studies' recommendations into the production blasting program.

J. Notice:

The operator shall, when requested by the Department, give 24-hour advance notice to the Land Quality Section Regional Office prior to any blast during a period for which notice is requested.

- K. Regarding blasting activities conducted to lower the haul road along the western boundary of the "Pit Expansion Initiated During 1989" area and Crabtree Creek, all of the corrective actions/steps outlined in the blast and rock slide investigation report prepared by Wake Stone Corporation dated January 20, 1992 shall be followed. In addition, any areas disturbed as a result of the previous rock slide and its subsequent removal shall be restored to its natural, pre-disturbed state or an alternative acceptable to the Department.

11. High Wall Barrier

A physical barrier consisting of large boulders placed end-to-end, fencing or other acceptable barrier materials shall be maintained at all times along the perimeter of any highwall to prevent inadvertent public access. In addition, a minimum 10 foot wide horizontal safety bench shall be provided at the junction between the top of rock and the toe of any overburden cut slope.

12. Visual Screening

- A. Existing vegetation shall be maintained between the mine and public thoroughfares to screen the operation from the public. Additional screening methods, such as constructing earthen berms, shall be employed as deemed appropriate by the Department.
- B. Vegetated earthen berms shall be located and constructed as shown on the Site Plan Map dated February 4, 2011. In addition to grasses, long leaf and/or Virginia pines or other acceptable evergreen species shall be planted as deemed appropriate by the Department to improve visual and noise buffering.
- C. Other berms may be required as mining progresses to reduce the noise and visual impact upon Umstead State Park.

13. Plan Modification

The operator shall notify the Department in writing of the desire to delete, modify or otherwise change any part of the mining, reclamation, or erosion/sediment control plan contained in the approved application for a mining permit and any approved revisions to it. Approval to implement such changes must be obtained from the Department prior to on-site implementation of the revisions.

14. Refuse Disposal

- A. No on-site disposal of refuse or other solid waste that is generated outside of the mining permit area shall be allowed within the boundaries of the mining permit area unless authorization to conduct said disposal has first been obtained from both the Division of Waste Management and the Land Quality Section, Department of Environment and Natural Resources. The method of disposal shall be consistent with the approved reclamation plan.
- B. Mining refuse as defined by G.S. 74-49 (14) of The Mining Act of 1971 generated on-site and directly associated with the mining activity may be disposed of in a designated refuse area. All other waste products must be disposed of in a disposal facility approved by the Division of Waste Management. No petroleum products, acids, solvents or their storage containers or any other material that may be considered hazardous shall be disposed of within the permitted area.
- C. For the purposes of this permit, the Division of Land Resources considers the following materials to be "mining refuse" (in addition to those specifically listed under G.S. 74-49 (14) of the N.C. Mining Act of 1971):
 - 1. on-site generated land clearing debris
 - 2. conveyor belts

3. wire cables
4. v-belts
5. steel reinforced air hoses
6. drill steel

D. If mining refuse is to be permanently disposed within the mining permit boundary, the following information must be provided to and approved by the Division of Land Resources prior to commencement of such disposal:

1. the approximate boundaries and size of the refuse disposal area;
2. a list of refuse items to be disposed;
3. verification that a minimum of 4 feet of cover will be provided over the refuse;
4. verification that the refuse will be disposed at least 4 feet above the seasonally high water table; and
5. verification that a permanent vegetative groundcover will be established

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Annual Reclamation Report

An Annual Reclamation Report shall be submitted on a form supplied by the Department by February 1 of each year until reclamation is completed and approved.

Bonding

The security, which was posted pursuant to N.C.G.S. 74-54 in the form of a \$500,000.00 blanket bond, is sufficient to cover the operation as indicated in the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

Archaeological Resources

Authorized representatives of the Division of Archives and History shall be granted access to the site to determine the presence of significant archaeological resources.

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the terms of the Mining Permit.

The approved plan provides:

Minimum Standards As Provided By G.S. 74-53

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the North Carolina Agricultural Experiment Station and the North Carolina Forest Service.
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, provide reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS:

1. Provided further, and subject to the Reclamation Schedule, the planned reclamation shall be to allow the quarry excavation to fill with water, provide a permanent barricade (fence) along the top of any high wall, and grade and revegetate any areas in unconsolidated material.
2. The specifications for surface gradient restoration to a surface suitable for the planned future use are as follows:

- A. All areas of unconsolidated material such as overburden or waste piles shall be graded to a 2 horizontal to 1 vertical or flatter slope and terraced as necessary to insure slope stability.
- B. Any settling ponds and sediment control basins shall be backfilled, graded, and stabilized or cleaned out and made into acceptable lake areas.
- C. The processing, stockpile, and other disturbed areas neighboring the mine excavation shall be leveled and smoothed.
- D. Compacted surfaces shall be disced, subsoiled or otherwise prepared before revegetation.
- E. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Conditions Nos. 12.A. through D.
- F. The affected land shall be graded to prevent the collection of noxious or foul water.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.

3. Revegetation Plan:

Disturbed areas shall be permanently revegetated according to the following provisions:

Site Preparation: The land surfaces shall be graded and/or shaped as necessary to create grades applicable to the subsequent use of the site, but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material and other obstructions that would interfere with the establishment of vegetation planned for the site shall be removed and either buried or properly disposed of off-site in accordance with Operating Condition Nos. 12A through D above. Surface runoff shall be controlled by terraces or diversions to allow discharge through protected outlets.

Lime and Fertilizer: Lime and fertilizer shall be applied in accordance with soil test result or at a rate of 2,000 lbs/acre of lime and 1000 lbs/acre of 10-20-20 fertilizer.

Seedbed Preparation: Lime and fertilizer shall be mixed with the soil to a depth of three to four inches where conventional equipment can be used. On slopes steeper than about 2:1, soils shall be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to seeding equipment, seed, nutrients and mulch, shall be applied by hand.

Revegetation: Typical seed mixtures to be utilized include fescue-rye, fescue-rye-lespedeza, and fescue-lespedeza, where the lespedeza used may be Korean or Kobe or Sericea. All rye species to be utilized shall be rye grain rather than rye grass. In fall or spring plantings, seeding mixtures shall utilize 100 lbs. Fescue and 50 lbs. Rye per acre to be planted. Late spring plantings in certain areas may contain up to 40 lbs. Kobe/Korean per acre where desirable to supplement natural deer browse. Sericea lespedeza shall be utilized at a rate of 20 to 40 lbs. per acre in combination with Fescue when planting excessively droughty soils or steep slopes. When using lespedeza species in fall plantings, non-scarified seed shall be utilized. Scarified seed shall be utilized in spring plantings. Newly seeded areas shall be mulched with unchopped small grain straw applied at a rate of 1.5 to 2 tons per acre, or until approximately 75% of the soil is hidden.

Loblolly pines (or other acceptable evergreen species) and red cedar seedlings shall be planted at selected sites to provide visual screens and revegetation. Evergreen seedling plantings shall be done on a staggered 4 feet by 4 feet pattern.

Maintenance: Plant placement and other maintenance that may be required to establish vegetative cover appropriate to the reclamation plan for this site shall be carried out until vegetation is properly established.

Whenever possible, disturbed areas should be vegetated with native warm season grasses such as switch grass, Indian grass, bluestem and gamma grass.

In addition, the permittee shall consult with a professional wildlife biologist with the N.C. Wildlife Resources Commission to enhance post-project wildlife habitat at the site.

4. Reclamation Plan:

Reclamation shall be conducted simultaneously with mining to the extent feasible. In any event, reclamation shall be initiated as soon as feasible after completion or termination of mining of any mine segment under permit. Final reclamation, including revegetation, shall be completed within two years of completion or termination of mining.

5. Donation to State

This provision is pursuant to Wake Stone Corporation's offer to donate the quarry site to the State as part of its reclamation plan.

The term "quarry site" shall include the entire pit as it exists after quarrying has been completed, a strip extending at least 50 feet back from the top of the slope of the pit on all sides, and a reasonable area to connect the pit and surrounding strip to the Park, constituting a total area of at least 75 acres.

The method by which the quarry site may be donated to the State is as follows: Wake Stone Corporation will grant to the State an option which, if exercised by the State, will require that Wake Stone Corporation convey a fee simple title to the quarry site to the State. The State shall have no obligations to exercise its option to accept a conveyance of the quarry site. The option may include such other terms as are mutually acceptable to the State and Wake Stone Corporation.

During the option period, Wake Stone Corporation shall have the right to encumber all of its remaining property from time to time by mortgage, deed of trust or other security agreement then in common use for the purpose of securing one or more bona fide obligations of Wake Stone Corporation, such as the payment of money or the providing of any goods or services. The option to the State shall be subordinate to each such encumbrance in the same manner and to the same extent as if such option has been recorded after the restoration of each such encumbrance.

The right of the State to exercise its option shall be subject to:

Wake Stone Corporation not being prohibited by the US Government, State of North Carolina, Wake County, any municipality having jurisdiction, or by any other court from removing from Wake Stone Corporation's property all quarryable stone which is outside of the buffer zones referred to in Operating Condition No.3 of this permit. The requirements by the State that Wake Stone Corporation comply with laws and rules and regulations generally applicable to stone quarrying shall not be deemed a prohibition of quarrying for the purpose of the option agreement.

The conveyance of the quarry site, if approved by the State, shall be by deed containing the usual covenants of warranty and conveying the quarry site free and clear of all encumbrances except those existing at the time of Wake Stone Corporation's purchase, ad valorem taxes at the time of conveyance (which shall be prorated), and such drainage and utility easements as shall have been installed in connection with the development of the property.

The terms and conditions of the option shall be as follows:

- A. When all quarryable stone has been removed from all of the land and belonging to or under the control of Wake Stone Corporation during the period of its quarrying operations and which lies between Umstead State Park and Interstate Highway 40, it shall be the duty of Wake Stone Corporation to notify the State of this fact. Upon receipt of such notice, the State shall have six months within which it may elect to have Wake Stone Corporation convey the quarry site to the State. If the State elects to have Wake Stone Corporation convey the quarry site to the State, it shall notify Wake Stone Corporation of such election within said six month period. All notices shall be by certified mail and return receipt requested. If the State fails to make election within said six month period or shall elect not to accept a conveyance of the quarry site, the option shall be thereupon

terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.

- Order*
- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accure at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is ~~sooner~~, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in Paragraph A above.
- C. Until the option has expired, Wake Stone Corporation shall not encumber by mortgage or deed of trust of any of the area designated "BUFFER AREA" on Wake Stone Corporation's Site Plan dated February 4, 2011, except for purchase money security interests.

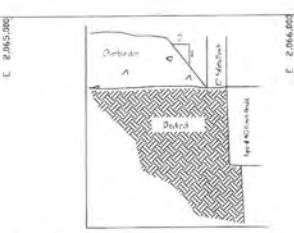
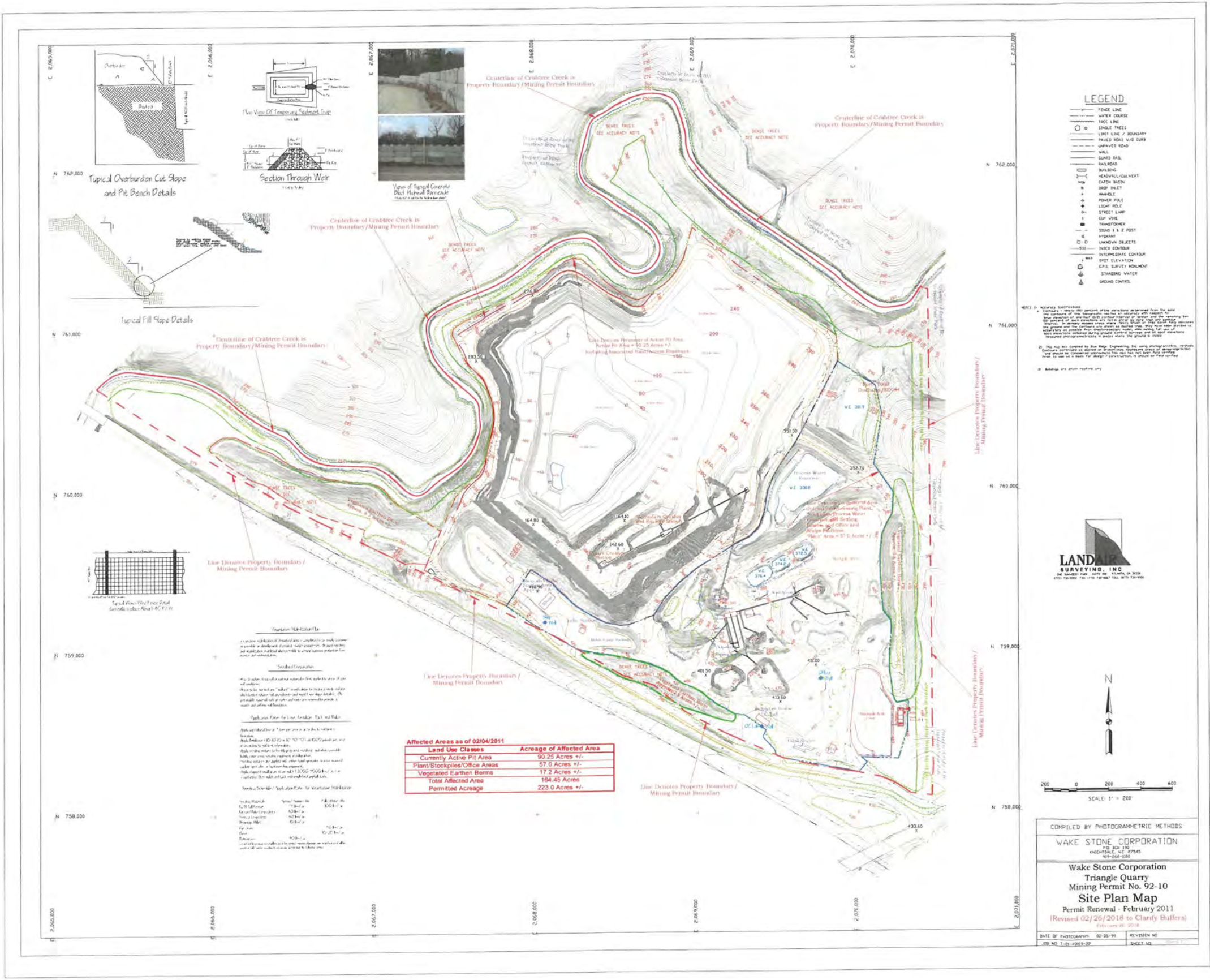
The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the conditions of the land to be transferred will be in accordance with the criteria identified in the "Principles' Governing the Establishment of Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

This permit, issued May 13, 1981, modified April 15, 1986, renewed and modified April 1, 1991, modified February 5, 1992 and October 11, 1996, renewed April 20, 2001 and modified November 24, 2010, is hereby renewed this 30th day of March, 2011 pursuant to G.S. 74-52.

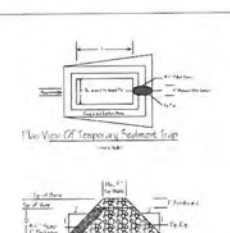
By: 

James D. Simons, Director
Division of Land Resources
By Authority of the Secretary
Of the Department of Environment and Natural Resources

Exhibit 25



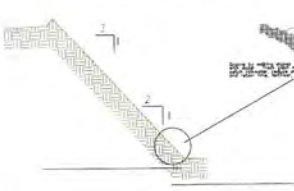
Typical Overburden Cut Slope and Pit Bench Details



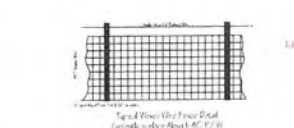
Section Through Weir



Typical Fill Slope Details
Typical View of Triangle Quarry



Typical Fill Slope Details



Typical View of Triangle Quarry

Vegetation Rehabilitation Plan

Standard Vegetation

Application Plan for Linear Features, Fills and Walls

Application Plan for Vegetation Rehabilitation

Application Plan for Vegetation Rehabilitation

Application Plan for Vegetation Rehabilitation

Application Plan for Vegetation Rehabilitation

Application Plan for Vegetation Rehabilitation

Application Plan for Vegetation Rehabilitation

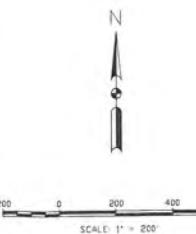
Application Plan for Vegetation Rehabilitation

Affected Areas as of 02/04/2011	
Land Use Classes	Acres of Affected Area
Currently Active Pit Area	90.25 Acres +/-
Plant/Stockpiles/Office Areas	57.0 Acres +/-
Vegetated Earthen Berms	17.2 Acres +/-
Total Affected Area	164.45 Acres
Permitted Acreage	223.0 Acres +/-

LEGEND

- FENCE LINE
- WATER COURSE
- TRAIL LINE
- SINGLE TREE
- LINE LINE / BOUNDARY
- PAVED ROAD / V/D DIRT
- UNPAVED ROAD
- WALL
- GUARD RAIL
- RAILROAD
- BUILDING
- HEADWALL/CULVERT
- CATCH BASIN
- DROP INLET
- MANHOLE
- POWER POLE
- LIGHT POLE
- STREET LAMP
- GUY WIRE
- TRANSFORMER
- ISSUE 1 & 2 POST
- HYDRANT
- UNKNOWN OBJECTS
- INDEX CONTOUR
- INTERMEDIATE CONTOUR
- SPOT ELEVATION
- GPS SURVEY MONUMENT
- STANDING WATER
- GROUND CONTROL

NOTES:
1. Contours - 10' intervals, except where otherwise indicated.
2. This map was compiled by the Wake Stone Corporation using aerial photography, ground surveys, and other data.
3. All measurements are in feet, except where otherwise indicated.
4. All measurements are to the center of the line, except where otherwise indicated.
5. All measurements are to the nearest foot, except where otherwise indicated.
6. All measurements are to the nearest tenth of a foot, except where otherwise indicated.
7. All measurements are to the nearest hundredth of a foot, except where otherwise indicated.
8. All measurements are to the nearest thousandth of a foot, except where otherwise indicated.
9. All measurements are to the nearest ten-thousandth of a foot, except where otherwise indicated.
10. All measurements are to the nearest hundred-thousandth of a foot, except where otherwise indicated.



COMPILED BY PHOTOGRAHIC METHODS
WAKE STONE CORPORATION
Wake Stone Corporation
Triangle Quarry
Mining Permit No. 92-10
Site Plan Map
Permit Renewal - February 2011
(Revised 02/26/2018 to Clarify Buffers)
DATE OF PHOTOGRAPHY: 02-05-10 REVISION NO:
JOB NO. 1-01-4001-02 SHEET NO. 1

Exhibit 26

Cole Atkins

From: David Lee
Sent: Monday, March 26, 2018 2:24 PM
To: Wehner, Judy
Cc: Sam Bratton; Cole Atkins
Subject: Triangle Quarry - Mining Permit 92-10
Attachments: Corrections for Permit 92-10.pdf

Judy-

Cole forwarded to me the revised Permit 92-10 for our Triangle Quarry which he received via email earlier today. After reading the revised permit, we have discovered several editorial/typographical errors that should be corrected. I am attaching a PDF of pages 3, 4, 14, and 17 with those needed corrections noted in red pen.

- Under Operating Condition 3. Buffer Zones, conditions C and D are unnecessary, should be deleted, and Condition E re-lettered as "C". Condition E, which references the February 26, 2018 Site Plan Map, adequately addresses all buffers.
- Modification history section: The December 1, 2018 date for life of mine should be December 1, 2017 (Session Law 2017-209).
- Same section: "correction of" should be "correct" under the March 19, 2018 modification reference.
- Operating Condition 2 – formatting - need a space between 2A and 2B.
- Reclamation Condition 2E should reference 14A through D (not 12A through D).
- Reclamation Condition 3 under Site Preparation should also refer to 14A through D, not 12A through D.
- Reclamation Condition 5C should be updated to reference the Site Plan revised February 26, 2018 as this condition relates to "BUFFER AREA" (not the old February 4, 2011 map).
- The Division and Department name under the signature on the last page need to be updated.

