

**Ordinance: 85ZC673**

**Effective: 7/3/12**

**Z-10-12 – Westgate Road, Conditional Use** - located on the northside, northwest of its intersection with Ebenezer Church Road being Wake County PIN(s), 0778536990 and 0778740512. Approximately 97.13 acre(s) is rezoned from Neighborhood Business Conditional Use District, Office and Institution-1 Conditional Use District, TD Conditional Use District, TD, Residential – 4 with AOD & SHOD-2 TO IND-1 Conditional Use District, with SHOD-2.

**Conditions Dated: 06/28/12**

**1) Conditional Use Zone Requested: Industrial-1 – CUD w/ SHOD-2**

**2) Narrative of conditions being requested:**

(a) Defined Terms. For purposes of the following conditions, (i) the two parcels proposed for rezoning by Martin Marietta Materials, Inc. in this case (PINs 0778-53-6990 and 0778-74-0512; Lots 1 and 2, respectively, Book of Maps 2011, Page 1208, Wake County Registry) are referred to as the “Property;” (ii) the term “overburden” shall refer only to the soil, earth, loose rock, and other natural material removed to reach marketable rock in the process of quarry excavation or that results from quarry processing; and (iii) all measurements of height made pursuant to these conditions shall be determined from existing grade of the midpoint of Ebenezer Church Road at its intersection with Wyngate Mill Lane.

(b) Realignment of Westgate Road. Before any mining and quarrying activity occurs upon the Property, except the removal, deposit, storage, and disposition of overburden as provided herein, the owner of the Property, in coordination with the NCDOT and the City of Raleigh, will pursue the realignment of Westgate Road to the north substantially as shown on Exhibit C-1 attached hereto. If such realignment is approved, the centerline of Westgate Road will be shifted to the north toward 1-540 no more than six hundred (600) feet from its current location and Martin Marietta will dedicate at no cost to the State or City the right-of-way for the realignment and will bear all costs associated with relocation of the road. It is provided, however, that during the pursuit of approvals to realign Westgate Road, the berm referenced in condition (d) along the boundary of the Property with tax parcel PIN 0778-74-4381 (Lot 3, Book of Maps 2011, Page 1208, Wake County Registry) may be constructed with soil and earth from the Property.

(c) Area South of Relocated Westgate Road. Any extraction of rock and/or other aggregates materials upon the Property shall occur only south of Westgate Road following its relocation as provided in the foregoing condition (b). Overburden may be removed from such area prior to the road relocation, but not from the area south of existing Westgate until the construction of the means of transporting overburden under relocated Westgate Road referenced in condition (h). The excavation of dirt or other materials south of relocated Westgate Road (except as provided in condition (i)) will occur no closer than fifty (50) feet to the right-of-way of relocated Westgate Road. At the time of or prior to the completion of such relocation of Westgate Road, a berm with a

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minimum height of twenty-five (25) feet shall be constructed between the right-of-way of relocated Westgate Road and the area of extraction south of relocated Westgate Road. Such berm shall be constructed no closer than twenty-five (25) feet from the right-of-way of relocated Westgate Road and may have a diagonal opening or openings to accommodate the driveway referenced in condition (i) and vehicular access to the means of transporting overburden under relocated Westgate Road referenced in condition (h). On both the east and the west, such berm will tie into and join the berms currently existing on Petitioner's property along Ebenezer Church Road on the east and along Westgate Road on the west.

(d) Construction of Berm; Required Set Back Area and Fence. Before any mining or quarrying activity occurs upon the Property (other than the removal, deposit, storage, and disposition of overburden) there shall be constructed along the boundary of the Property with tax parcel PIN 0778-74-4381 (Lot 3, Book of Maps 2011, Page 1208, Wake County Registry) a berm a minimum of fifty (50) feet in height with a maximum slope of 2:1. Such berm shall be set back (that is, it will begin to rise in height) at least one hundred fifteen (115) feet from the boundary of the Property with PIN 0778-74-4381. The area of such set back ("the Set Back Area") will remain in a natural condition and will remain undisturbed by tree disturbing and land disturbing activities except as provided in this condition. The portion of the Set Back Area more than seventy-five (75) feet from the boundary of the Property with PIN 0778-74- 4381 may contain a driveway no more than twenty (20) feet in width running parallel and adjacent to the berm, utilities, and stormwater infrastructure. Along the entire boundary of the Property with PIN 0778- 74-4381, but set back approximately seventy-six (76) feet from such boundary, there shall be constructed and maintained a chain link fence at least five (5) feet in height. It is provided, however, that such fence shall not extend into the natural protective yard required in condition (o). An opening shall be provided in the berm a minimum of seventy (70) feet in width to accommodate the possible future extension of Ebenezer Church Road as provided in the City's Comprehensive Plan.

