



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

## Special Exception

**SE-4520**

Application	General Data
<b>Project Name:</b> Mirant MD Ash Management, LLC  <b>Location:</b> North side of North Keys Road, approximately 2,200 feet north of Gibbons Church Road, known as 11710 North Keys Road.  <b>Applicant/Address:</b> Mirant MD Ash Management LLC c/o Mirant Corp. 8711 Westphalia Road Upper Marlboro, Maryland 20774 ATTN: Constance Pierce	Date Accepted: 8/9/05
	Planning Board Action Limit: N/A
	Plan Acreage: 178
	Zone: O-S
	Dwelling Units: N/A
	Square Footage: N/A
	Planning Area: 86A
	Tier: Rural
	Council District: 09
	Municipality: N/A
	200-Scale Base Map: 217SE10

Purpose of Application	Notice Dates
Sanitary Landfill (Fly Ash)	Adjoining Property Owners Previous Parties of Record Registered Associations: (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed:

Staff Recommendation		Staff Reviewer: Reggie Baxter	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

March 1, 2006

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board  
The Prince George's County District Council

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Reggie Baxter, Planning Coordinator

SUBJECT: **Special Exception Application No. 4520**

REQUEST: **Extension of Time for the Operation of a Sanitary Landfill (Fly Ash)**

RECOMMENDATION: **APPROVAL with conditions**

---

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

---

## FINDINGS:

- A. **Location and Field Inspection:** The subject property (Brandywine Ash Site) is located on the north side of North Keys Road, approximately 2,200 feet north of its intersection with Gibbons Church Road, at 11710 North Keys Road. Access to North Keys Road is via a 30-foot-wide private road, approximately 2,500 feet in length, that is shared by an adjoining sand and gravel mining and wet processing facility (wash plant). The north and west portions of the property (Phase 1) are currently being filled. The southeast portion remains to be filled in the second phase. The access road loops to the east where a trailer, barn, and attached two-door garage/shop are located, along with an asphalt parking area. A gravel drive leads to a temporary contractor trailer and diesel fuel storage tank approximately 100 yards to the east. A truck wash area is on the access road approximately 50 yards from the facility manager's trailer.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	O-S (Open Space)	O-S
Use(s)	Sanitary Landfill (Fly Ash)	Sanitary Landfill (Fly Ash)
Acreage	178.7563	178.7563
Lots	1 (Parcel 6)	1 (Parcel 6)
Square Footage/GFA	N/A	N/A

### Other Development Data:

The property is the subject of record plat VJ 189@97 recorded June 2000 and is known as PEPCO Brandywine Fly Ash Facility, Parcel 6. The Subdivision Section (August 23, 2005, memorandum) indicates the site plan conforms to the record plat of subdivision (attached in the file). The Department of Environment Resources signed off on this plat for conveyance of a parcel to a public agency without public or private water and sewer (Plat Note 2). No building permits may be issued until Health Department approval is granted or public water and sewer are available (Plat Note 3). There are no subdivision issues for the continuation of the existing use.

- C. **History:** The property has been used for fly ash disposal since 1971, operating under three previous special exceptions (SE-2774, SE-3106, SE-4002). In July 1971, SE-2774 was approved for a portion of the subject property, however, that special exception expired. Special Exception SE-3106 was approved in July 1978 for a 12-year period for approximately the same area. In January 1991, SE-4002 was approved with conditions to continue the use of the property as a fly ash rubblefill site for a period of 12 years. A Type II Tree Conservation Plan (TCPII/105/90) was approved concurrently. The current request seeks another extension of the special exception use for 15 years for all the property approved in SE-4002, except the area located on the west side of the PEPCO power line right-of-way.

The applicant indicates that the previous owner, who engaged in surface gravel mining on the property, began operation of the Brandywine Ash Facility in the 1960s. Coal ash produced at the Chalk Point and Potomac River Generation Stations was disposed of on the property for the purpose of filling pits from the surface gravel mining operation. There is no history of lining and filling operations prior to PEPCO ownership in 1970. The following is a summarized chronology of the property's site filling history:

- 1970–1974—PEPCO purchased a 107-acre tract and began a four-phase cellular fill operation that was stabilized by vegetation in 1974. A fifth phase was filled between 1975–1978, followed by PEPCO’s acquisition and re-engineering of 237 acres between.
- 1973–1978—PEPCO acquires another 237 acres and engineers five additional fill areas (Areas A–E). Area A was filled in the 1970–1974 period and Area D was filled between 1975–1978.
- 1978–1980—Area B filled
- 1979—maps show surface mining expansion over most of the property as well as expansion on surrounding properties.
- 1980—ponds constructed on the northern portion of the property.
- 1981–1985—Area C filled.
- 1985–1992—Area E was filled.
- 1988—surface mining expands to the property’s boundaries and was still expanding on adjacent properties.
- 1989—site re-engineered to extend useful structural fill for 13 years by elevating Areas A, B, C and E approximately 20 feet.
- In approving the extension of the use in the last special exception (SE-4002), the following four conditions were imposed:
  - “1. In addition to any other sign required, the operator of the fill shall maintain a double sided, freestanding sign at the entrance to the haul road which is clearly visible from North Keys traffic, perpendicular to that road, giving the name of the operator, its mailing address and local phone number;
  - “2. There shall be no operations conducted on the subject property on weekends, except for emergencies as determined by the Department of Public Works and Transportation, nor on weekdays except between 7:00 a.m. and 5:00 p.m., nor on holidays of the County;
  - “3. That a minimum 50-foot-wide wooded buffer be maintained along the north, east and south property lines; and
  - “4. This special exception shall expire 12 years after final approval action.”