If necessary, Cole and/or I can meet with you and David at your convenience to discuss these needed corrections. Please let he or I know if that would be beneficial. The easiest fix may be to simply send corrected pages to be slip-sheeted into our copy of the permit.

Thank you for your prompt attention to this matter,
-David

David F. Lee
Geologist/Environmental Supervisor
Wake Stone Corporation
PO Box 190
Knightdale, North Carolina 27545
Office: 919-266-1100, ext. 134
website: www.wakestonecorp.com
Cell: 919-369-3449
Home: 919-553-4666

November 24, 2010: This permit has been modified to increase the affected acreage at this site to 156.6 acres as indicated on the Site Plan Maps last revised November 22, 2010. The modification includes the construction of a stockpile area contiguous to the existing plant and stockpile yard and includes the installation and maintenance of all associated erosion and sediment control measures.

December 1, 2017: This permit has been legislatively modified to issue the permit for the life of the site or the duration of the lease term.

March 19, 2018: This permit has been modified to ^{correct} ~~correction~~ of discrepancies on the mine map and in several mining permit conditions.

This permit is valid for the life of the site or life of lease, if applicable, as defined by Session Law 2017-209 and has no expiration date. However, all provisions of GS 74-51 and GS 74-52 still apply for new, transferred and modified mining permits.

Conditions

This Permit shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

OPERATING CONDITIONS:

1. Wastewater and Quarry Dewatering

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any storm water runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Division of Water Quality to secure any necessary storm water permits or other approval documents.

2. Air Quality and Dust Control

- A. Any mining related process producing air contaminant emissions including fugitive dust shall be subject to the requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. The provisions of Air Quality Permit No. 4386 shall be followed.
- C. The permanent access (plant entrance) road shall be paved from the scale house to SR 1790. During quarry operation, water trucks or other means that

may be necessary shall be utilized to prevent dust from leaving the permitted area.

- D. Dust suppression systems shall be used throughout the plant to control dust.
- E. Drill hole dust shall be controlled by wetting or other means.
- F. Dust control at the crushers and screens shall be maintained by the use of water sprays.
- G. A water spray shall be provided for highway haul trucks.
- H. Washed stone shall be stockpiled within the part of the designated plant area which is closest to the park.

3. Buffer Zones

- A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.
- B. Sufficient buffer shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- ~~C.~~ A minimum buffer zone of 250 feet shall be maintained between any mining activity and Crabtree Creek along the north side of the mine site.
- ~~D.~~ A minimum buffer zone of 100 feet shall be maintained between any mining activity and both the Umstead Park property and adjoining property along the east and south sides of the mine site, respectively.
- ~~E.~~ All buffer zones shown on the Site Plan Map revised February 26, 2018 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, shall remain undisturbed.

*3C & 3D are redundant w/ 3E's
reference to 2/26/18 map depicted buffers.*

- B. Any settling ponds and sediment control basins shall be backfilled, graded, and stabilized or cleaned out and made into acceptable lake areas.
- C. The processing, stockpile, and other disturbed areas neighboring the mine excavation shall be leveled and smoothed.
- D. Compacted surfaces shall be disced, subsoiled or otherwise prepared before revegetation.
- E. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Conditions Nos. 12.A through D. 14
- F. The affected land shall be graded to prevent the collection of noxious or foul water.
- G. Any diverted or re-established drainage channels shall be restored to a stable condition.

3. Revegetation Plan:

Disturbed areas shall be permanently revegetated according to the following provisions:

14 Site Preparation: The land surfaces shall be graded and/or shaped as necessary to create grades applicable to the subsequent use of the site, but in no case will any slope greater than 26 degrees in unconsolidated material be left. Loose rock, woody material and other obstructions that would interfere with the establishment of vegetation planned for the site shall be removed and either buried or properly disposed of off-site in accordance with Operating Condition Nos. 12A through D above. Surface runoff shall be controlled by terraces or diversions to allow discharge through protected outlets.

Lime and Fertilizer: Lime and fertilizer shall be applied in accordance with soil test result or at a rate of 2,000 lbs/acre of lime and 1000 lbs/acre of 10-20-20 fertilizer.

Seedbed Preparation: Lime and fertilizer shall be mixed with the soil to a depth of three to four inches where conventional equipment can be used. On slopes steeper than about 2:1, soils shall be grooved or scarified along the contour to provide for retention of seeds and nutrients on the slope until germination and growth is started. On steep slopes not accessible to seeding equipment, seed, nutrients and mulch, shall be applied by hand.

terminate and Wake Stone Corporation shall have no further obligation to convey the quarry site to the State.

- B. If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in Paragraph A above.
- C. Until the option has expired, Wake Stone Corporation shall not encumber by mortgage or deed of trust of any of the area designated "BUFFER AREA" on Wake Stone Corporation's Site Plan dated February 4, ~~2011~~, except for purchase money security interests. 26, 2018

The terms and conditions relating to the donation are placed herein to prescribe generally the boundaries of the Wake Stone Corporation offer. The acceptance by the State is subject to approval by the Department of Administration and the council of State and the ascertaining that the offer is in accord with the laws of the State and lawfully adopted rules and regulations. Further, the Department's analysis of the conditions of the land to be transferred will be in accordance with the criteria identified in the "Principles' Governing the Establishment of Extension and Development of State Parks, State Recreation Areas and State Natural Areas."

This permit, issued May 13, 1981, modified April 15, 1986, renewed and modified April 1, 1991, modified February 5, 1992 and October 11, 1996, renewed April 20, 2001, modified November 24, 2010, renewed March 30, 2011 and modified December 1, 2017, is hereby modified this 19th day of March, 2018 pursuant to G.S. 74-52.

By: 

William E. Vinson, Jr., Interim Director

Division of Land Resources

By Authority of the Secretary

Of the Department of Environment and Natural Resources

DEMLR
DEQ

Wehner, Judy

From: Vinson, Toby
Sent: Monday, March 26, 2018 2:47 PM
To: Wehner, Judy; Miller, David
Subject: RE: [External] Triangle Quarry - Mining Permit 92-10

Please do.

tV

From: Wehner, Judy
Sent: Monday, March 26, 2018 2:34 PM
To: Miller, David <david.miller@ncdenr.gov>; Vinson, Toby <toby.vinson@ncdenr.gov>
Subject: FW: [External] Triangle Quarry - Mining Permit 92-10

Do you want me to make these corrections? I agree with everything but the first one on the buffers.

From: David Lee [<mailto:davidlee@wakestonecorp.com>]
Sent: Monday, March 26, 2018 2:24 PM
To: Wehner, Judy <judy.wehner@ncdenr.gov>
Cc: Sam Bratton <samuelbratton@wakestonecorp.com>; Cole Atkins <coleatkins@wakestonecorp.com>
Subject: [External] Triangle Quarry - Mining Permit 92-10

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

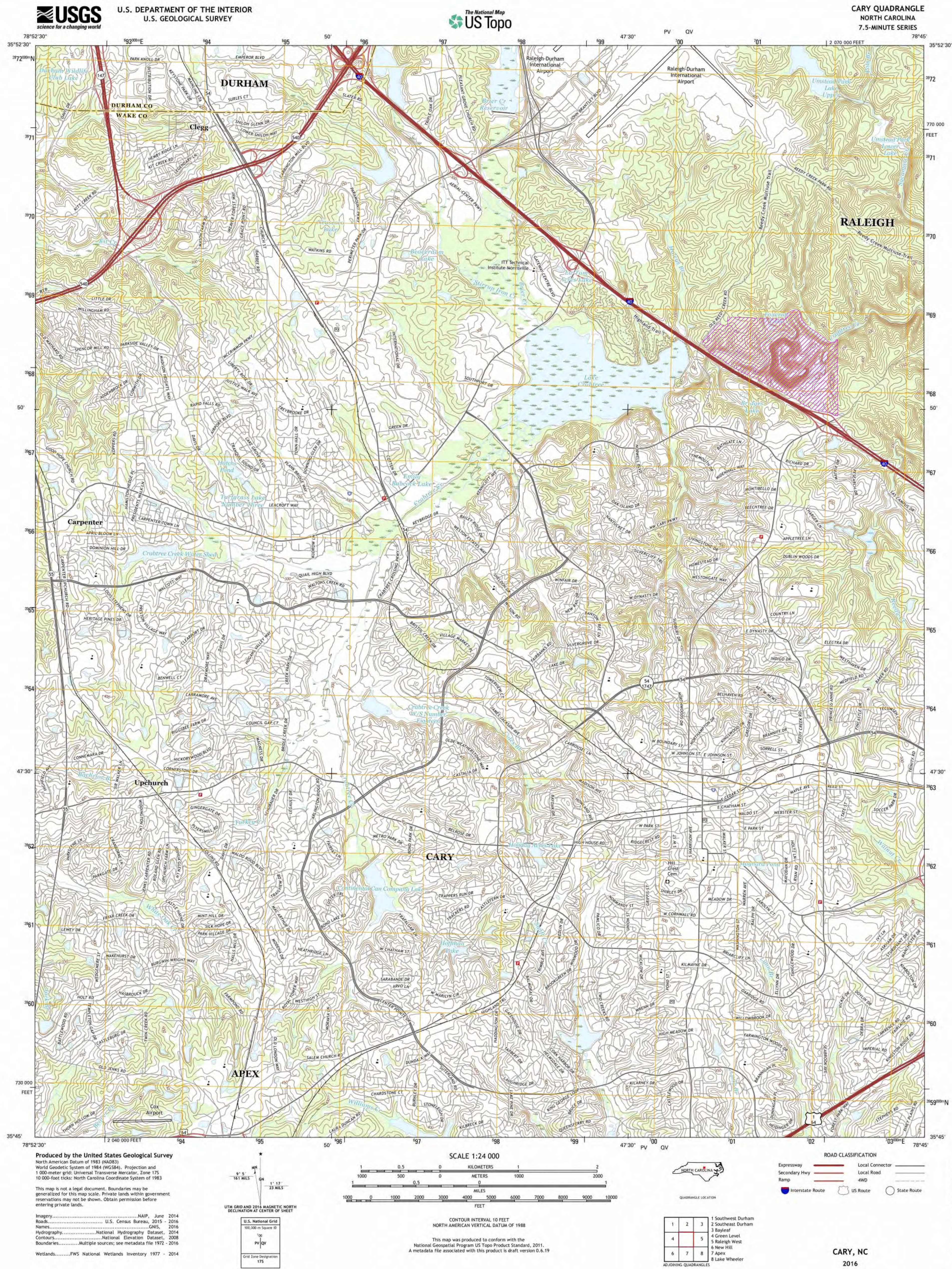
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If necessary, Cole and/or I can meet with you and David at your convenience to discuss these needed corrections. Please let he or I know if that would be beneficial. The easiest fix may be to simply send corrected pages to be slip-sheeted into our copy of the permit.

Exhibit 27



WAKE STONE
CORPORATION

Triangle Quarry Mining Permit No. 92-10 Modification Application Site Plans and E&SC Plan

For the expansion of Triangle
Quarry, including the addition of
RDU Property mineral lease
(approximately 106 acres),
and modification of
existing Triangle Quarry pit
perimeter road

Contents (Separated by Plan Set)

Wake Stone Site Plan Set

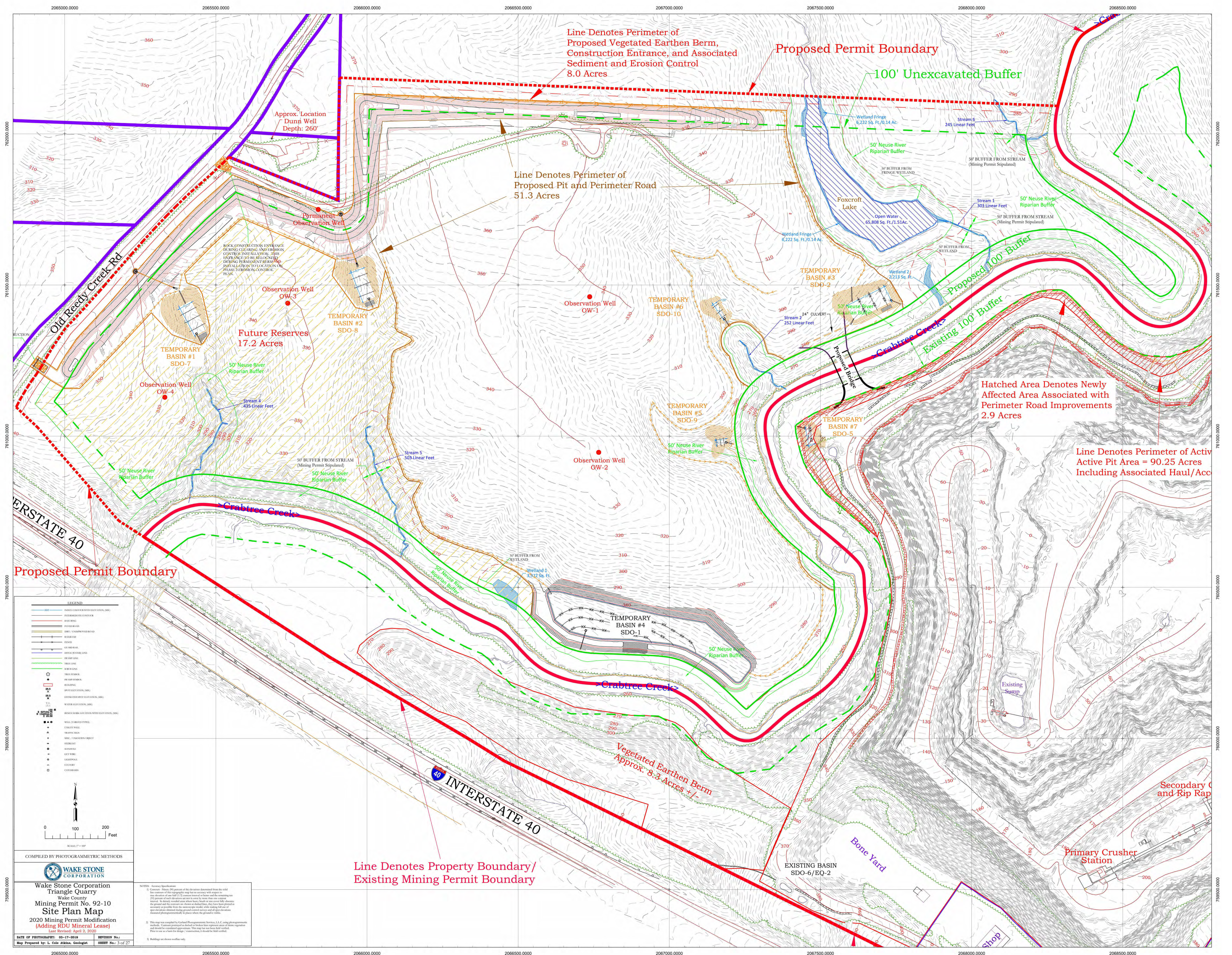
Sheet #	Contents
1	Cover/Contents/USGS Vicinity Map
2	Site Plan Overview
3	Odd Fellows (Phase I Site Prep)
4	Odd Fellows (Phase II Site Prep)
5	Conceptual Mine Plan
6	Existing Triangle Pit (Conceptual Pit Depletion)
7	Existing Triangle Perimeter Road Improvements
8	Conceptual Overburden Storage
9	Details and Cross Sections
10	Conceptual Reclamation Plan

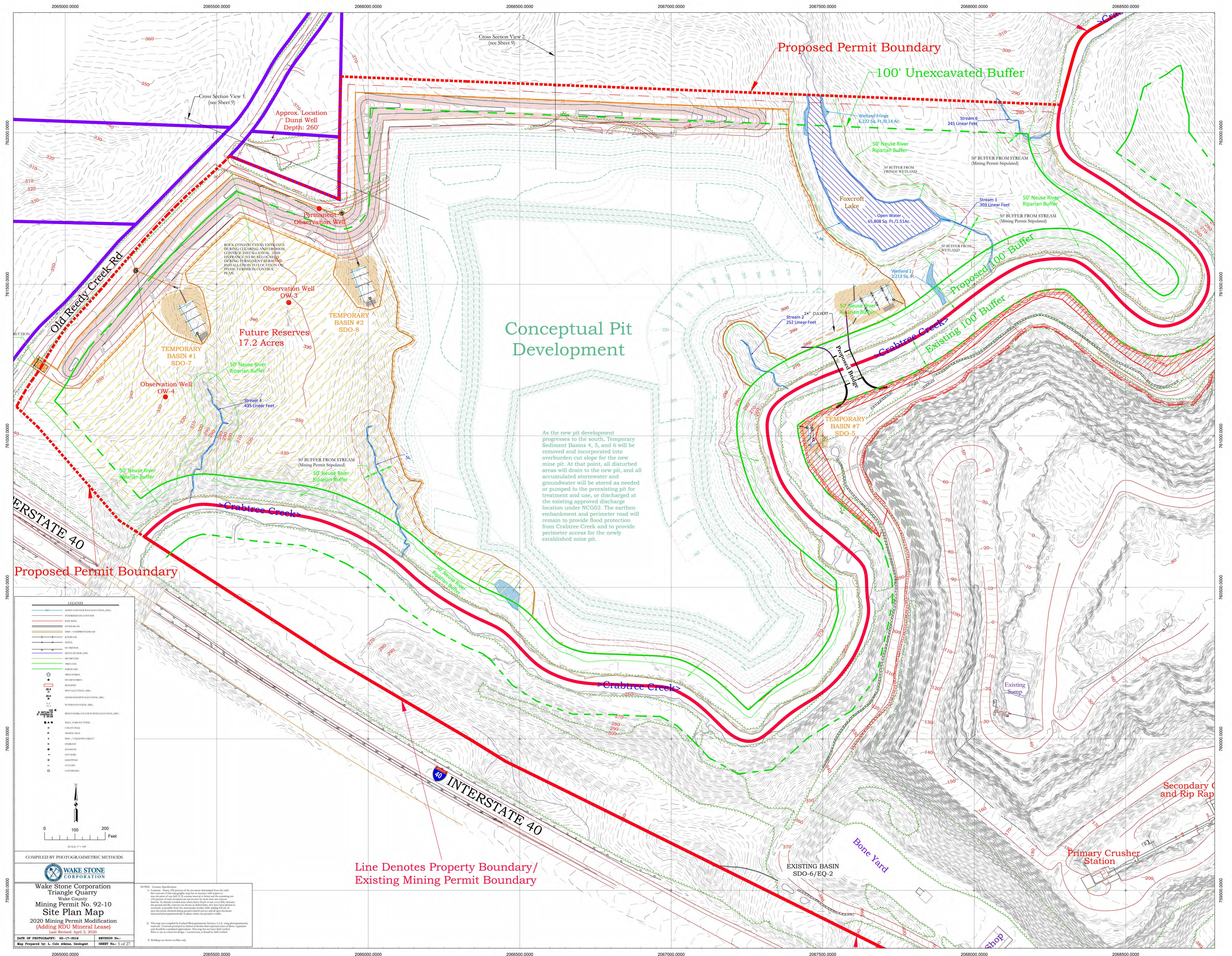
E&SC Plan Set - Piedmont Land Design, LLP