(e) Use of Area North of Relocated Westgate Road. The area of the Property north of Westgate Road, as relocated pursuant to the foregoing condition (b), shall be utilized only for (i) the deposit, storage, and disposition of overburden (and the preparation of areas for such deposit, storage and disposition) and (ii) the installation of driveways, berms, plants and trees, utilities, stormwater infrastructure, the means of transporting overburden under relocated Westgate Road referenced in condition (h) and for no other use except as set forth in condition (r). Other than during the placement of overburden, no quarry related equipment, mobile equipment, vehicles or other personal property will be stored on this portion of the Property. Attached as Exhibit C-2 is a map showing generally the areas upon the Property where overburden will be deposited and/or berms constructed in the event the relocation of Westgate Road as described in condition (b) is approved by the NCDOT and any permitting authority having jurisdiction. Exhibit C-3 attached hereto shows this information on a larger scale for a portion of the Property. No overburden berm shall be located closer than twenty-five (25) feet from the right-of-way of relocated Westgate Road.

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(f.) Height of Overburden. Overburden deposited upon the Property in accordance with these conditions shall be less than fifty (50) feet in height at all points within four hundred ten (410) feet of the following parcels: PIN 0778-72-8995 (Owner: Stacey Douglas Daniels; deed recorded at Book 10157, Page 1125, Wake County Registry), PIN 0778-73-8064 (Owner: Richard Keith Hale; deed recorded at Book 8107, Page 861, Wake County Registry), PIN 0778-73-8181 (Owner: Kandas B. and Jason W. Branson; deed recorded at Book 13084, Page 1557, Wake County Registry), PIN 0778-73-8197 (Owner: Donald A. and Lisa K. Templeton; deed recorded at Book 8299, Page 1167, Wake County Registry), PIN 0778-73-8294 (Owner: Ali Akbar and Parvin Salim Mahmoudi recorded at Book 8104, Page 932, Wake County Registry), PIN 0778-73-9300 (Owner: Coyett Wayne and Shelley A. Vanover; deed recorded at Book 8059, Page 2447, Wake County Registry), PIN 0778-73-9317 (Owner: Brant S. Ust and Jessica Ann Hoppe Ust, deed recorded at Book 14665, Page 1025, Wake County Registry), PIN 0778-73-9404 (Owner: Fred E. Hicks, Jr. and Maria K. Hicks; deed recorded at Book 7444, Page 664, Wake County Registry), PIN 0778-73-9505 (Owner: Candace B. and Richard G. Wilson; deed recorded at Book 13572, Page 1799, Wake County Registry); PIN 0778-73-9651 (Owner: Colin Alasdair Currie McKerrell and Ada Stewart McKerrell; deed recorded at Book 8254, Page 1087, Wake County Registry), PIN 0778-73- 8889 (Owner: Wyngate Homeowners Association Inc.; deed recorded at Book 8077, Page 1916, Wake County Registry), PIN 0778-74-9004 (Owner: David J. Debesis; deed recorded at Book 07-E-, page 1740, Wake County Registry), PIN 0778-74-8039 (Owner: George I. and Tanya B. Russ; deed recorded at Book 8091, Page 282, Wake County Registry), PIN 0778-74-7290 (Owner: Linda B. Peace; deed recorded at Book 08-E-, Page 2290, Wake County Registry), PIN 0778-74-7375 (Owner: Jung Sung and Amber Park; deed recorded at Deed Book 8451, Page 2331, Wake County Registry), PIN 0778-74-6378 (Owner: Michael B. and Deborah A. Miller; deed recorded at Book 8315, Page 2743, Wake County Registry), PIN 0778-74-6520 (Owner: Patricia B. Brandon; deed recorded at Book 8350, Page 1535, Wake County Registry), and PIN 0778-74-6588 (Owner: Gerald L. and Linda D. Ballard; deed recorded at Book 9170, Page 1519, Wake County Registry). Such parcels are referred to hereafter as the “Wyngate Parcels.” Overburden deposited upon the Property in accordance with these conditions shall be less than seventy (70) feet in height at all points greater than four hundred ten (410) feet and within four hundred eighty (480) feet of the Wyngate Parcels. Except as otherwise herein limited in height, the deposited overburden shall not exceed seventy (70) feet in height at any point upon the Property.