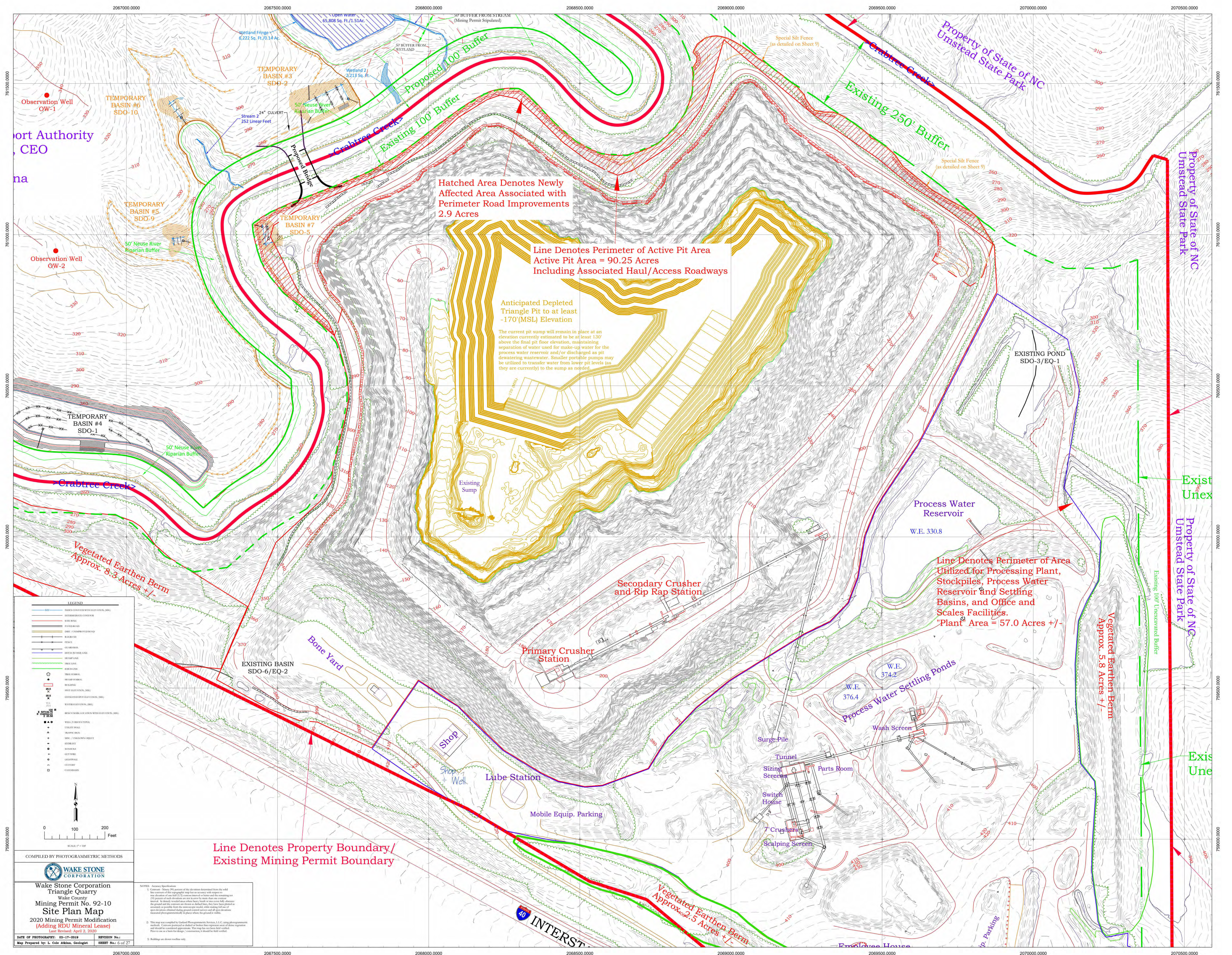
Sheet #	Contents
1	PLD E&SC SITE 1 - Cover Sheet
2	PLD E&SC SITE 2 - Overall Erosion Control Plan Sheet 1 of 2
3	PLD E&SC SITE 3 - Overall Erosion Control Plan Sheet 2 of 2
4	PLD E&SC SITE 4 - New Quarry Expansion - Phase 1 Erosion Control Plan Sheet 1 of 2
5	PLD E&SC SITE 5 - New Quarry Expansion - Phase 1 Erosion Control Plan Sheet 2 of 2
6	PLD E&SC SITE 6 - New Quarry Expansion - Phase 2 Erosion Control Plan Sheet 1 of 2
7	PLD E&SC SITE 7 - New Quarry Expansion - Phase 2 Erosion Control Plan Sheet 2 of 2
8	PLD E&SC SITE 8 - Existing Quarry Road Improvements Sheet 1 of 2
9	PLD E&SC SITE 9 - Existing Quarry Road Improvements Sheet 2 of 2
10	PLD E&SC SITE 10 - Details
11	PLD E&SC SITE 11 - Details

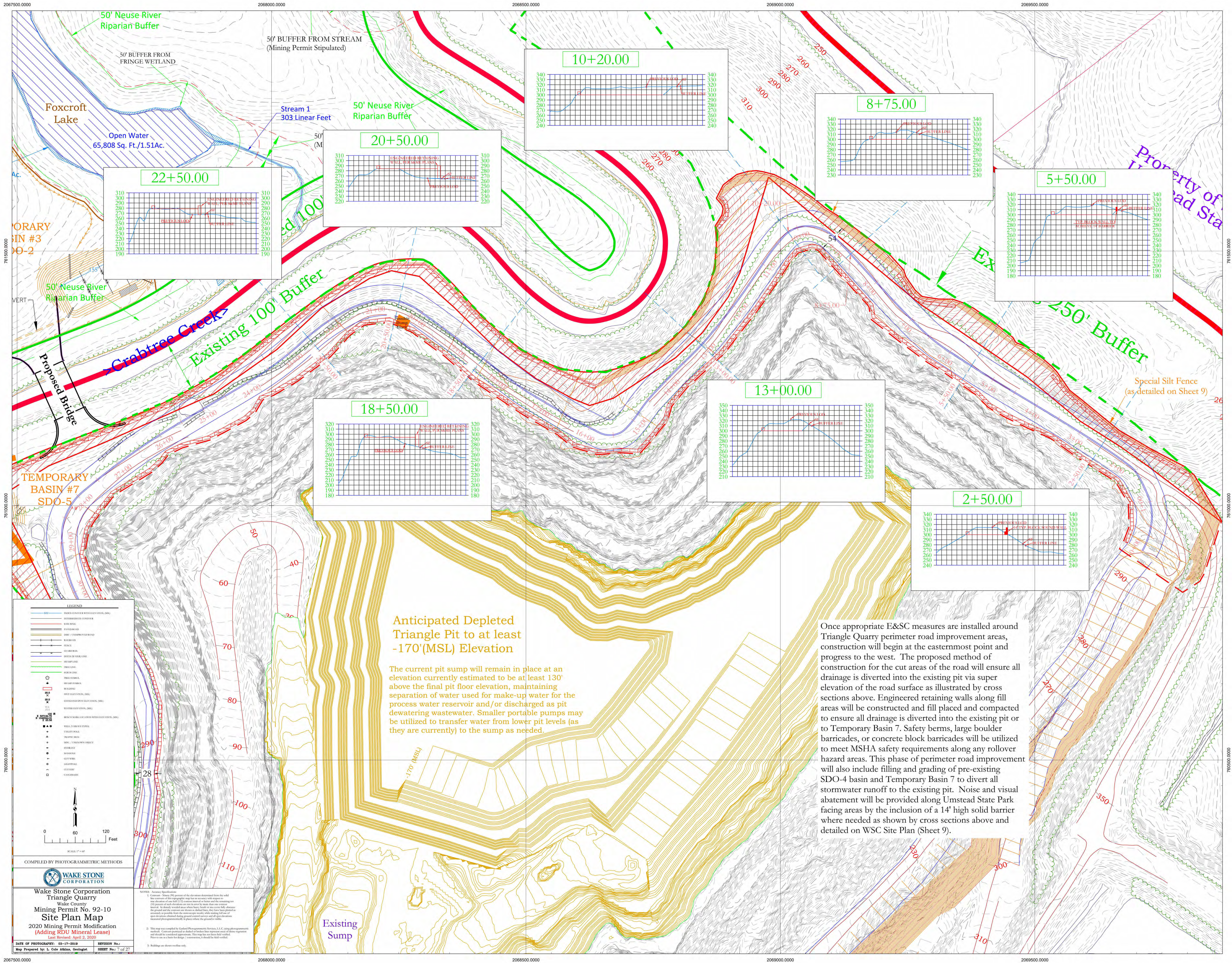
Block Retaining Wall Plan Set - S&ME

Sheet #	Contents
1	S&ME MSE Retaining Wall Sheet 1 - Plan View
2	S&ME MSE Retaining Wall Sheet 2 - Wall No.1 Elevation View
3	S&ME MSE Retaining Wall Sheet 3 - Wall No.1 Elevation View (cont.)
4	S&ME MSE Retaining Wall Sheet 4 - Wall No.2 Elevation View
5	S&ME MSE Retaining Wall Sheet 5 - Wall No.3 and No. 4 Elevation View
6	S&ME MSE Retaining Wall Sheet 6 - MSE Details and Notes

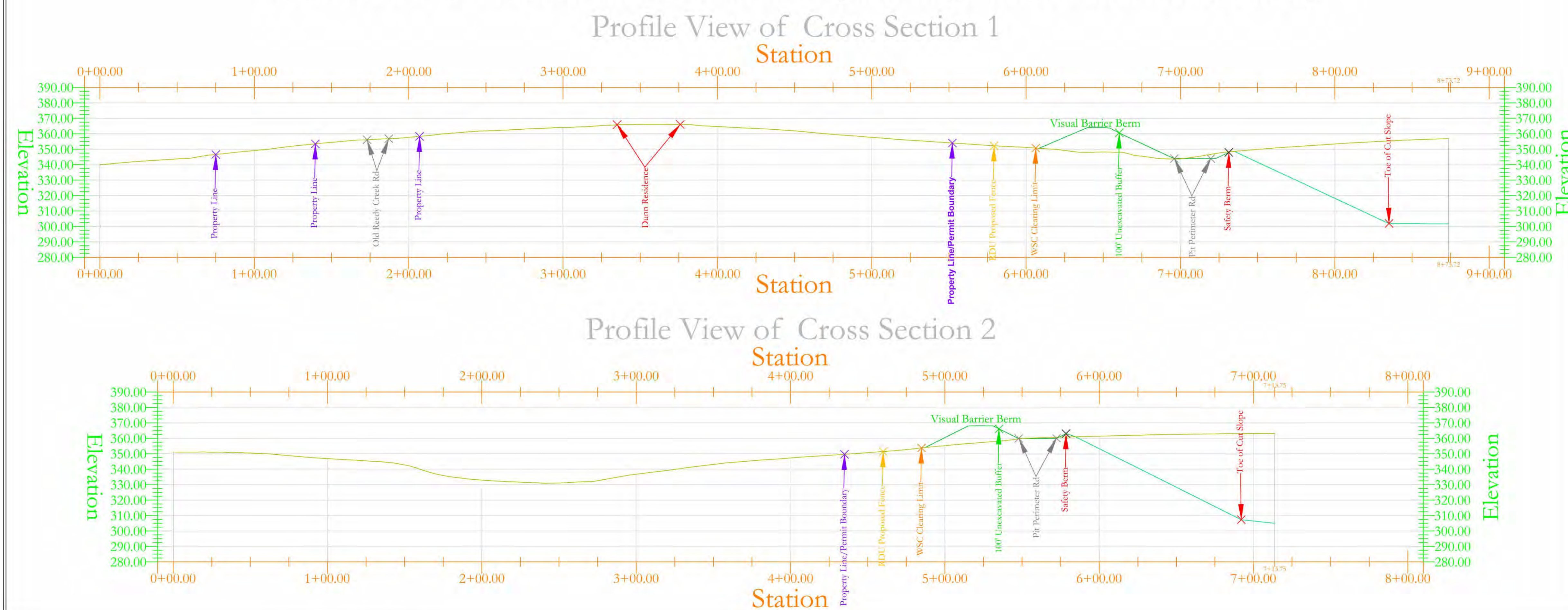






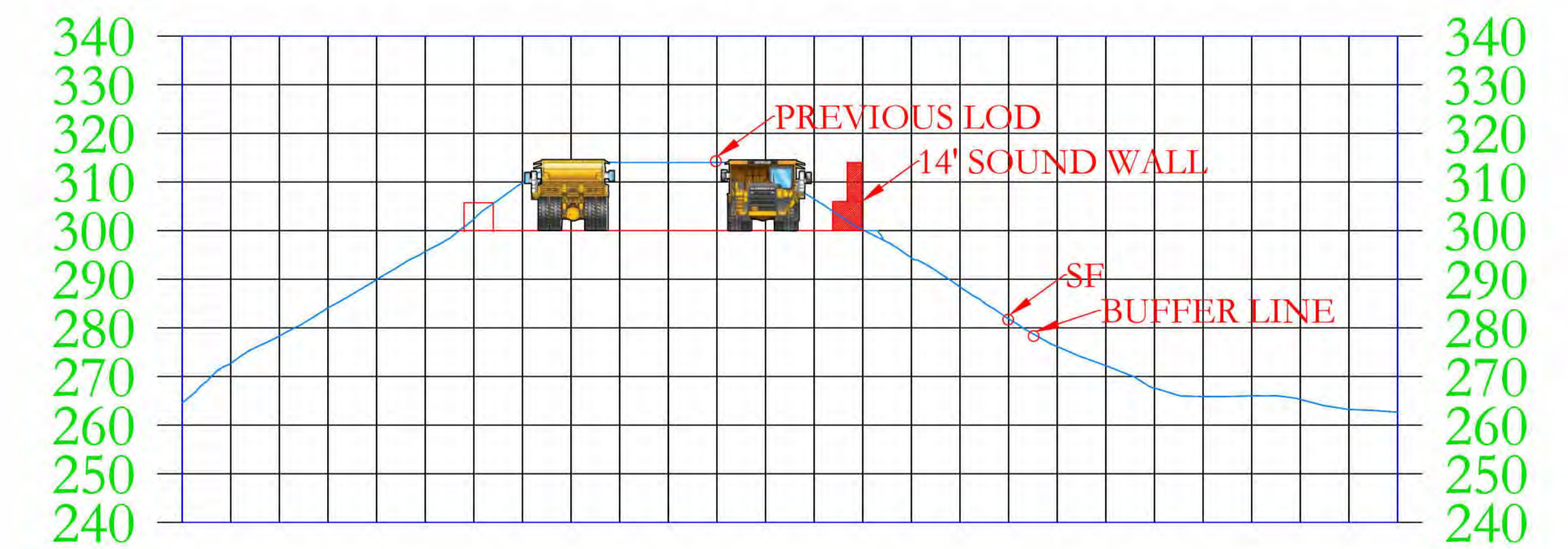


Profile View of Cross Sections for RDU Expansion (as shown on Sheets 2 and 5)

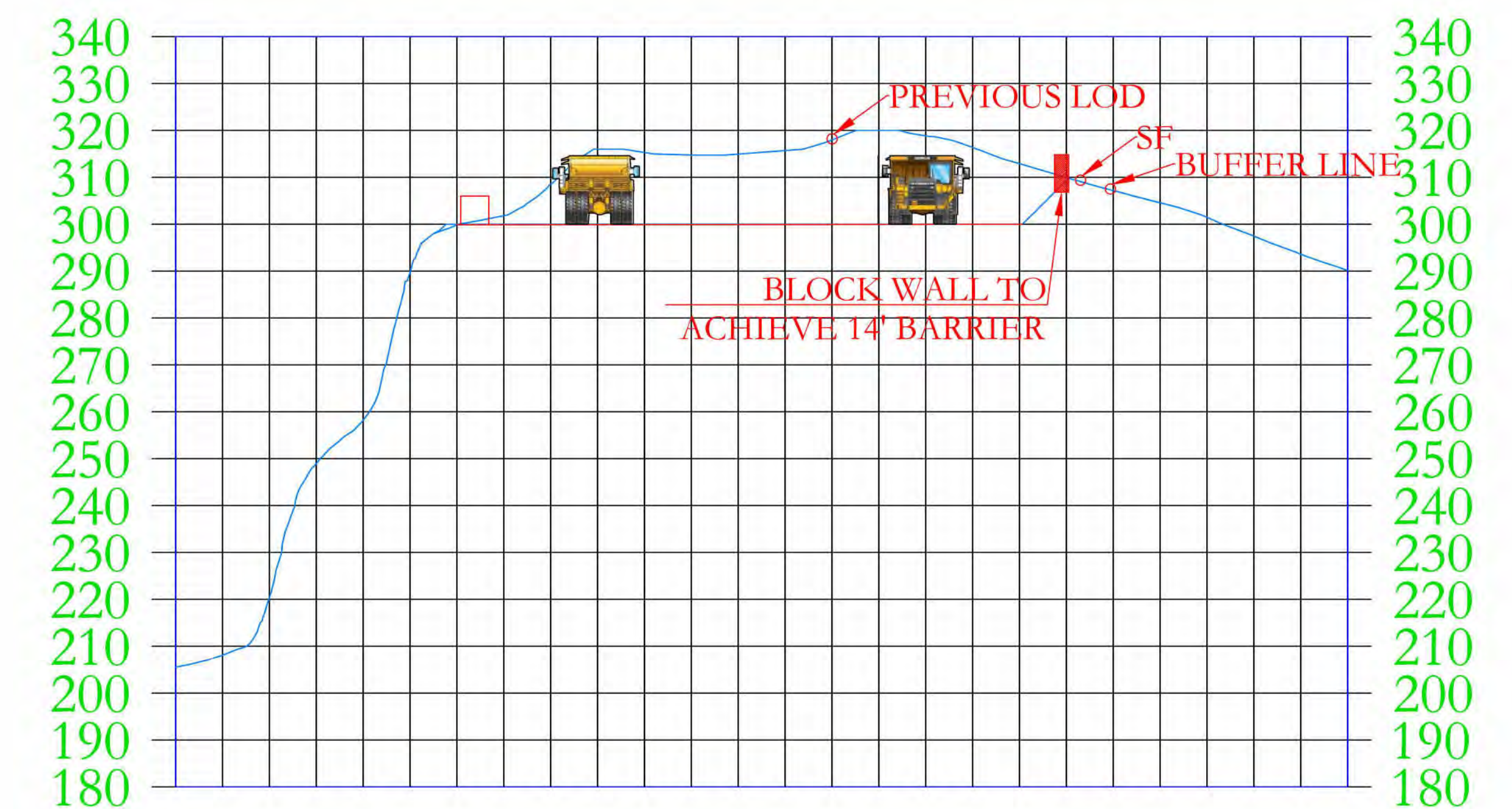


Cross Sections of Existing Pit Perimeter Road Improvements Adjacent to Umstead State Park (as shown on Sheet 6)