(g) Deposit of Overburden - Time Limitations. Overburden will be deposited, graded, or moved about upon the Property only in accordance with these conditions and only between 7:00 A.M. and 6:00 P.M. on Mondays through Fridays. There will be no deposit, grading, or movement of overburden on the Property on Saturdays and Sundays. No additional overburden will be deposited on the Property following the tenth anniversary of the date Westgate Road, as relocated pursuant to the foregoing condition (b), is opened to public traffic. In the event such relocation is not approved by NCDOT and any other permitting authority having jurisdiction, no additional overburden will be deposited upon the Property following the tenth anniversary of the later of (i) the final approval of this

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rezoning case or (ii) if a legal action is filed challenging such approval, the entry of a final judicial decision affirming such approval.

(h) Transport of Overburden Under Westgate Road. No overburden will be transported at grade across existing Westgate Road in either a direct or indirect manner. Following the relocation of Westgate Road as provided in the foregoing condition (b), subject to the approval of the NCDOT and any other permitting authority having jurisdiction, overburden removed from any area south of relocated Westgate Road shall be transported to that portion of the Property north of relocated Westgate Road only through a tunnel, under a bridge, or by other means of conveyance under relocated Westgate Road.

(i) Areas Along Relocated Westgate Road. An area a minimum of fifty (50) feet in width shall be maintained upon the Property along each side of Westgate Road, as relocated in accordance with the foregoing condition (b). Such areas shall remain in a natural condition except as provided in this condition. Each such area may contain (i) a single driveway, subject to NCDOT and City of Raleigh approval, no wider than sixty (60) feet of disturbed area, which may diagonally cross such area, (ii) the excavation and structure for transporting overburden under relocated Westgate Road referenced in condition (h), and (iii) berms, plants and trees, utilities, stormwater infrastructure, the transit easements referenced in condition (q) hereafter, and such slope and construction easements as shall be appropriate for the relocation of Westgate Road referenced in condition (b).

(j) Planting of Grass and Pine Seedlings. Upon the completion of the construction of any berm or deposit of overburden upon the Property as provided in these conditions, the berm or deposit will be planted with grass or another groundcover and in areas on the exterior of such berm planted with pine seedlings in staggered rows at intervals of ten (10) feet. The seedlings shall be planted as soon as practicable based upon generally accepted silvicultural practices. If any vegetation planted on a berm or other deposit of overburden dies, it will be replaced as soon as practicable, but in no event should replacement be delayed more than 180 days following written notification by the City of Raleigh to the owner to replant.

(k) Control of Dust. At all times when overburden is being transported to or deposited, graded, or moved about upon the Property, a water truck or trucks will be utilized to control dust on the haul roads and other areas of the Property where overburden is being transported, deposited, graded, or moved about and such control of dust will be maintained until overburden berms and deposits are planted with grass or another groundcover as provided in condition (j).

(1) Areas Where Blasting Prohibited. No blasting shall occur upon the Property north of Westgate Road, as relocated pursuant to the foregoing paragraph (b), or upon that portion of the Property south of relocated Westgate Road that is within two hundred (200) feet of the right-of-way of such relocated road. There will be no blasting upon the Property at any point within eight hundred (800) feet of the Wyngate Parcels.

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(m) Limitations on Blasting. With regard to blasting allowed upon the Property south of Westgate Road, relocated in accordance with condition (b), a seismograph reading will be made of each blast. Those readings shall be taken at a seismograph (the "Seismograph") which shall be maintained by the owner of the Property in the northwest quadrant of the intersection of Westgate and Ebenezer Church Roads. Records of such readings will be maintained by the owner of the Property and will include: date, time, pounds per delay, location of blast, location of seismograph, peak particle velocity readings, and decibel readings. Records will be kept for a minimum of five years at the office of the owner of the Property at 6028 Triangle Drive, Raleigh, NC 27617 and may be inspected on request by the City Manager or his/her designee or any representative of the Wyngate Homeowners Association. If such office is closed or relocated, within thirty (30) days the owner of the Property will provide another office, which must be in the City of Raleigh, where such records will be kept and may be inspected and will provide the Chief Zoning Enforcement Officer of the City of Raleigh and the Wyngate Homeowners Association written notice of the address of such office. The impacts of blasting upon the Property at the closest occupied structure (not owned by the owner of the Property) are limited by state law to 2"/second PPV, the level at which Federal Bureau of Mines studies show is a safe threshold at and below which no damage will occur, and with respect to overpressure, to 134 dbl. Within each calendar year, seventy-five percent (75%) of the blasts occurring upon the Property shall not exceed a reading taken at the Seismograph of .5"/second PPV, ninety percent (90%) of such blasts shall not exceed a reading taken at the Seismograph of .6"/second PPV, and ninety-nine percent (99%) of such blasts shall not exceed a reading taken at the Seismograph of 1.0"/second PPV. Also, within each calendar year, ninety-two percent (92%) of the blasts occurring upon the Property shall not exceed a reading taken at the Seismograph of 127 dbl and ninety-nine percent (99%) of such blasts shall not exceed a reading taken at the Seismograph of 130 dbl. In the records of blasting upon the Property maintained in accordance with this condition (m), the record of any blast that exceeds a reading of .5"/second PPV or 127 dbl will be entered in bold type font.