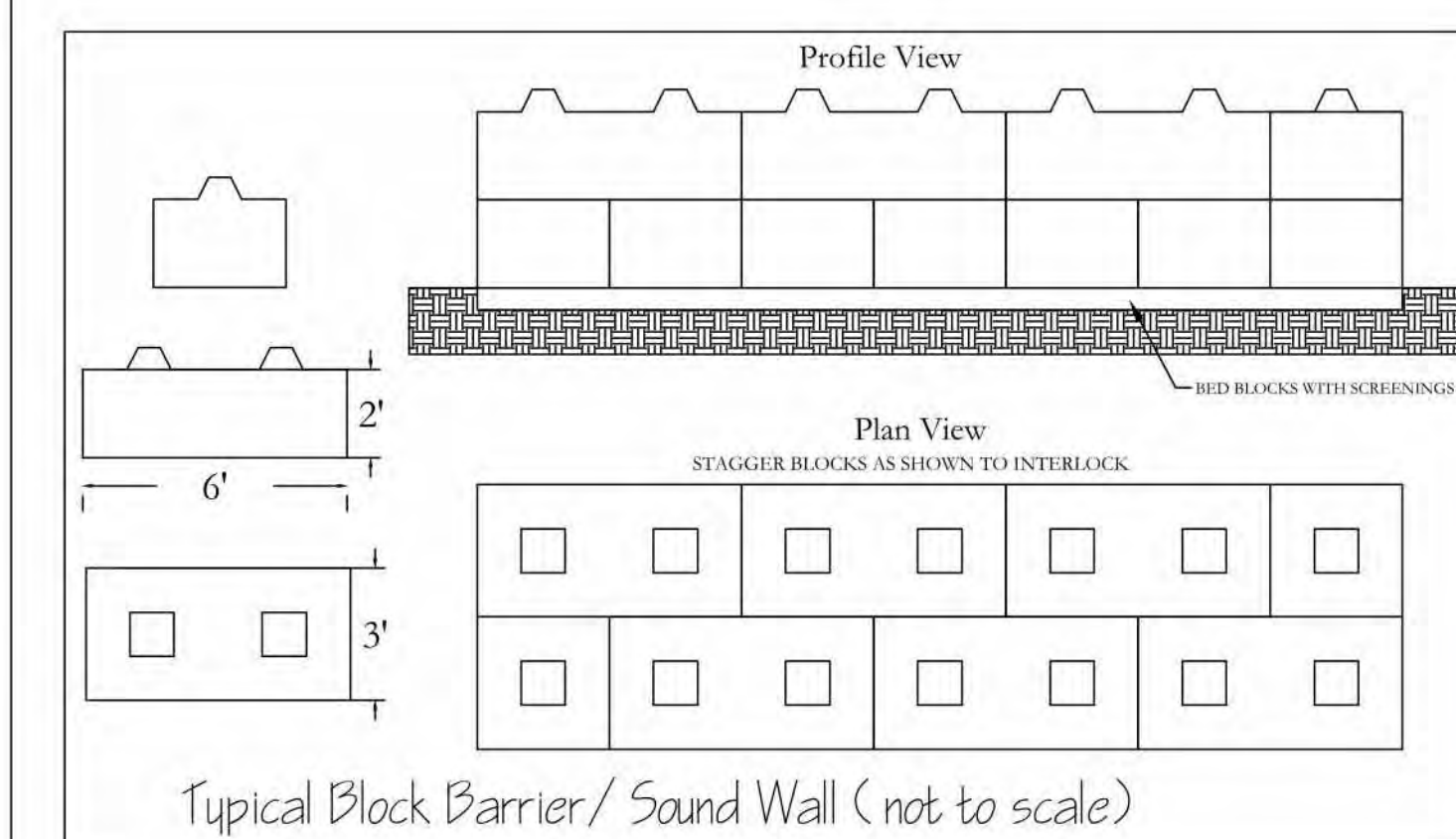
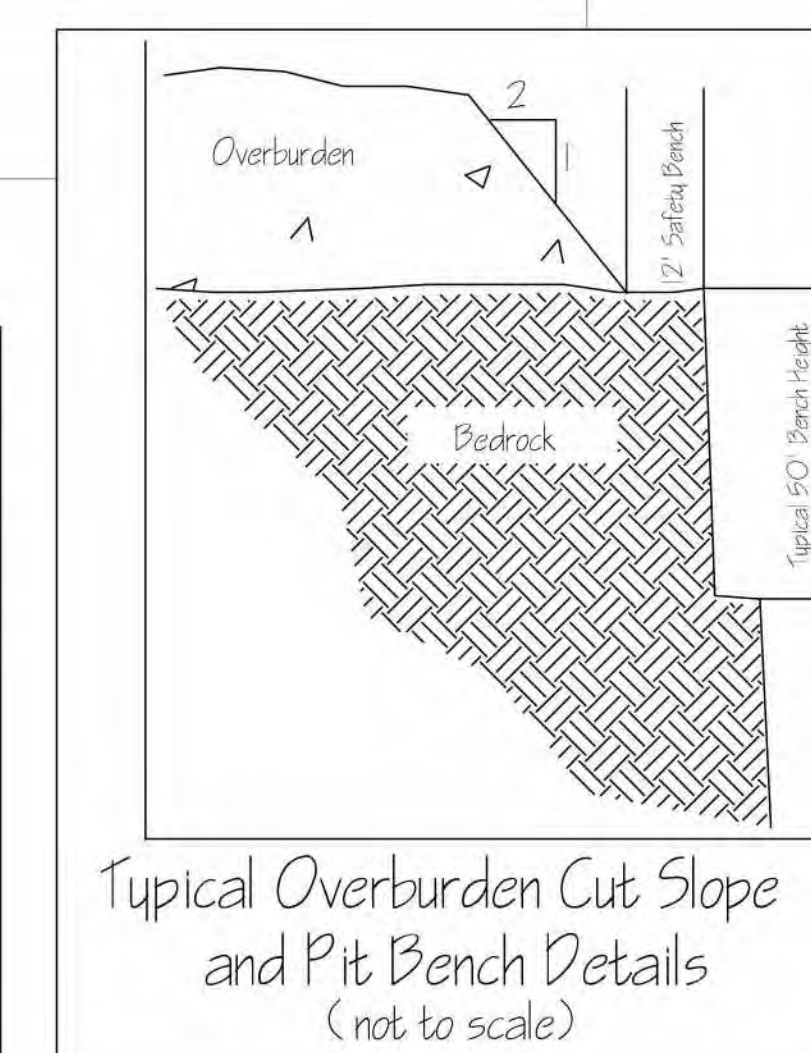
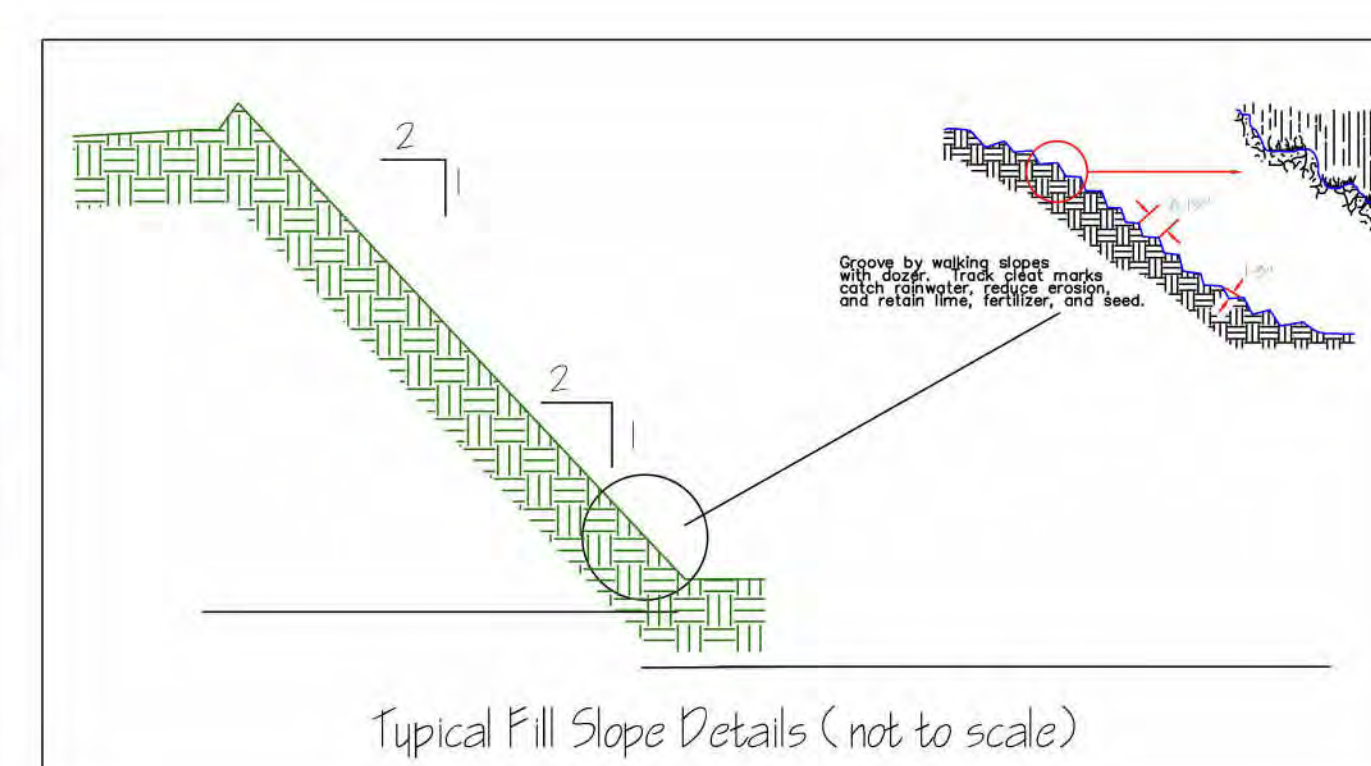
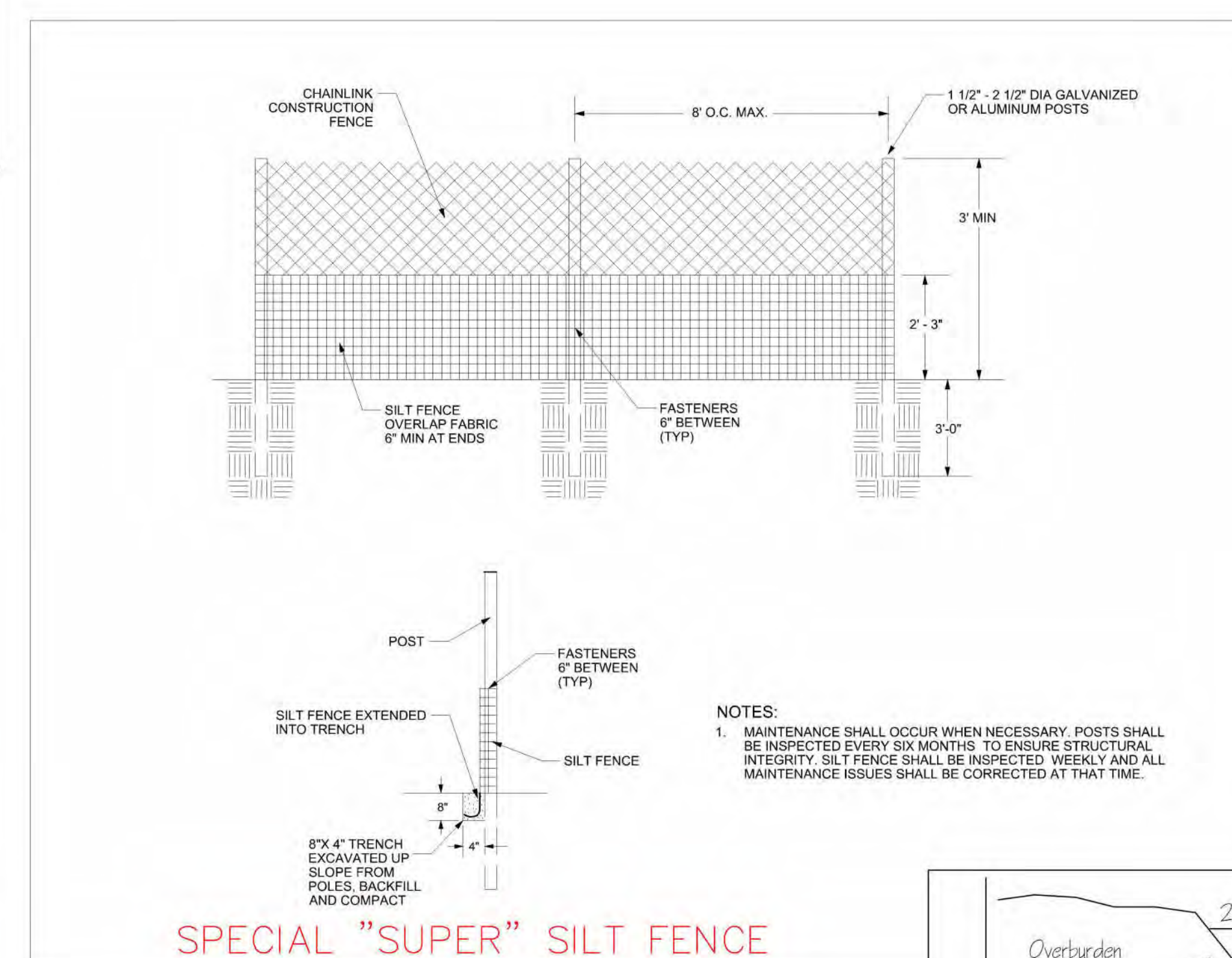
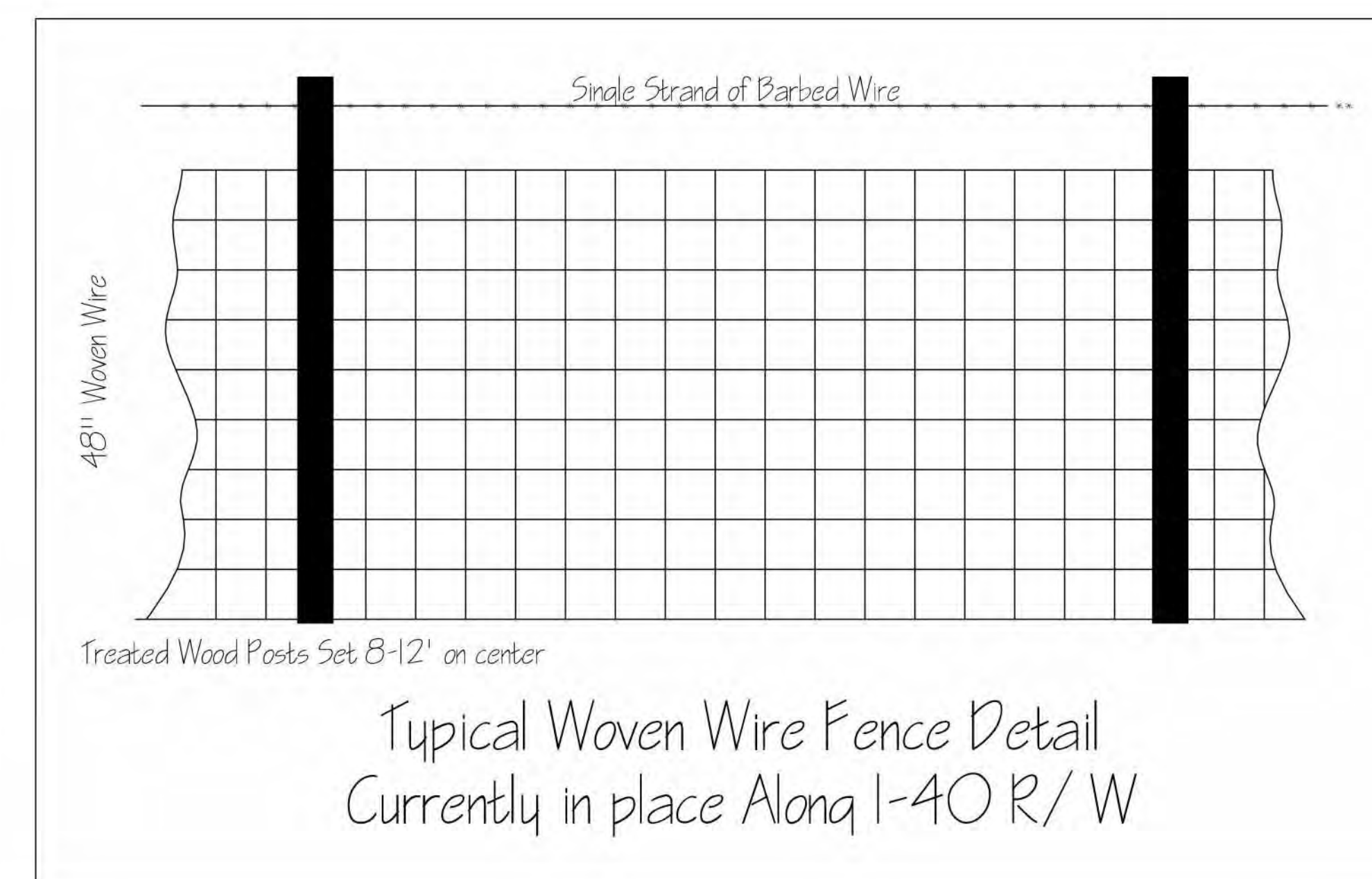
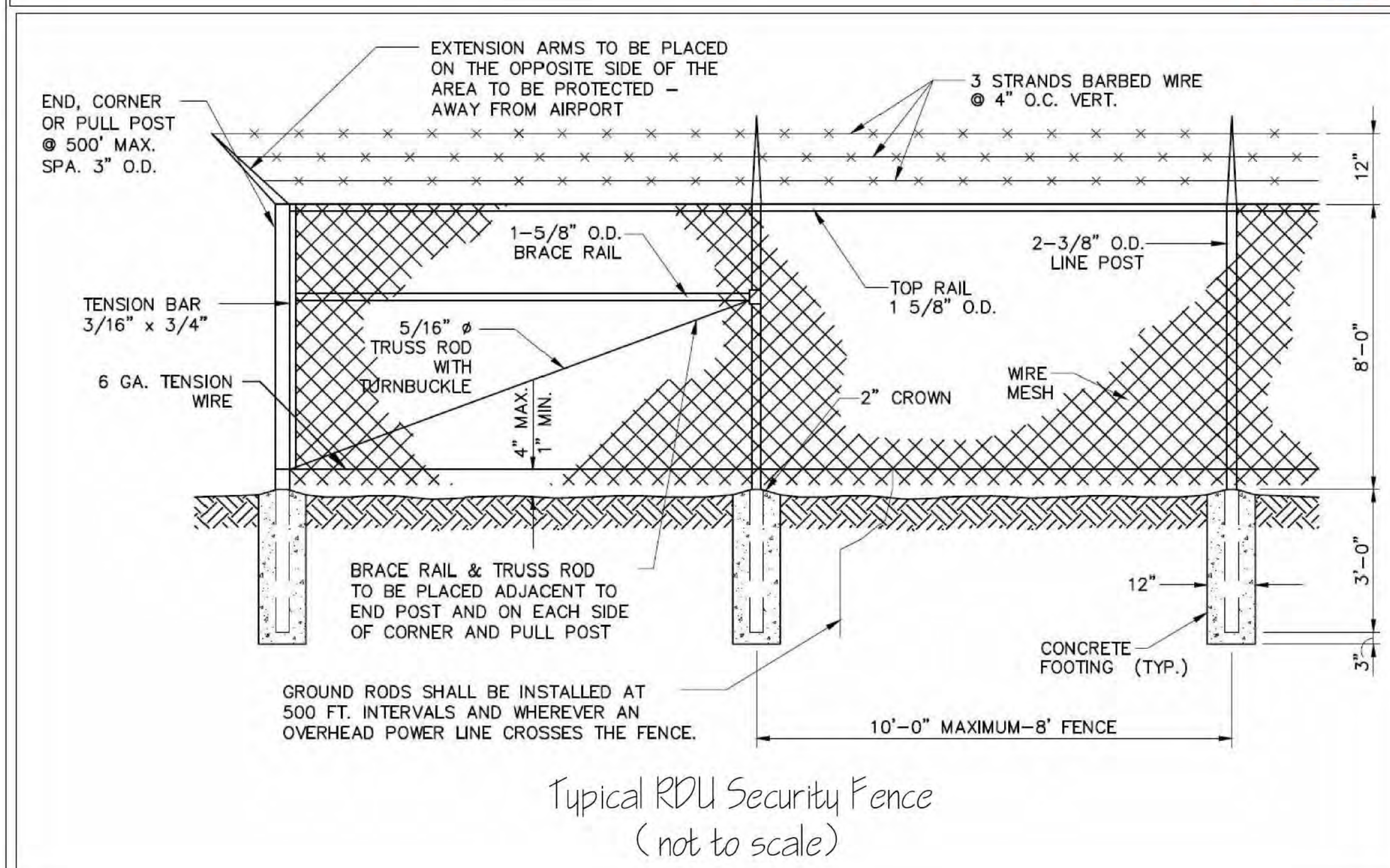
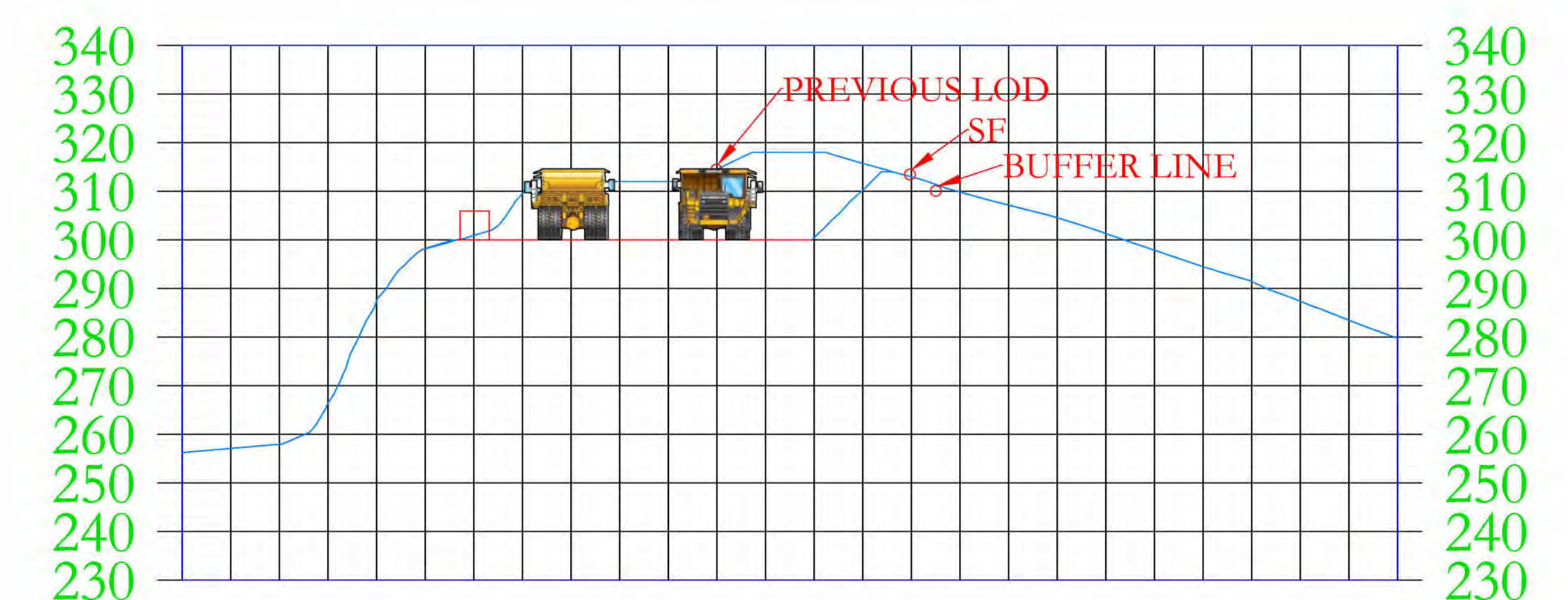
2+50.00

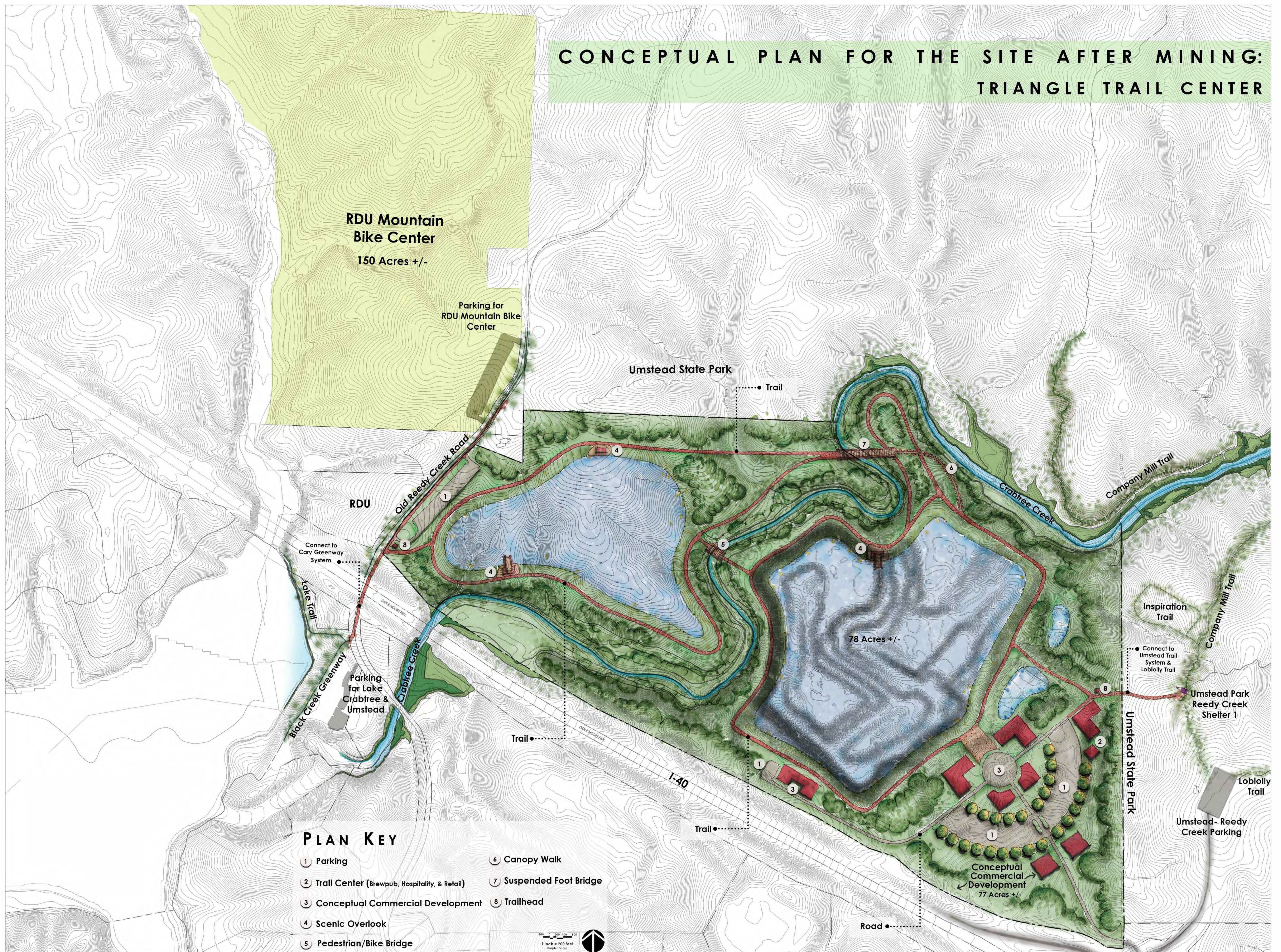


5+50.00



8+75.00





Conceptual Reclamation Plan

COMPILED BY PHOTOGRAMMETRIC METHODS

WAKE STONE CORPORATION

Wake Stone Corporation
Triangle Quarry
Wake County
Mining Permit No. 92-10
Site Plan Map
2020 Mining Permit Modification
(Adding RDU Mineral Lease)
Last Revised: April 2, 2020

DATE OF PHOTOGRAPHY: 03-17-2019
Map Prepared by: L. Cole Atkins, Geologist

REVISION No.:
SHEET No.: 10 of 27

Exhibit 28



Wake Stone Corporation Triangle Quarry

Mining Permit No. 92-10

Modification Application

April 8, 2020



NORTH CAROLINA MINING PERMIT APPLICATION

**State of North Carolina
Department of Environmental Quality
Division of Energy, Mineral, and Land Resources**

**1612 Mail Service Center
Raleigh, North Carolina 27699-1612
(919) 707-9220**

Revised: 2017

North Carolina Mining Permit Application

**State of North Carolina
Department of Environmental Quality
Division of Energy, Mineral, and Land Resources**

**1612 Mail Service Center
Raleigh, North Carolina 27699-1612
(919) 707-9220**

APPLICATION FOR A MINING PERMIT

4. a. Will the operation involve crushing or any other air contaminant emissions? Yes ☒ No ☐.
If yes, indicate evidence that you have applied for or obtained an air quality permit issued by the Division of Air Quality or local governing body.

Reference attached Cover Sheets for NC DAQ Air Permit No. 04386R15.

- b. How will dust from stockpiles, haul roads, etc., be controlled?

Triangle Quarry currently utilizes two 8,000-gallon capacity water trucks in the control of haul road and stockyard fugitive dust emissions. Fugitive emission from plant processes (crushers, sizing screens, and conveyor transfer points) are controlled via the application of water sprays, or screen enclosures. The same control methodologies will be employed for the proposed expanded pit operation.

5. a. A buffer will be required between any mining activity and any mining permit boundary or right-of-way. It may be an unexcavated buffer (no excavation, but roadways, berms and erosion & sedimentation control measures may be installed within it), an undisturbed buffer (no disturbance within the buffer whatsoever), or a combination of the two, depending upon the site conditions. Note that all buffers must be located within the mining permit boundaries.

How wide a buffer will be maintained between any mining activity and any mining permit boundary or right-of-way at this site? A minimum buffer of 25 feet is recommended, although a wider buffer may be needed depending on site conditions. *Show all buffer locations and widths on the mine map(s).*

Proposed permanent buffers are illustrated on the accompanying Site Plan and Erosion and Sediment Control Plan drawings.

- **Old Reedy Creek Road Right-of-Way:** A 100' unexcavated buffer is proposed along the Old Reedy Creek Road right-of-way property boundary. (Earthen berm construction, E&SC structures, and security fencing will occur within this buffer.)
- **Dunn Property and northern boundary with Umstead State Park:** A 100' unexcavated buffer is proposed along these adjoining properties. (Earthen berm construction, E&SC structures, and security fencing will occur within this buffer.)
- **Crabtree Creek:** A 100' (as measured from the property line/centerline of Crabtree Creek) undisturbed buffer is proposed.

(Pursuant to and in accordance with the Raleigh Durham International Airport Authority's proposed security fencing plan, fencing will likely be installed within the 100' unexcavated buffer along Old Reedy Creek Road and the Dunn and Umstead State Park boundaries.) Should RDU proceed with their proposed security fencing plan prior to Mining Permit issuance, installed fencing will be according to their proposed design. Should RDU elect not to proceed with the proposed fencing plan, Wake Stone will install appropriate security fencing to prevent inadvertent public entry into the mine site. A conceptual fencing design is illustrated on the Site Plan drawing set.

Exhibit 29



The Umstead Coalition

P.O. Box 10654
Raleigh, NC 27605-0654
(919) 852-2268

<http://umsteadcoalition.org>

<facebook.com/umsteadcoalition>

<meetup.com/umsteadcoalition>

*B.W. Wells Association
Capital Group Sierra Club
Eno River Association
Friends of State Parks
Headwaters Group Sierra Club*

*New Hope Audubon Society
Neuse Riverkeeper Foundation
NC Herpetological Society
NC League Conservation Voters Foundation
NC Wildlife Federation*

*NC Native Plant Society
Orange-Chatham Group Sierra Club
Raleigh Ski and Outing Club, Inc.
Rockingham Naturalist's Club
Friends of Jockey's Ridge
Wake Audubon Society*

November 14, 2018

Secretary Michael A Regan, Secretary
North Carolina Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601
michael.regan@ncdenr.gov

Cc: Susi H Hamilton, Secretary NC Department Natural and Cultural Resources, susi.hamilton@ncdcr.gov
D. Reid Wilson, Chief Deputy Secretary, NC Department Natural and Cultural Resources,
reid.wilson@ncdcr.gov

Dwayne Patterson, Director, Division of State Parks and Recreation, NC Department Natural and Cultural Resources, dwayne.patterson@ncparks.gov

Carol Tingley, Deputy Director, Division of State Parks and Recreation, NC Department Natural and Cultural Resources, carol.tingley@ncparks.gov

William E. Vinson, Jr, Interim Director, Division of Energy, Mineral and Land Resources, NC DEQ,
toby.vinson@ncdenr.gov

Cassie Gavin, NC Sierra Club, cassie.gavin@sierraclub.org

Kym Hunter, Southern Environmental Law Center (SELC), khunter@selcnc.org

Re: Mining Permit 92-10 - Modification Dated March 28, 2018
Request to reverse permit modification made without affected agency and public notification

Dear Secretary Regan:

Upon Public Records examination of the Permit files for Mining Permit 92-10 on November 6, 2018, we discovered an unexpected and disturbing Permit Modification Permit 92-10 that was made by an internal "administrative text change." The change would result in a substantial impact to adjacent William B. Umstead State Park and nearby residences and business. And, therefore require public notice prior to any consideration. No such notification occurred.

Per this letter, we formally request that the recent "text" modification made on Permit 92-10 be **reversed**. And the permit issued on December 2017 stand.

We appreciate your desire for OPENNESS and TRANSPARENCY in public actions. It is likely you were not aware of a recent “text” change made by DEQ staff that would result in a major expansion of a quarry without affected agency and public notification.

The most recent Permit Modification dated March 28, 2018 was made internally by staff within the Division of Energy, Mineral and Land Resources, NC DEQ per a request by the quarry owner. NO public notice was made. NO notification of affected adjacent land owners occurred. NO notification to NC State Parks occurred. NO electronic tracking of this permit change is available.

We contend:

1. The change that was made by DEQ staff to the December 2017 permit was substantial, not a clerical correction, and results in detrimental effects to William B. Umstead State Park, private residences, and private businesses, negate a condition essential to the issuance of a permit in 1981 and an effectively allow an indefinite expansion of quarry operations .
2. No such substantial “text” change should have been considered without public notice to the affected adjacent land owners and landowners within 1000 ft of the permit boundary.
3. Because the original permit application in 1980 was denied based upon impacts to William B. Umstead State Park, donation conditions under the Reclamation Conditions were negotiated with NC State Parks. The approved May 13 1981 permit donation conditions are correct.
4. All the previous approved and signed permits (May 13, 1981; April 15, 1986; April 1, 1991; February 5, 1992; November 24, 2010; March 30 2011; and December 1, 2017) have the CORRECT wording under Reclamation Condition 5.B:

5.B. *If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is sooner, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.*

The recent “Administrative text change” replaced “sooner” with “later” (Permit modification dated March 28, 2018). This change to the Approved Reclamation Conditions, Section 5 “Donation to State” is inconsistent with historical records and the Mining Commission’s intent to allow the State to acquire the quarry site at the end of 50 years from the date quarrying commences. The recent text change substitutes “later” for “sooner” in the original 1981 permit section concerning terms and conditions for the donation, page 13. Further note that same text edit was requested by the quarry March 7 of 2011 with no public notice and denied as evident March 30, 2011 permit not having been so modified.

It is our contention that the Mining Commission and the Department in 1981 intended that the State have the right to accept the donation at the end of 50 years under all circumstances. This right was a fundamental condition for Wake Stone Corporation to mine property bordering William B. Umstead State Park. Substituting “later” for “sooner” per the recent permit modification voids the State’s right to do so. In fact such a text change renders any reference to 50 years meaningless extra words. Furthermore, such a substitution allows Wake Stone 10 years to notify the State that condition A is met. There is no reason for Condition B to have been written if the commission’s/Department’s intent was to use “later” instead of “sooner”. The significance and necessity of the use of “sooner” in Condition B is self-evident.

We request that NC DEQ REVERSE permit 92-10 modification dated March 28, 2018 and return the Condition 5.B text to the 1981 permit wording which remained correct through the December 2017 Permit.

We would be available to discuss this request.

Dr. Jean Spooner, Chair, The Umstead Coalition

info@umsteadcoalition.org

(919) 602-0049

Exhibit 30



The Umstead Coalition

P.O. Box 10654
Raleigh, NC 27605-0654
(919) 852-2268

<http://umsteadcoalition.org>

<facebook.com/umsteadcoalition>

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NC Herpetological Society
NC League Conservation Voters Foundation
NC Wildlife Federation*

*NC Native Plant Society
Orange-Chatham Group Sierra Club
Raleigh Ski and Outing Club, Inc.
Rockingham Naturalist's Club
Friends of Jockey's Ridge
Wake Audubon Society*

March 12, 2019

MEMORANDUM

To: Danny Smith, Interim Director, NC Division of Energy, Mineral and Land Resources, NC DEQ

Cc: Mike Regan, Secretary, NC Department of Environmental Quality (NC DEQ)
Susi H Hamilton, Secretary, NC Department Natural and Cultural Resources (NC NCR)
Reid Wilson, Deputy Secretary, NC Department Natural and Cultural Resources (NC NCR)
Dwayne Patterson, Director, NC Division of Parks and Recreation, NC NCR
Carol Tingley, Deputy Director, NC Division of Parks and Recreation, NC NCR
Ken Eudy, NC Governor's Advisor
Bill Holman, North Carolina State Director, The Conservation Fund
Cassie Gavin, NC Sierra Club
Kym Hunter, Attorney, Southern Environmental Law Center (SELC)
Gray Styers, Attorney, Fox Rothschild, LLP
Hayes Findley, Attorney, Fox Rothschild, LLP

From: Dr. Jean Spooner, Chair, The Umstead Coalition, 919-602-0049, umsteadcoalition@gmail.com
Dr. William Doucette, Member, The Umstead Coalition

Reference: Mining Permit 92-10 - Modification Dated March 28, 2018 issued to Wake Stone Corporation.

Request to reverse permit modification and re-instate Sunset Clause

We appreciate meeting with you on March 5, 2019 to discuss our objections to the above reference permit modification. Our objective was to further explain the basis for our request dated November 14, 2018 to reverse the permit modification to the Reclamation Condition 5.B. The Umstead Coalition letter was within 30 days of The Umstead Coalition's discovery date (November 6, 2018) that the permit had been changed. There are no on-line records of the permit files.

From our discussion it is our understanding that your office issued the modification based on an e-mail in March 2018 from Wake Stone Corporation indicating a clerical error in the initial May 13 1981 mining permit (and all subsequent permits). Attached to the e-mail from Wake Stone Corporation was a document purportedly issued by the Mining Commission dated April 3, 1981, more than a month before the actual first permit issuance, which describes the permit conditions. DEQ staff may have assumed that the Mining Commission document has precedence and the 1981 permit was in error. However, DEQ acknowledged that an original of that Mining Commission document is not present in the permit file, and not verified.

Wake Stone Corporation did not submit a required permit modification request form prior to your issuing the 2018 modification.

Our first position is that the 1981 permit as written has precedence over the purported Mining Commission document dated over a month prior. The permit donation conditions were the result of negotiations over a period from January 27 to May 13, 1981 and are correctly written in the 1981 permit. The Mining Commission document dated a month before permit issuance, if valid, represents only one point in a long negotiation. Please consider the following.

- The original permit application by Wake Stone Corporation was denied by NC Department of Natural Resources and Community Development (now known as DEQ; for convenience, DEQ is used for the remainder below) per the Mining Commission report “Findings of Fact, Conclusions, and Decision” Dated January 27, 1981. This Mining Commission document states that DEQ was correct in the denial of the permit application due to “significant adverse effect on the purposes of the park” and asks for development of adequate buffer zones and donation of the quarry to State for park use as part of its reclamation plan.
- The 1981 Mining Commission “Finding of Facts, Conclusions and Decision” which states with respect to quarry donation to the State for park use: “the Commission requests that counsel for Wake Stone meet with Mr. Daniel Oakley, Assistant Attorney General and Ms. Becky French, Director, Office of Administrative Hearings, to reach an agreement, to be submitted to the commission on the best method to transfer the land.” No original records of such agreement are present in the file beyond the 1981 permit.
- The permit file contains a letter from NC State Parks with comments on a draft of the 1981 permit dated May 11, 2018 which was 2 days before the initial permit was issued.
- The memo from NC Division of Parks and Recreation dated May 11, 1981 (2 days prior to the first permit being signed) illustrates that the first permit was reviewed in great detail and refers to Clause 5B. Based upon the great scrutiny the first signed permit received by the NC Division of Parks and Recreation, DEQ, Wake Stone Corporation, and the public, there is adequate evidence that ALL parties knew that “sooner” was the correct wording in Clause 5B. This letter further demonstrates that State Parks is an “interested party” to the permit.
- A Cover letter addressed to Wake Stone Corporation and signed by Stephen G. Conrad, Director, Land Resources for the May 13, 1981 permit includes: “Please review the permit and notify this office of any objection or question concerning the terms of the permit.” There is no documentation in the file that the May 13, 1981 permit signed by DEQ and Wake Stone Corporation had “any concerns” by Wake Stone Corporation for 5.B.
- Wake Stone Corporation accepted the May 13, 1981 permit without objection to reclamation Condition 5.B and accepted permit renewals May 13, 1981; April 15, 1986; April 1, 1991; February 5, 1992; November 24, 2010; March 30 2011; and December 1, 2017 without objection to Reclamation Condition 5.B.
- The original 1981 Mining Permit and the renewals/modification signed by DEQ and Wake Stone through December 2018 are the OPERATING DOCUMENTS.