(n) Limitations on Time of Blasting. Blasting on the Property (as limited by these conditions) will only be allowed between the hours of 9 a.m. and 5 p.m., Mondays through Fridays, except in cases of emergency. Cases of emergency shall exist only when (i) a misfire or other mishap occurs during a blasting event otherwise authorized by these conditions or (ii) because of a storm or other natural disaster, the production of stone not already on hand is requested by the NCDOT or other governmental agency or authority. No blasting will be allowed on the traditional holidays of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day.

(o) Natural Protective Yard. Along the boundary of the Property with PIN 0778-85-1532 (owner: Wake County Board of Education; deed recorded at Book 12175, Page 1847, Wake County Registry) there will be maintained a natural protective yard a minimum of 50 feet in width. The natural protective yard shall not be designated as a primary tree conservation area.

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(p) Control of Stormwater. Stormwater upon the Property shall be managed and controlled such that no stormwater from the Property shall flow to or upon any parcel included within the Wyngate Subdivision as such subdivision is shown on the plats recorded at Book of Maps 1996, Pages 1291, 1292, 1293, 1390, 1469, 1470, 1471, 1545, and 1546, Book of Maps 1997, Pages 1681, 1973, and 1974, Book of Maps 1998, Pages 272, 273, 645, and 2078, and Book of Maps 1999, Page 1531 of the Wake County Registry. This condition shall also be applicable to any recombination or further subdivision of such parcels.

(q) Transit Easements. Upon development there shall be dedicated on both the north and south sides of Westgate Road following its relocation as provided in condition (b), a transit easement fifteen (15) feet wide and twenty (20) feet in length at a location acceptable to the City. In the event such road relocation is not approved, a transit agreement having such dimensions shall be so provided on the north side of existing Westgate Road.

(r) Westgate Road Relocation Not Allowed. In the event that the relocation of Westgate Road as described in condition (b) is not approved by NCDOT and any other permitting authority having jurisdiction, the Property may be utilized only for (i) the deposit, storage, and disposition of overburden (and the preparation of areas for such deposit, storage, and disposition), (ii) the installation of driveways, berms, plants and trees, utilities, stormwater infrastructure, a means of transporting overburden under existing Westgate Road, and the transit easement referenced in condition (q), and/or (iii) a church or synagogue and/or daycare center. The height of any berm or deposit of overburden upon the Property shall be limited as provided in condition (f). In the event such relocation is not so approved, no blasting shall occur upon the Property. Other than during the placement of overburden, no quarry related equipment, mobile equipment, vehicles or other personal property will be stored on the Property. No overburden will be transported to the Property at grade across existing Westgate Road. Upon the use of the Property pursuant to this condition, the berm referenced in condition (d) shall be constructed as provided therein. In the event that the relocation of Westgate Road is not approved and does not occur as described in condition (b), (i) conditions which relate to or reference such road as relocated shall be of no effect and unenforced, (ii) conditions (j), (k), (o), and all other conditions which do not relate to or reference the relocation of Westgate Road as provided in condition (b) shall remain applicable, and (iii) an area a minimum of fifty (50) feet in width shall be maintained along the boundary of the Property with existing Westgate Road. Such area shall remain in a natural condition except as provided in this condition. Such area may contain (i) a single driveway, subject to NCDOT and City of Raleigh approval, no wider than sixty (60) feet of disturbed area, which may diagonally cross such area, (ii) a means of transporting overburden under existing Westgate Road, and (iii) berms, plants and trees, utilities, stormwater infrastructure, and the transit easement referenced in condition (q).

(s) Stormwater Drainage from Grading Areas. Stormwater drainage from grading areas (deposit and removal) on the Property will be directed to and through point source

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outfalls. The discharge from the outfalls shall not cause the turbidity of the receiving waters to exceed a Water Quality Standard of 50 NTU.



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Exhibit C-1

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EXHIBIT C-2





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EXHIBIT C-3

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