Second: Changing the word “sooner” to “later” in Section 5.B. is a SUBSTANTIAL change to the permit. This change eliminates the “Sunset Clause”, the right of the State of North Carolina to exercise its donation option 50 years after mining commenced. This change completely disadvantages William B. Umstead State Park and the State of NC.

Changing the text from “sooner” to “later” renders Section 5.B. meaningless. The plain reading of 5B requires the word “sooner” in order to have any utility/meaning in the permit. Otherwise, why would 5B have been in the permit for 38 years and a reference made to 50 years in the context of all quarryable stone not removed?

Third DEQ failed to follow its own procedures in issuing the modification. There was NO application from Wake Stone Corporation for a Permit Modification submitted for the change from “sooner” to “later.” Further more there was no notification to the affected landowners within 1,000 feet (NC Division of Parks and Recreation for William B. Umstead State Park), 2 private landowner as had occurred with other significant permit changes that affected Umstead State Park (e.g., change in the buffers, as evidence by extensive communications between NC Division of Parks and Recreation and DEQ in the permit file).

The 2018 permit modification in Section 5B of “sooner” to “later” was based upon an unverified document that was put into the permit file by Wake Stone Corporation. A Public Records request failed to show any original of this document. There has been no other due diligence by DEQ that the unverified document that Wake Stone added to the permit file was correct. An email referencing an unverified document that Wake Stone Corporation had put to the file should be considered insufficient grounds to make such a significant change to a permit. An unverified document should NOT override the actual first permit signed almost 1 month later. However, even if the document that Wake Stone Corporation added to the file is found to be correct, it should not take precedent over the permits signed by DEQ and Wake Stone Corporation over 37 years – the **permits are the operating documents.**

Finally, NC State Parks, local governments and the public depended on the 1981 Reclamation Conditions for 37 years before the 2018 DEQ modification. Even if the 1981 permit conditions are in error (which we content were not) the extraordinary length of time upon which these conditions were in effect render such an error inconsequential. The public has expected since the first permit was signed in May of 1981 that the State of NC has the option to exercise that could eliminate the large volume of heavy truck traffic, noise and dust at our most popular entrance to William B. Umstead State Park.

We strongly urge that Clause 5B in the Mining Permit 92-10 be corrected to the words used in the May 13, 1981 permit with the “sooner” word.

Exhibit 31

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CV 008638

THE UMSTEAD COALITION,)
)
Plaintiff,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
DIVISION OF ENERGY, MINERAL,)
AND LAND RESOURCES, ~~and~~ WAKE)
STONE CORPORATION, ~~and WAKE~~)
WAKE STONE PROPERTY COMPANY,)
)
Defendants.)
_____)

FIRST AMENDED COMPLAINT
FOR DECLARATORY
JUDGMENT and PETITION FOR
WRIT OF *CERTIORARI*

NOW COMES Plaintiff, The Umstead Coalition (“Plaintiff”), by and through the undersigned counsel and pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure,¹ and alleges and says as follows:

INTRODUCTION/SUMMARY

1. Plaintiff seeks judicial review of major modifications made in 2018 to a mining permit issued, originally in 1981, to Wake Stone Corporation (“Wake Stone”) by the North Carolina Department of Natural Resources and Community Development, Division of Land Resources (“NRCD”), now known as the Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (hereafter referred to as “DEQ”)². Plaintiff seeks this review

¹ A redlined version of this Amended Complaint is provided as Exhibit 31.

² The name of the agency that was NRCD in 1981 is now DEQ, and has changed several times in the past 40 years, as have the names of the Department’s constituent divisions. Hereinafter, for

pursuant to the provisions of Article 4 of the North Carolina Administrative Procedure Act, NC. Gen. Stat. §§ 150B-43 *et. seq.* or, alternatively, through Writ of *Certiorari* pursuant to N.C. Gen. Stat. § 1-269, and for entry of a declaratory judgment pursuant to N.C. Gen. Stat. §§ 1-253 *et. seq.*

2. Contrary to the assertion of DEQ staff that the modifications were simply “ministerial corrections,” Exhibit 1 at 1³, the 2018 permit modifications were major changes, including: a) the removal of a 50-year sunset provision for quarry operations (hereafter “Sunset Provision”) that affects contractual option language for the State of North Carolina to acquire Wake Stone’s quarried property as part of William B. Umstead State Park (“Umstead State Park”); and b) the reduction of protected, permanent, and undisturbed vegetated buffer zones from the top edge of Crabtree Creek to the center line of Crabtree Creek, resulting in the gutting of between 230,000 to 280,000 square feet of protected buffers. The Sunset Provision was expressly included in the initial permit, was a fundamental basis for the issuance of the permit, and was never challenged upon permit renewal or otherwise for 37 years.

3. DEQ staff informally and hastily made the substantive 2018 permit modifications at the sole request of Wake Stone and based on minimal materials supplied only by Wake Stone. This was done without any hearing or notice to, input from, or opportunity to comment by Plaintiff, any other agency, or any other interested parties or members of the public. Moreover, the request was premised upon misrepresentations of fact by Wake Stone. DEQ did not provide any notice of the modifications to any other persons, including Plaintiff, who potentially would be adversely impacted by the decision, and who otherwise would have appealed pursuant to proper notice of

simplicity and clarity, the current Departmental acronym “DEQ” will be used to refer to the agency, the relevant division, and their predecessors.

³ All exhibits attached to this Complaint are true and correct copies to the best of Plaintiff’s knowledge and are incorporated herein. Citations include additional explanatory parentheticals when appropriate.

Wake Stone's request for the modifications. That request was not made in writing on DEQ's official form for permit modifications, and Wake Stone did not pay the required non-refundable modification application fee. Moreover, Wake Stone's informal modification request, submitted via e-mail to a DEQ staff person, did not specifically request modifications pertaining to the 50-year Sunset Provision.

4. Plaintiff had no knowledge of the permit modifications until months after DEQ approved them. It only discovered the changes after requesting, for other reasons, to examine the public records within the permit files held at DEQ's office. After learning of these modifications, Plaintiff attempted to work with DEQ to resolve this issue. Those efforts were unsuccessful, and it recently became clear that litigation would be necessary to resolve DEQ's illegal modification.⁴ Accordingly, Plaintiff's only avenues for obtaining judicial review are pursuant to the provisions of N.C. Gen. Stat. §§ 150B-43 *et. seq.*, or alternatively by Writ of *Certiorari* under N.C. Gen. Stat. § 1-269, and through entry of declaratory relief pursuant to N.C. Gen. Stat. §§ 1-253 *et. seq.*

5. Plaintiff asserts that in making the permit modifications at issue, DEQ failed to comply with the provisions of N.C. Gen. Stat. §§ 74-52(a), (c), 74-54.1, and 15A NCAC 05B .0112 (a)–(e); exceeded its statutory authority, and acted erroneously in derogation of its statutory duties by modifying Wake Stone's permit in a way not consistent with and in utter disregard of several essential bases for the issuance of the original permit; failed to follow statutory and administrative procedures; abused its discretion by improperly relying and basing its decision on incomplete information and/or documentation; reached a decision unsupported by substantial evidence; and

⁴ Had Wake Stone applied for a major modification as it should have to get this result, and had DEQ denominated its action a major modification, and followed its customary protocol of notifying N.C. Parks and other long-known interested parties, it would have been available to Plaintiffs to file a petition for a contested case hearing within 30 days of the decision under N.C. Gen. Stat. § 150B-23. As things actually happened, this avenue was foreclosed.

engaged in arbitrary and capricious conduct. Plaintiff therefore seeks an order and judgment declaring that DEQ's permit modifications and the 2018 amended permit incorporating those modifications (including the February 2018 site plan map containing the changes) are invalid and void; rescinding the administrative action granting the modifications; reinstating the terms of the permit prior to the 2018 modifications; awarding to Plaintiff its costs, including reasonable attorneys' fees; and granting such other and further relief as the Court deems just and reasonable.

PARTIES

6. Plaintiff The Umstead Coalition was founded in 1968 and is a volunteer-led, 501(c)(3) nonprofit organization comprised of individual members and 16 partner conservation organizations. Plaintiff engages in service projects, park land acquisition, environmental education activities, trail maintenance, restoration of Umstead State Park's 120 historic cabins and mess halls (recently accomplished with over 7,000 volunteer hours), preservation of the cultural history of the rural community that once occupied the lands that became the Umstead State Park, and, foremost, protection and enhancement of Umstead State Park. Plaintiff's primary office is located in the City of Raleigh, North Carolina.

7. Defendant DEQ is an agency of the State of North Carolina that, in relevant part, is tasked with ensuring the wise use and protection of the State's land and geologic resources, including, *inter alia*, the issuance, revocation, modification, and enforcement of mining permits.

8. Defendant Wake Stone is a North Carolina corporation with its principal office located at 6821 Knightdale Blvd., Knightdale, North Carolina 27545. Wake Stone holds the mining permit at issue in this proceeding.

8.9. Defendant Wake Stone Property Company is a North Carolina limited liability company with its principal office located at 6821 Knightdale Boulevard, Knightdale, NC 27545.

Wake Stone Property Company was created on January 25, 2021, and Wake Stone deeded to it a portion of the property covered under Wake Stone's Mining Permit No. 92-10 on March 1, 2021.

JURISDICTION AND VENUE

~~9.~~10. This Court has jurisdiction over the subject matter of this action under N.C. Gen. Stat. §§ 1-253, 1-254, 1-269, 7A-3, 7A-240, 7A-243, 7A-245, 7A-250, and 150B-43 *et. seq.*

~~10.~~11. This court has *in personam* jurisdiction over Defendants under N.C. Gen. Stat. §§ 1-75.3 and 1-75.4. Defendant Wake Stone is properly joined in this action under N.C. Gen. Stat. §§ 1A-1, Rule 19 (a)-(b), 1-260, and 150B-46. Defendant Wake Stone Property Company is properly joined under Rules 19(a)(1)(A) and 20 of the North Carolina Rules of Civil Procedure, since, in its absence, the Court cannot accord complete relief among the existing parties, and it joinder is necessary to insure that any relief obtained by Plaintiff as a result of this case will equally apply to and bind that entity, as well as Wake Stone, with respect to the property covered by Wake Stone's mining permit.

~~11.~~12. Venue of this action in this Court is proper under N.C. Gen. Stat. § 1-82.

BACKGROUND AND HISTORY

~~12.~~13. Umstead State Park is a North Carolina State Park in Wake County, North Carolina covering 5,599 acres nestled between the expanding cities of Raleigh and Durham. Hikers, birders, trail runners, bicyclists, equestrians, orienteers, and researchers cherish the extensive network of hiking and multi-use trails at the Park, as well as the peaceful forest environment. Trailheads on both sides of the Park provide access to three manmade lakes. Umstead State Park visitors can take advantage of canoe and rowboat rentals, fishing, and the use of picnic grounds, shelters with fireplaces, tent campground, and group campsites with cabins, mess halls, and washhouses. Umstead State Park abuts Crabtree Creek along its southern border with Wake Stone's existing

quarry. From there, Crabtree Creek runs through the Park after flowing between Wake Stone's quarry and the adjacent undeveloped Odd Fellows Tract. Umstead State Park is a place to escape the pressures of everyday life and to enjoy the peace and quiet of nature. Preserving the Park's natural environment and its surrounds is a primary part of Plaintiff's organizational mission.

~~13.14.~~ On May 26, 1980, Wake Stone filed an application for a mining permit for a rock quarry on a 195-acre tract located at the northwest corner of the intersection of I-40 and Harrison Avenue having a common boundary of approximately 3,150 feet with Umstead State Park on its east side, and a common boundary of approximately 9,350 feet with Crabtree Creek on its northwest side.

~~14.15.~~ Because of the proposed quarry's close proximity to Umstead State Park, there was public outcry against the permit application, including public statements opposing the proposed quarry by then-Governor James Hunt and Attorney General Rufus Edmisten.

~~15.16.~~ By letter dated August 22, 1980, Wake Stone was notified that DEQ had denied Wake Stone's permit application, finding that the combined adverse effects of noise, sedimentation, dust, traffic, and blasting vibration associated with the proposed quarry operation would adversely impact Umstead State Park in the form of noise intrusion and deterioration of visual resources. Exhibit 2.

~~16.17.~~ On September 16, 1980, Wake Stone appealed the denial and requested a hearing before the North Carolina Mining Commission ("Commission"). After four days of hearings, the Commission issued its initial Findings of Fact, Conclusions, and Decision on January 27, 1981, Exhibit 3, reversing the permit denial and finding that the permit should be issued, "subject to the Commission's final approval," with adequate protections mutually agreeable to Wake Stone and DEQ to avoid possible adverse effects of the quarry operation on Umstead State Park. Those

protections included: 1) requiring state-of-the-art techniques to minimize noise, dust, and other possible adverse effects; 2) selection of the optimum location of processing and stockpiling facilities; 3) provision for adequate buffer zones between the quarry and Umstead State Park; and 4) requiring construction of a berm or berms between the quarry and Umstead State Park. In addition, the Commission directed counsel for Wake Stone, Assistant Attorney General Mr. Daniel C. Oakley (“Assistant AG Oakley”), and the Director of the Office of Administrative Hearings Ms. Becky R. French, to reach agreement and submit to the Commission the best method for donating the quarry to the State for use by Umstead State Park. *Id.*

~~17.18.~~ The Commission issued amended and corrected Findings of Fact, Conclusions, and Decision on April 3, 1981. Exhibit 4. This document expressly stated that the Commission’s decision was not final, scheduled a public hearing, and directed Wake Stone and DEQ to present their plans for protecting Umstead State Park, as set forth in paragraph 16 above, to the Commission. *Id.* Following conclusion of these steps, the Commission would render its final decision. *Id.*

~~18.19.~~ The Commission entered its Final Decision also dated April 3, 1981 reversing the denial of Wake Stone’s permit application. Exhibit 5. The Final Decision ordered DEQ to grant the permit “subject to several specified conditions,” including, among others: Condition No. 3 – Buffer Zone Plan; Condition No. 4 – Construction of Berms; and Condition No. 5 – Donation of Quarry to the State.

~~19.20.~~ With respect to Condition No. 3, the Commission’s Final Decision provided that the permit was to include a “completely undisturbed” natural buffer zone not to be developed or altered as set forth in a Wake Stone memorandum to DEQ dated March 10, 1981. Exhibit 6. Wake Stone’s memorandum includes the following pertinent statements:

- We have offered to provide a very wide buffer area adjacent to Umstead Park which we believe will, as a practical matter, avoid impact on Umstead Park.
- [W]e would propose that *all of the areas northeast of our initial pit area and northeast of our plant area would remain in its present natural state and undisturbed during the first 10 years ...*⁵
- The buffer areas which we have proposed on our latest plan, ... will provide a barrier to vision and noise which, in general, is *50 feet or more above the bank of the Crabtree Creek.*
- The buffering of the park during the early years of our quarrying operation, as well as the latter years, would offer a maximum of protection to Umstead park ...

Id. (emphasis added).

~~20~~21. The Commission also issued an amendment to its Final Decision, likewise dated April 3, 1981, providing that “the 250’ buffer area shown on the northern boundary and the 100’ buffer area shown on the eastern boundary of Wake Stone’s property *is considered by the Commission to be permanent buffer zone.*” Exhibit 5 (emphasis added). This amendment was missing from DEQ’s Mining Permit File during Plaintiff’s in-person review in November 2018. Plaintiff only became aware of the amendment during a later review of the North Carolina State Archives, the Wake County Commissioners’ Special Permit file, and the North Carolina Division of Parks and Recreation’s (“N.C. Parks”) files. Upon finding the document, Plaintiff provided a copy to the North Carolina Attorney General’s Office (“Attorney General’s Office”). Upon information and belief, the Attorney General’s Office then provided it to DEQ.

~~21~~22. With respect to Condition No. 5, as contained in the Commission’s Final Decision, pertaining to when the State could exercise an option to acquire the Wake Stone property, the

⁵ The initial permit was only effective for a period of ten (10) years from the date of issuance, after which time it would expire unless the applicant successfully applied for and received a new permit from DEQ.

Commission provided that in the event all quarriable stone was not removed, “[t]he right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, whichever is later . . .” *Id.* at Exhibits Page 87.

22-23. The Commission further expressly provided that “[t]he option may include such other terms as are mutually acceptable to the State and Wake Stone.”⁶ *Id.* at Exhibits Page 88. It is important to note, as this passage highlights, that the Commission did not issue a permit nor write the permit. It only reversed the denial of the permit and directed DEQ to issue a permit, which it did.

23-24. Prior to issuance of the Commission’s Final Decision, then-Division Director Stephen Conrad and Wake Stone’s John Bratton had signed a letter dated March 12, 1981, transmitting to the Commission certain materials containing proposed terms and conditions for the Commission’s consideration. Exhibit 7 (containing later-added highlighting by an unknown source). With respect to Condition No. 5, the materials included a one-page summary of the respective parties’ positions regarding the quarry donation, Exhibit 8 (containing later-added highlighting by an unknown source), and a March 12, 1981 memorandum from Wake Stone to Assistant AG Oakley, Exhibit 9 (also containing later-added highlighting by an unknown source), setting forth Wake Stone’s offered terms for the quarry donation to the State.

24-25. As reflected in the highlighted portion of Exhibit 10, DEQ expressed no opinion as to acceptability of the terms contained in Wake Stone’s March 12, 1981 memorandum with respect

⁶ It is important to note that while the Commission clearly had authority to review and, if deemed appropriate, reverse DEQ’s initial decision to deny Wake Stone’s permit application, it did not have the authority to issue a permit or to dictate the terms of the permit. *See* N.C. Gen. Stat. § 143B-290. That authority resided solely with DEQ, subject to compliance with all applicable statutory requirements. N.C. Gen. Stat. §§ 74-50 *et. seq.*

to the donation of the quarry property. Exhibit 10 (containing later-added highlighting by an unknown source). In the letter, DEQ advised the Commission that “it remains our position that the quarry permit should be denied for the reasons presented at the hearing,” and “there remains several points in which the Division could not agree with Wake Stone ...”⁷ *Id.* Both DEQ and Wake Stone reserved their respective rights, and, on information and belief, the parties continued to negotiate after issuance of the Commission’s Final Decision to reach agreement on all of the terms of the issued permit and avoid any further proceedings.⁸

~~25-26.~~ By letter dated May 13, 1981, DEQ notified Wake Stone of the issuance of its mining permit as ordered by the Commission, and it enclosed a copy of Permit No. 92-10 (“permit”). Exhibit 11. The letter requested that Wake Stone “review the permit and to notify this office of any objection or question concerning the terms of the permit.” *Id.* Wake Stone did not appeal the terms of the permit, nor is there any record of any less formal objection by Wake Stone to any term of the permit.

~~26-27.~~ Condition No. 3 of the issued May 13, 1981 permit (“Condition 3”) expressly addresses the buffer zones, including the point at which the undisturbed vegetated buffer along Crabtree Creek begins:

The dotted line labelled as buffer along the northern boundary and along the eastern boundary is the *permanent buffer* as designated by the Mining Commission (Site plan dated March 10, 1981).

⁷ It is the Plaintiff’s position that DEQ did not at any time prior to issuance of the Commission’s Final Decision agree that a permit should be issued to Wake Stone, concur with any of Wake Stone’s suggested language for Condition 5 regarding the timing for the State to exercise its option to acquire the quarry, nor waive its right to appeal or otherwise seek judicial review of the Commission’s decision.

⁸ Just as the Commission lacked authority to itself issue a mining permit, it did not have the authority to dictate what terms the parties might choose to agree upon for inclusion within the permit, including, but not limited to, the terms of Condition 5.B.

An undisturbed buffer of existing natural vegetation shall be maintained between the mining disturbance and Park property as indicated by the "10 years buffer" shown on the site plan dated March 10, 1981.

An undisturbed buffer zone of existing natural vegetation shall also be maintained between the top edge of the bank of Crabtree Creek and any mining disturbance within the 10 years permit area. The buffer zone shall be of sufficient width to prevent offsite sedimentation and to preserve the integrity of the natural watercourse. In any event, the buffer will meet U.S. Corps of Engineers requirements for Crabtree Creek Watershed.

Id. at Exhibits Page 119 (emphasis added).

~~27~~28. The Sunset Provision, permit Condition No. 5.B.⁹ ("Condition 5.B.") of the May 13, 1981 permit comprises part of the Reclamation Plan, which expressly addresses the issue of when mining operations shall cease and the State can exercise its option to acquire the quarry site, as follows:

If all quarryable stone is not removed, the right of the State to acquire the quarry site shall accrue at the end of 50 years from the date quarrying commences or 10 years after quarrying operations have ceased without having been resumed, *whichever is sooner*, and notices shall be exchanged at that time in the same manner and with the same time limitations as set forth in paragraph A above.

Id. at Exhibits Page 128 (emphasis added). In short, the Governor, the Attorney General, and the people of North Carolina were assured that these mining operations would cease within 50 years, a compromise between disallowing the mine completely and allowing it to continue indefinitely.

~~28~~29. On information and belief, the wording of the above-quoted provisions in Conditions 3 and 5.B. of the issued May 13, 1981 permit (as well as the wording of the other Conditions of the Permit) were insisted upon by the Attorney General's Office and DEQ, absent which they would not have accepted and rather would have contested and appealed the

⁹ The paragraph numbering in the permit restarts several times. Though the permit contains more than one paragraph 5.B., the above reference is to the terms and conditions contained within the Reclamation Plan section, found on the final page of the permit.

Commission's Final Decision. Further, this language represented a mutually acceptable compromise between and among Wake Stone, the Attorney General's Office, and DEQ.¹⁰ *See* Affidavit of Rufus Edmisten, Exhibit 12.

~~29~~30. The Commission raised no objections to the final terms of the permit issued by DEQ. Since the Commission had on several occasions indicated that any issued permit would be subject to its review, and since it is only reasonable to assume that the Commission did in fact review the terms of the permit, its silence implies at least tacit approval of the permit. Furthermore, Wake Stone did not raise any objections to or concerns with the permit as issued, and Wake Stone did not appeal the permit or otherwise seek judicial review of DEQ's action, thereby both indicating its acceptance of the permit's terms and waiving any objections it might have had to the permit's wording.

~~30~~31. Between the issuance of the original permit and 2018, the permit was renewed four times (on April 1, 1991; April 20, 2001; March 20, 2011; and December 1, 2017), each time with the same language as the original permit with respect to Condition 5.B. During that same period of time, there were four modifications to the permit, all made at the request of Wake Stone (on April 15, 1986; February 5, 1992; October 11, 1986; and November 24, 2010).

~~31~~32. The very first time Wake Stone raised any issue regarding the Sunset Provision was on March 7, 2011, when it applied for a permit renewal and informally raised the issue by phone and e-mail with Judy Wehner, DEQ Assistant State Mining Specialist ("Ms. Wehner"). Now

¹⁰ A memorandum from the Assistant Secretary of DEQ (previously known as NRCD) dated February 4, 1981, referencing a strategic meeting between members of that agency and Assistant AG Oakley, clearly evidences DEQ's dissatisfaction with the Commission's Final Decision and a commitment to insist that the permit contain "the most stringent possible conditions." Failing inclusion of such conditions, the memorandum indicates that DEQ would contemplate appealing the Commission's Final Decision. Exhibit 13 (containing later-added highlighting).

retired, Ms. Wehner was a veteran DEQ staff member with significant knowledge and expertise related to DEQ's mining program and the Wake Stone quarry in particular. In those communications, Wake Stone requested that DEQ consider modifying the language of Condition 5.B. from "whichever was sooner" to "whichever was later." Exhibit 14. This one-word change would completely remove the assurance of a mine limited to 50 years of operation, allowing it to continue to operate indefinitely.

~~32:33.~~ On information and belief, the informal request in 2011 was considered and rejected by then-Division Director James D. Simons, who had first-hand knowledge of how the challenged language of Condition 5.B. had been reached in 1981. Accordingly, the permit was renewed without any changes to Condition 5.B., the Sunset Provision.¹¹ Likewise, during the same 37-year timespan, there is no record of any objections by Wake Stone to the buffer provisions of Condition No. 3, nor any request to modify the undisturbed vegetated buffer zone abutting Crabtree Creek to cause it to run from the centerline of the Creek, rather than from the top of the Creek bank's edge.

~~33:34.~~ Historically, it was standard practice for DEQ to consult with N.C. Parks regarding the permit's issuance, re-issuance, and modifications.

CHALLENGED 2018 PERMIT MODIFICATIONS

~~34:35.~~ By 2018, DEQ staff who had been aware of and/or involved in the 1981 permit proceedings and were familiar with the bases for that permit's negotiated terms had all died or

¹¹ The online copy of the March 30, 2011, official records of DEQ pertaining to the renewed 2011 permit, similar to many of the other permit records dating back to the 1980s, includes handwritten write-outs, strike-through, notes, and added verbiage by an unknown source. In addition, the 2011 permit records reflect removal of various provisions of the preceding permit without any record of a formal request for the modifications, along with other unexplained irregularities. Through discovery in this case, Plaintiff intends to attempt to obtain clean and accurate copies of all pertinent records, along with explanations for the various handwritten notes and changes, the identity of whomever added the notes and changes, when the notes and changes were added and at whose direction, and an explanation of the reason(s) for other apparent irregularities.

retired, including, but not limited to a) then-Division Director Stephen Conrad, who was directly involved in negotiations of the permit conditions with Wake Stone representatives in 1981 and responsible for the wording of the original permit, and b) then-Division Director James Simons who refused Wake Stone's informal 2011 request for modification of Condition 5.B. of the permit.

I. Fifty-Year Sunset Provision Modification

~~35.~~36. David Lee of Wake Stone sent an e-mail to Ms. Wehner on March 16, 2018, re-sending a copy of the previous e-mail of March 7, 2011, discussed in paragraph 32 hereinabove. Exhibit 15¹². In its March 16, 2018 e-mail Wake Stone referred to the change in the Sunset Provision as “a simple one-word change,” despite it being a major, substantive amendment directly at odds with the intent of the original permit and the parties involved in negotiating the final permit terms. As discussed in paragraphs 31 and 32 above, Wake Stone's 2011 request to change the 50-year Sunset Provision was rejected. The March 16, 2018 e-mail request for modification of Condition 5.B. was not made on DEQ's official form for modifications, and no fee whatsoever was paid by Wake Stone for the modification request to eliminate the Sunset Provision.

~~36.~~37. Absolutely no explanation was provided by Wake Stone as to why it had not previously raised any objection to the wording of the provision in the original or modified permits over a span of more than 30 years. The *only* proffered justification for its requested modification was that the Commission's 1981 Final Decision had used the language “whichever is later.” Wake Stone failed to mention the fact that the actual issued May 13, 1981 permit by DEQ included the

¹² Earlier, on February 26, 2018, Wake Stone had sent Ms. Wehner a letter requesting modifications to Condition 3 (buffers) of the permit, which is discussed hereinafter commencing at paragraph 48. Wake Stone's February 26, 2018 permit modification request did not include any request for modification of the 50-year Sunset Provision contained within Condition 5.B. or, for that matter, any of Condition 5's terms. Furthermore, Wake Stone never requested to amend or modify its February 26, 2018, modification request to include modifications to Condition 5.B.

language “whichever is sooner” without objection or challenge by Wake Stone, the Commission, or any other party.

37.38. The Condition 5.B. change would fundamentally change the permit and undo the basis for agreement to have ever issued a permit for this mine. The “whichever is later” language, if it is allowed to remain in the permit, would contradict all of Wake Stone’s representations, and the intentions of the actors in 1981, about this being a 50 year mine. This is especially true with Wake Stone currently— 41years after issuance of the permit—trying to expand the mine to a completely new piece of property. Instead of a 50-year mine, with the “later” language we have a mine that can continue operation indefinitely—until Wake Stone has finished extracting stone from both tracts decades from now and has not extracted any stone for an uninterrupted period of 10 years. Despite this, and despite the March 2018 DEQ administrators’ lack of knowledge of any of the circumstances surrounding the wording of Condition 5.B. in the issued permit, DEQ decided to accede to Wake Stone’s request and issue a new permit incorporating the changes based upon, at most, 3 days’ consideration.¹³ Neither Plaintiff, N.C. Parks, the Attorney General’s Office, any local residents or businesses in the vicinity of the Wake Stone quarry, or any members of the public were provided with any notice of or opportunity to comment or have any input whatsoever on: a) the fact DEQ was considering the modification to the permit at Wake Stone’s behest; b) the reasons given and representations made to DEQ by Wake Stone in support of change; c) consideration of the requested modifications by the DEQ staff; or d) the proposed wording of the Wake Stone permit as modified.

¹³ Wake Stone sent the e-mail requesting the change to Judy Wehner on March 16, 2018, and a new permit including the requested change to Condition 5.B. was issued by William (“Toby”) Vinson on March 19, 2018.

38.39. On information and belief, the members of the staff of DEQ involved in the review of very limited information supplied by Wake Stone in support of the suggested change to Condition 5.B. to the permit, taking part in the decision to grant the requested modifications, and involved in the wording of the permit as modified did not, at any time during their extremely brief deliberations, contact any of the former DEQ members knowledgeable regarding the issues raised by Wake Stone, including but not limited to former Division Director James Simons, the representatives of the Attorney General's Office responsible for or involved in negotiating the final terms of the original permit or with personal knowledge of what occurred, former members of the Commission familiar with the Commission's review and approval of the original permit, or anyone else involved in negotiating the terms of the original permit. In addition, it appears that DEQ did not seek or obtain the input of N.C. Parks or any other agencies regarding Wake Stone's requested modifications.¹⁴

39.40. During the 1981 hearings before the Commission on Wake Stone's appeal of the original denial of its permit application, representatives of Wake Stone repeatedly referenced the fact that it expected the mine to have a 50-year life, and even projected the anticipated aggregate output in tons per year over the 50-year life. A memorandum of December 31, 1980 to the Commission prepared by Becky French, Director of the Office of Administration Hearings, and who subsequently was tasked with conferring with counsel for Wake Stone and Assistant AG Oakley regarding the best method for transfer of the Wake Stone mining property to the State,

¹⁴ Aware of Plaintiff's and N.C. Park's interest in the permit, their strong objections to the permit having ever been granted, and their active participation in doing everything possible to protect Umstead State Park, DEQ had routinely notified N.C. Parks when DEQ was considering any material changes to previous permits and afforded N.C. Parks the opportunity to provide input. With respect to its consideration of the 2018 modifications, Plaintiff and N.C. Parks staff were kept in the dark.

reflects the general understanding of those involved that there would be a 50-year sunset on mining of the property under any alternative transfer scenario. Exhibit 16. As previously noted, but for the inclusion in the issued permit of the 50-year Sunset Provision contained in Condition 5.B, DEQ and the Attorney General's Office would never have agreed to issuing the permit, but rather would have appealed the Commission's Final Decision.¹⁵

40-41. As referenced above and incorporated herein is a true and correct copy of an affidavit of Rufus L. Edmisten, Exhibit 12, the Attorney General of the State of North Carolina from 1975 to 1985. According to Mr. Edmisten, he, then-Governor James Baxter Hunt, Jr., and then- DEQ Secretary Howard N. Lee, all publicly criticized the Commission's Final Decision, opposed the location of a quarry adjacent to Umstead State Park, and were publicly considering a legal appeal of that Final Decision. Mr. Edmisten states that the "whichever is sooner" language included in the wording of Condition 5.B. was consistent with Wake Stone's repeated public statements that it expected the life of the mine to be 50 years, after which it would be donated to the State, *i.e.*, a 50-year Sunset Provision. While Mr. Edmisten concedes that Wake Stone preferred there be no time limit for donating the land in Condition 5.B., he recalls that the Attorney General's Office and DEQ insisted upon the 50-year time limit for the mine to close and the donation to

¹⁵ Wake Stone has never denied that it made the commitment contained in the original Sunset Provision, starting with its initial application for a mining permit, during the hearings before the Commission, in discussions with DEQ staff, and to the public. In fact, in responding to DEQ's information requests as a result of Plaintiff's objections raised to the granting of the 2018 modification, Wake Stone admitted that the real reason for the modification request was to accommodate an anticipated quarry expansion. Exhibit 17 (providing Wake Stone's explanation that it needed to "postpone" its earlier commitments related to the Sunset Provision and including highlighting of relevant language). Wake Stone has estimated that its mining operations in the current footprint will, in fact, cease within the initial 50-year Sunset Provision, although others familiar with the quarry believe that rock reserves and the permitted mining depth would allow for mining beyond 50 years. What is known is that if the mining permit expansion is granted and the 50-year Sunset Provision modification is upheld, then mining operations will continue for decades beyond the original 50-year time limit.

occur. According to Mr. Edmisten, the issue was resolved with a compromise consisting of agreement to the “whichever is sooner” language in Condition 5.B. and, in return, a concession by the Attorney General’s Office and DEQ not to appeal the Commission’s Final Decision and to issue the permit.

41-42. Based on his recollection of what occurred at the time, Mr. Edmisten states that inclusion of the “whichever is sooner” language in Condition 5.B. of the May 13, 1981 permit was not a typographical error by then-Division Director Stephen Conrad; that it is difficult to believe that Wake Stone would have accepted the permit if it was an error or not objected to that language for nearly 37 years during which the permit was renewed or modified 8 times; and that it was and is inappropriate to modify the permit at this late date to eliminate a pivotal provision without which the permit would never have been issued—especially without the input of those actually involved in the decision-making process in May of 1981.

42-43. DEQ itself repeatedly referred to its actions, including in the cover letter accompanying the March 28, 2018 permit, as constituting “modifications” to the permit. Exhibit 18.

43-44. Some months later, Plaintiff became aware of a memorandum purportedly dated March 29, 2018, from S. Daniel Smith, Interim Director, Division of Energy Mineral and Land Resources (“Director Smith”), to “File,” subject: “Clarification Memorandum to File Wake Stone Corporation Permit No. 92-10, Wake County.” Exhibit 1. In the first paragraph, the memorandum references a letter received from the Plaintiff dated December 17, 2018, requesting reversal of the 2018 modifications to the permit. Since it clearly would have been impossible for Director Smith to know on March 29, 2018, that the Plaintiff had sent a letter on December 17, 2018

(approximately 8 months after the memorandum was created), it is clear the memorandum was improperly dated, either intentionally or accidentally.

[44.45.](#) The memorandum purports to be “correcting” the term “modification” in the March 28, 2018 cover letter, as it relates to Condition 5.B. in the permit, and it seeks to belatedly reframe the action taken as “a ministerial correction” and “not a permit modification.” The memorandum states that the Sunset Provision change in the March 28, 2018, permit was “made in response to an e-mail request received by Wake Stone dated February 26, 2018.”¹⁶ *Id.*

[45.46.](#) Director Smith’s belated and mis-dated memorandum notes that the Commission’s April 3, 1981 Final Decision used the phrase “whichever is later” in the quarry donation provision of Condition 5.B., while the permit issued by DEQ used the phrase “whichever is sooner,” thereby supposedly justifying Director Smith’s position that the Condition 5.B. modification was merely a “ministerial correction” “in keeping with the final agency decision.” *Id.*

[46.47.](#) The obvious implications of this distorted reasoning are that, in 1981, the parties, despite all the statements regarding a 50-year mine, did not really intend to put any time limitation on the mining activities, and that: 1) DEQ mistakenly, rather than intentionally, used the term “sooner” rather than “later”—a mistake missed by the Director, all staff members reviewing the permit, and representatives of N.C. Parks asked to review the draft 1981 permit; 2) counsel from the Attorney General’s Office involved in the hearing before the Commission and in the negotiations with Wake Stone’s counsel on the final terms of the permit, as well as others within

¹⁶ Notably, Director Smith’s memorandum does not mention the modification to buffer Condition 3 or the acceptance of the amended site plan map or even attempt to classify those modifications as mere “corrections.” Furthermore, the February 26, 2018 e-mail request from Wake Stone to DEQ is entirely related to buffer protection modifications and does not mention the 50-year Sunset Provision, making the reference to the February 26, 2018 e-mail irrelevant to the 50-year Sunset Provision.

the Attorney General's Office, never noticed the "error;" 3) counsel for Wake Stone did not notice the different language, either initially or during the repeated renewals of the permit or numerous modifications to the permit over a 37-year timeframe; and 4) the Commission members who ordered issuance of the permit and their staff, comprised of DEQ and Attorney General staff persons who were intimately familiar with the terms of the Final Decision and undoubtedly received and reviewed the issued permit, likewise failed to notice the language. Without unduly belaboring the issue, Plaintiff submits that this belated, self-serving justification for why DEQ's action was merely a "ministerial correction" is preposterous, disingenuous, belies credulity, and should be disregarded.

[47:48](#). Moreover, in a letter of November 18, 2021, sent to current Division Director Brian Wrenn ("Director Wrenn") by Dwayne Patterson, Director of N.C. Parks, regarding Wake Stone's requested expansion of its mining operations, Director Patterson specifically referenced the importance of the wording of Condition 5.B. in 1981, stating:

We ask that when weighing the various proposals regarding this matter and interpreting prior decisions of the Commission, you consider whether such a significant expansion of the quarry was ever contemplated. As far as DPR is concerned, we have always—*since our then-Director reviewed a draft permit including the "sooner" language in 1981—relied upon the plain language of the permit and planned for the land donation to occur at the "sooner" date of 2031 or the exhaustion of quarryable stone at the existing quarry.*

Exhibit 19 (referring to Exhibit 20) (emphasis added).¹⁷

¹⁷ North Carolina has long recognized that when the language of a statute is clear and unambiguous, it is the duty of a court to give effect to the plain meaning thereof and judicial construction of the legislative intent is not required. *See N.C. Dept. of Corr. V. N.C. Med. Bldg.*, 363 N.C. 189, 201, 675 S.E.2d 641, 649 (2009). Similarly, it has consistently held that when the plain language of a contract is clear, the intention of the parties is inferred from the words used, and there is no room for construction. *See Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996); *Jones v. Casstevens*, 222 N.C. 411, 413, 23 S.E.2d 303, 305 (1942). These legal principles should likewise apply to final rulings and pronouncements of administrative bodies, including issued permits. There is nothing ambiguous in the use of the language "whichever is

II. Buffer Modifications

~~48.49.~~ On February 26, 2018, David Lee of Wake Stone sent a letter to Ms. Wehner stating he had “discovered” that the then-current site plan map dated February 4, 2011, Exhibit 21 (prepared by Wake Stone),¹⁸ did not properly delineate the property boundary “as the centerline of Crabtree Creek.” Exhibit 22. The letter further states “[i]t appears that this discrepancy occurred during our company’s transition to digital mapping.” *Id.*

~~49.50.~~ Plaintiff agrees that the *property boundary* is the centerline of Crabtree Creek. The property boundary has never been in dispute, and any suggestions that previous maps improperly denoted the property boundary are unfounded as previous site plan maps properly showed this boundary. *E.g.*, Exhibit 21. Those maps’ depictions of the property boundary also are consistent with Wake County’s real property records, contrary to Mr. Lee’s assertion. Exhibit 23. What is in dispute is the relevance, or lack thereof, of that line with respect to the undisturbed vegetated buffer along Crabtree Creek.

~~50.51.~~ Wake Stone’s February 26, 2018 letter also asserts that “[t]his discrepancy is critical in that the buffers are to be measured from the Property Boundary/Mining Permit Boundary (which are one and the same).” Exhibit 22. This statement is erroneous. Further, previous permits and site plan maps indicated that the undisturbed vegetated buffer along Crabtree Creek began at the top of the bank where vegetation begins, and therefore was not intended to be related to the property boundary where the Creek divides the Odd Fellows Tract from Wake Stone’s existing quarry property. For example, and as previously noted, the original 1981 permit expressly stated

sooner” as used in Condition 5.B. of the initial Wake Stone permit, and the intent of DEQ in choosing that language in 1981 should therefore be inferred from the words used.

¹⁸ It is easier to view this map online, although Plaintiff has attached a printed copy to this Complaint. The map may be found at the following web address: <https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/DEMLR/wake-stone/2011A.jpg>.

that “[a]n undisturbed buffer zone of existing natural vegetation shall also be maintained *between the top edge of the bank of Crabtree Creek and any mining disturbance* within the 10 year permit area.” Exhibit 11 (emphasis added). Any mapping corrections made to the property boundary simply do not affect in any way the location of the undisturbed vegetated buffer along the Creek.

51:52. The 2011 and 2017 permits also contained consistent buffer language:

3. Buffer Zones

A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.

B. Sufficient buffer shall be maintained *between any affected land and any adjoining waterway* or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.

C. A minimum buffer zone of 250 feet shall be maintained *between any mining activity and Crabtree Creek along the north side of the mine site.*

D. A minimum buffer zone of 100 feet shall be maintained between any mining activity and both the Umstead Park property and adjoining property along the east and south sides of the mine site, respectively.

E. All buffer zones shown on the Site Plan Map dated February 4, 2011 shall be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required sediment control measures and approved earthen berms, *shall remain undisturbed.*

Exhibit 24 at Exhibits Page 221 (emphasis added).

52:53. The letter also included a revised site plan map, Exhibit 25, modifying the 100-foot and 250-foot undisturbed vegetated buffers adjoining Crabtree Creek to run from the Creek’s centerline. This map changes the language used to denote the undisturbed vegetated buffers; in comparison to the 2011 site plan map, the 2018 version changed the language for the 100-foot

buffer from “100’ Undisturbed Vegetated Buffer” to “100’ Buffer from Property Boundary,” and changed the language for the 250-foot buffer from “250’ Undisturbed Vegetated Buffer” to “250’ Buffer from Property Boundary.” *Cf.* Exhibits 21 and 25.

~~53.54.~~ Wake Stone further requested that Conditions 3.C and 3.D be removed from the permit and to change Condition 3.E to 3.C to read: “All buffer zones shown on the Site Plan Map revised February 26, 2018 be maintained to protect adjoining property. These buffer zones, with the exception of the installation of required erosion control and sedimentation control measures and approved earthen berms, shall remain undisturbed.” Exhibit 22 at Exhibits Page 211.

~~54.55.~~ Taken together, Wake Stone’s requests would result in measuring the undisturbed vegetated buffers from Crabtree Creek’s centerline instead of the top edge of the Creek, thereby significantly reducing the total undisturbed vegetated buffer area by approximately 230,000 to 280,000 square feet, or 5.28 to 6.43 acres.

~~55.56.~~ In its letter, Wake Stone stated that it assumed the changes would qualify as a “mining permit modification,” and it asked that its letter be accepted as a “formal request to modify” its’ permit. *Id.* Upon information and belief, Wake Stone never submitted a formal modification request using DEQ’s official forms, and it is unclear if the required fee was paid by Wake Stone, as required by N.C. Gen. Stat. § 74-52(a) and 15A NCAC 05B.0122 Permit Application Processing Fees.

~~56.57.~~ 15A NCAC 05B .0122 (b) sets forth the submission requirements for minor and major modifications:

Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. *All other changes to the permit are major modifications.*

(emphasis added).

57-58. Applying the above the language in 15A NCAC 05B .0122, Wake Stone's requested amendments and resulting diminution of undisturbed vegetated buffer area constitute major changes. Accordingly, DEQ's categorization of these amendments as "ministerial" is incorrect and misleading.

58-59. On or about March 26, 2018, DEQ provided Wake Stone with a new modified permit signed and dated on March 19, 2018. On that same day, Wake Stone e-mailed Ms. Wehner with a list of 8 requested changes, as noted in handwritten annotations on the permit dated March 19, 2018. Exhibit 26. In its communication, Wake Stone represented that its requested modifications were to correct "several editorial/typographical errors." *Id.*

59-60. Upon review and later forwarding Wake Stone's request to her supervisors, Ms. Wehner recommended that 7 of Wake Stone's suggestions be accepted, but specifically stated that she did not agree with the requested changes to Condition 3 with regard to changing the buffer area's location along Crabtree Creek to run from the Creek's centerline rather than from the Creek's bank. *Id.*

60-61. Despite Ms. Wehner's recommendation and within 23 minutes of Ms. Wehner's e-mail, then-Interim Division Director William "Toby" Vinson indicated that he approved of all 8 requested changes. *Id.* Upon information and belief, Mr. Vinson only had held his position as Interim Division Director for a few weeks and had not previously worked on this permit during his tenure at DEQ.

61-62. Wake Stone did not provide any legal basis or substantiated factual basis for its patently incorrect representation to DEQ that the boundary line for the 100-foot and 250-foot

undisturbed vegetated buffers adjoining Crabtree Creek should be the property boundary line and/or that those buffers should run from the centerline of the Creek.

~~62-63.~~ There are no applicable statutes or regulations suggesting that a buffer adjacent to a stream is to be measured from the stream's centerline, nor directing or authorizing the use of a property boundary as the beginning point of an undisturbed vegetated buffer abutting a stream. To the contrary, DEQ's regulations suggest that such buffers exist in the area between any stream and the mined land. 15A NCAC 05B .0105(2) (specifying that DEQ may issue a permit when subject to certain conditions, including that "a natural buffer be left between any stream and the affected land). Nonetheless, and without providing any justification for its actions, DEQ accepted Wake Stone's representations after giving the matter little time or consideration. This was done without the customary notice to or input from any other interested agencies or members of the public. As a result, a large swath of long-designated undisturbed vegetative buffer area was improperly eliminated by sheer administrative fiat.¹⁹

~~63-64.~~ DEQ issued a modified permit signed and dated on March 28, 2018. Exhibit 18.

¹⁹ It is worth noting that Wake Stone's April 7, 2020, application for a permit modification included site plan maps showing significant mining disturbance within the buffer area that previously had been protected until the 2018 modification. Exhibit 27 (also available online at <https://edocs.deq.nc.gov/EnergyMineralLandResources/DocView.aspx?id=347&dbid=0&repo=EnergyMineralLandResources>); *see also* Exhibit 28 (excerpted) (confirming that Wake Stone intended for the undisturbed, vegetated buffer to start at the Creek's centerline) (excerpted). Plaintiff submits that the real reason for Wake Stone's 2018 buffer modification request, as later implicitly admitted by Wake Stone in responding to DEQ's post-2018 inquiry into the buffer change, was to enable it to expand mining operations onto the Odd Fellows Tract, which would require disturbing the previously-protected buffer area. *See* Exhibit 17 (including highlighting of relevant language).

C. Violation of Applicable Statutes and Agency Rules

~~64-65.~~ N.C. Gen. Stat. § 74-52(c) provides that permit modifications are to be “generally consistent with the bases for issuance of the original permit.” The modification and effective elimination of the Sunset Provision, by substituting “whichever is later” for “whichever is sooner,” wholly undoes one of the important and material bases for issuance of the original permit. As explained above, “whichever is later” allows Wake Stone to continue to operate the mine for as long as it likes, with the 50-year cutoff of operation next to the Umstead State Park intended by the drafters completely undone.

~~65-66.~~ DEQ’s actions in modifying the 50-year Sunset Provision and changing the boundary of 100-foot and 250-foot undisturbed buffer zones abutting Crabtree Creek from the top edge of the Creek to the centerline of the Creek were both inconsistent with the bases for issuance of the original permit under N.C. Gen. Stat. § 74-52 (c). DEQ’s actions therefore exceeded the agency’s statutory authority, constituted an erroneous application of law, and represented an abrogation of the agency’s statutory duties. Furthermore, DEQ acted contrary to law and its own regulations by granting modifications absent the filing of formal applications and the payment of required fees by Wake Stone pursuant to the terms of N.C. Gen. Stat. § 74-52(a) and the provisions of 15A NCAC 05B .0112(a), (d) and (e), and its decision to grant the modifications requested by Wake Stone was arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

D. Estoppel

~~66-67.~~ If Wake Stone was not in agreement with the provisions of the original permit, it had the opportunity to appeal in 1981, yet it chose to accept and operate under those provisions. Had it appealed, the Plaintiff, DEQ, the Attorney General’s Office, and other interested agencies

and parties would have had the opportunity to participate in the appeal process, which was denied to them in the long-delayed, informal, and *ad hoc* modification process followed in the contested instance.²⁰ Furthermore, by itself accepting the Sunset Provision and buffer condition contained in the original permit without challenge for over 37 years, Wake Stone was estopped from thereafter belatedly and improperly challenging these substantive provisions that are critical to protecting the Umstead State Park and the people of the State of North Carolina. Those provisions are fully consistent with the terms negotiated between DEQ, the Attorney General's Office, and Wake Stone in 1981, with the bases for issuance of the original permit, and with the bases communicated to then- and still-interested agencies and parties.

E. Exhaustion of Remedies

~~67-68.~~ It was not until November 6, 2018, that Plaintiff unexpectedly discovered the disturbing permit modifications while engaging in a public records examination of the Wake Stone permit file at DEQ's office. Plaintiff had no previous knowledge of Wake Stone's 2018 modification requests or DEQ's granting of those modifications.

~~68-69.~~ While N.C. Gen. Stat. § 74-61 affords to anyone affected by a permit modification the right to file a petition to contest the action within 30 days after the decision is made, the 30-day window ended on June 28, 2018, thereby precluding Plaintiff from taking advantage of any administrative review rights through no fault whatsoever on its part. This provision assumes that DEQ's decision is knowable to any person affected by that modification.

²⁰ Had a timely challenge or appeal been filed by Wake Stone in 1981, those personally involved in the wording of the original permit and the negotiations between the parties between the date of issuance of the Mining Commission's Final Decision and the issuance of the original permit would have been available to explain the circumstances and the reasons for the original permit's language.

~~69.~~70. Plaintiff claims that the modifications requested by Wake Stone to Conditions 3 and 5.B. adversely impacts Umstead State Park by reducing the 100-foot and 250-foot. undisturbed buffers adjacent to Crabtree Creek and bordering Umstead State Park, and by gutting the 50-year Sunset Provision. By reason of the Plaintiff's primary dedicated purpose and responsibility in conserving, protecting, and enhancing Umstead State Park and its surrounding environment for its members, Plaintiff is adversely impacted by DEQ's modifications to the permit.

~~70.~~71. On November 14, 2018, Plaintiff's Chair, Dr. Jean Spooner ("Dr. Spooner"), sent a letter to then-DEQ Secretary Michael A. Regan, on behalf of itself and its 16 partner conservancy organizations to request the reversal of the 2018 permit modifications. Exhibit 29. The letter pointed out that the permit modifications had been made by DEQ staff without any notice whatsoever, were not "clerical corrections," but constituted significant substantive changes to important and fundamental negotiated bases for of the issuance of the original permit in 1981, and that the modifications were inconsistent with multiple permit renewals and modifications made during the 37-years preceding the 2018 modification. *Id.*

~~71.~~72. On March 5, 2019, DEQ invited Plaintiff's representatives to a meeting to discuss Plaintiff's objections to the permit modifications. On March 12, 2019, Dr. Spooner sent a memorandum to DEQ summarizing the meeting and Plaintiff's objections. Exhibit 30. Following a May 7, 2019 meeting with Director Smith, Plaintiff waited to hear whether DEQ intended to correct the 2018 modifications.

~~72.~~73. Since the May 7, 2019, meeting, Plaintiff's representatives have been culling through the State Archives searching for relevant DEQ records regarding the permit provisions and various subsequent additions/changes to the permit—many of which are nowhere to be found among the records DEQ maintains at its office. Plaintiff has worked diligently to uncover and

confirm the facts underlying this Complaint and has shared them with the Attorney General's Office which, based upon information and belief, has shared them with DEQ. In a virtual meeting held on January 7, 2022, Representatives of Plaintiff discussed these issues with Director Wrenn. Plaintiff has heard nothing further from DEQ or the Attorney General's Office.

~~73.74.~~ Despite Plaintiff's efforts to share with DEQ all pertinent information it obtained from other agencies' files and the State Archives so that DEQ internally could rectify the improper permit modification before the filing of this action became necessary, and DEQ's knowledge that significant public interest exists with respect to Wake Stone's Triangle Quarry, DEQ has failed to correct its errors or even to inform Plaintiff as to what course of action it intends.

~~74.75.~~ DEQ failed to provide Plaintiff and other interested parties notice of the permit modification. DEQ's actions ensured that the present action would be Plaintiff's only available avenue for relief.

CLAIMS FOR RELIEF

1. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 74 of this Complaint.

2. By reason of the matters alleged above in this Complaint, Plaintiff seeks and is entitled to:

a. Judicial *de novo* review of whether DEQ's actions in granting the modifications requested by Wake Stone violated applicable laws or regulations, exceeded the agency's statutory authority, and/or were erroneous in derogation of the agency's statutory duties;

b. Judicial whole record review of whether DEQ's actions in granting the modifications requested by Wake Stone were arbitrary and capricious, an abuse of discretion, and/or unsupported by substantial evidence;

c. A finding and declaration that due to DEQ not notifying Plaintiff or the public that it was considering Wake Stone's modification requests or that it had granted those requests, Plaintiff was not required or able to file an appeal under N.C. Gen. Stat. § 74-61 or §150B-23, and that Plaintiff is entitled to review of the agency's decision by *certiorari*;

d. A finding and declaration by the Court that in approving the requested permit modifications and issuing an amended permit with those modifications, as well as accepting an amended site plan map, DEQ: (i) violated applicable statutes or regulations, including the terms and provisions of N.C. Gen. Stat. §§ 74-52 (a), (c), 74-54.1, and 15A NCAC 05B .0112 (a)–(e); (ii) exceeded its statutory authority under N.C. Gen. Stat. §§ 74-52(a), (c) and 74-54.1; and (iii) acted erroneously in derogation of its statutory duties under N.C. Gen. Stat. §§ 74-52(a), (c) and 74-54.1;

e. A finding and declaration by the Court that DEQ's actions in agreeing to the permit modifications requested by Wake Stone and amending the permit to incorporate those modifications were arbitrary and capricious, unsupported by substantial evidence, and constituted an abuse of the agency's discretion; and

f. A finding and declaration that the permit dated March 28, 2018, including the related revised site plan map, was improperly, improvidently, and unlawfully issued by DEQ, that the modified permit is void, *ab initio*, and that the modified permit with revised 2018 site plan map therefore should be rescinded in its entirety, leaving the 2017 permit in force without the improper 2018 modifications.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to enter an order and judgment:

1. Finding that it has jurisdiction over this action pursuant to the provisions of N.C. Gen. Stat. §§ 1-253, 1-254, 1-269, 7A-3, 7A-240, 7A-243, 7A-245, 7A-250, and 150B-43 *et. seq.*; that venue is proper in this Court under N.C. Gen. Stat. § 1-82; and that it has *in personam* jurisdiction over Defendants under N.C. Gen. Stat. §§ 1-75.3 and 1-75.4.

2. Finding and declaring that DEQ issued the permit dated March 28, 2018 in violation of applicable statutes and regulations, exceeded its statutory authority and duties, and that DEQ's actions were arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

3. Finding and declaring that the permit dated March 28, 2018, is void, *ab initio*, and ordering DEQ to revoke the permit and accompanying site plan map in their entirety, as well as any other subsequent permit and site plan renewals or modifications incorporating and/or based upon the 2018 modifications to Condition 3 and/or Condition 5.B.

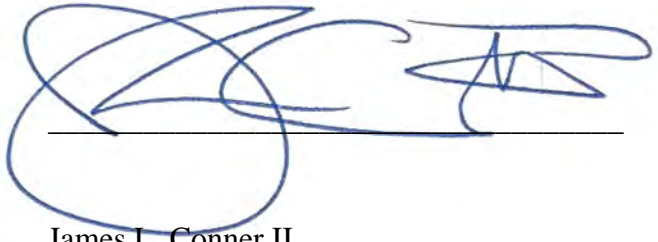
4. Finding and declaring that the permit terms that went into effect on December 1, 2017 remain in force;

5. Awarding to Plaintiff its costs, including an award of reasonable attorney's fees; and

6. Ordering and granting any such other and further relief as the Court deems just and proper.

[Signature on the following page]

This the _____~~12th~~ day of ~~December~~July, 2022.



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Attorneys for Plaintiff

Exhibit C

West's North Carolina General Statutes Annotated
Chapter 74. Mines and Quarries
Article 7. The Mining Act of 1971 ([Refs & Annos](#))

This section has been updated. Click [here](#) for the updated version.

N.C.G.S.A. § 74-61

§ 74-61. Administrative and judicial review of decisions

Effective: January 1, 2012 to July 6, 2022

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under [G.S. 150B-23](#) within 30 days after the Department makes the decision. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission.

Credits

Added by Laws 1971, c. 545, § 16. Amended by Laws 1973, c. 1262, § 33; Laws 1977, c. 771, § 4; Laws 1979, c. 252, § 3; Laws 1987, c. 827, § 86; [Laws 1993 \(Reg. Sess., 1994\), c. 568, § 9, eff. July 1, 1994](#); [S.L. 2011-398, § 30, eff. Jan. 1, 2012](#).

N.C.G.S.A. § 74-61, NC ST § 74-61

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

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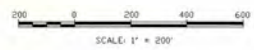
Exhibit D



LEGEND

- FENCE LINE
- WATER COURSE
- TREE LINE
- PAVED ROAD W/2 CURB
- IMPROVED ROAD
- WALL
- GUARD RAIL
- RAILROAD
- BUILDING
- HEADWALL/CULVERT
- EATION BASIN
- DROP INLET
- MANHOLE
- POLE POLE
- LIGHT POLE
- STREET LAMP
- DAY WIRE
- TRANSFORMER
- CONG 1 & 2 POST
- VIOLANT
- UNKNOWN OBJECTS
- INDEX CONTOUR
- INTERMEDIATE CONTOUR
- SPOT ELEVATION
- S.F.S. SURVEY MONUMENT
- STANDING WATER
- GROUND CONTROL

NOTES: 1. Accuracy Specifications
 a. Contours are shown at 10-foot intervals, determined from the field. The contours of this map are not to be used as a basis for any other map. The contours of this map are not to be used as a basis for any other map. The contours of this map are not to be used as a basis for any other map.
 2. This map was compiled by Blue Star Engineering, Inc. using photogrammetric methods. The map is not a survey and should not be used as a basis for any other map. The map is not a survey and should not be used as a basis for any other map.
 3. Buildings are shown as footprints only.



COMPILED BY PHOTOGRAMMETRIC METHODS
WAKE STONE CORPORATION
 P.O. BOX 195
 UNDESBLE, NC 27545
 919-264-1100
Wake Stone Corporation
 Triangle Quarry
 Mining Permit No. 92-10
Site Plan Map
 March 1, 2001

DATE OF PHOTOGRAPHY: 02-05-99 REVISION NO:
 JOB NO: T-01-4001-22 SHEET NO:

Land Use Classes	Acres of Active Disturbed Area
Conifer Active Pit Area	20 Acres +/-
Power Station/Road Areas	45 Acres +/-
Vegetated Earthen Embankment	15 Acres +/-
Permitted Acroage	723 Acres +/-

Vegetation Rehabilitation

Rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit.

Rehabilitation Preparation

Rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit.

Rehabilitation Schedule for Linear Features, Trenches, and Pits

Rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit. The rehabilitation of disturbed areas is required to meet the requirements of the permit.