D. **Master Plan Recommendation:** The 2002 General Plan places this property in the Rural Tier. Rubblefill activity is an interim use of land that is not specifically addressed by Rural Tier Development Pattern goals and policies. However, reclamation and reuse of this site for recreation, forestry or agriculture activities would be consistent with Rural Tier goals and policies.

The 1993 Subregion VI Study Area master plan recommends Low-Rural residential land use densities (up to 0.2 dwelling units per acre) and the sectional map amendment retained the O-S Zone. The

Community Planning staff (September 13, 2005, memorandum) indicates that the master plan shows natural reserve and conditional reserve areas along the northern and southeastern portions of the property. Also, a proposed hiker/biker/equestrian trail is shown on the property using the PEPCO right-of-way. There are no new master plan issues related to fly ash disposal on this site.

E. **Request:** The applicant is requesting this special exception to allow continuation of a fly ash rubblefill site in the Brandywine area that has been operating since 1972. The most recent Special Exception 4002 was approved in January 1991 to allow a 12-year extension of fly ash fill use. The applicant is now seeking to continue this use for a maximum of 15 years to allow for completion of the fill site.

F. **Neighborhood and Surrounding Uses:** Staff agrees with the following neighborhood boundaries selected by the applicant and established by the Zoning Hearing Examiner in the last approval for the ash fill site (SE-4002):

- North: Mattaponi Creek
- East: MD 382 (Croom Road)
- South: North Keys Road
- West: Popes Creek Branch Railroad tracks

The rural character of the neighborhood has changed little since 1990. The area contains active and former sand and gravel mines; undeveloped agricultural and wooded fields; vacant parcels, and a few commercial, institutional and public-quasi public uses. Surrounding land to the south is occupied by an active sand and gravel mining operation and wet processing facility (SE-3561). A PEPCO high-voltage power line right-of-way and other land owned by the applicant (previously used for fly ash disposal) are located to the west. Mataponi Creek and an electric power generation switchyard are located to the northwest. A forest buffer is along Mataponi Creek as it flows along the northwest edge of the subject property. A rubble landfill is located on adjoining property beyond the forested stream buffer. Agricultural land adjoins the subject property to the east.

The Environmental Planning Section staff (September 23, 2005, memorandum) indicates that the subject property is located outside the viewshed for North Keys Road where it will not impact the rural character of the area or the designated historic road in the Rural Tier, where the General Plan encourages the preservation of rural character.

G. **Specific Special Exception Requirements:**

#### **Section 27-406 Sanitary Landfill; Rubblefill**

(a) **A sanitary landfill or rubblefill may be permitted as a temporary Special Exception.**

**Staff Comment:** The request is for a temporary extension of the existing fly ash rubblefill operation for a maximum of 15 years in order to complete fill operations and restore the site. The subject property is a repository for the disposal of fly ash, a by-product of coal-fired electrical generation. The site receives ash generated at the Chalk Point Generating Plant in Prince George's County and the Potomac River Generating Plant located in the City of Alexandria, Virginia. The operation performs two major tasks: the compaction of fly ash and truck hauling. Staff observed (January 13, 2005) that the site appeared well-managed and

organized to accept and compact the fill material. There is an office trailer near the center of the site, adjacent to a two-door garage attached to a well-maintained barn used for materials storage. An asphalt parking area is in front and to the side of the office trailer. To the east, beyond a gravel cul-de-sac, are a temporary contractor trailer and adjacent diesel oil storage tank. The facility manager explained that he and four site contractors are present full-time. During the summer there are approximately five additional seasonal employees.

The applicant explains that the structural fill method used on the property entails spreading ash in one-foot-thick layers and compacting it with vibratory rollers. Compaction serves to reduce water inundation. Benches or terraces are made as elevation increases and soil cover is placed on the edges of the benches when the next level of fill begins. The storage facility is lined with clay and other native soils to qualify as being impermeable. This entails placing a layer of “bottom ash” (with installed drainpipes to collect rainwater leachate) over the clay. Drainpipes, installed in the clay to collect any leachate that percolates through the cells, lead to four collection ponds where water quality is monitored, pH is adjusted, and solids settle out. Stormwater associated with truck washing is transported through a storm drain system to these same ponds. A sprinkler pump in the ponds aerates the water before discharge through four outfalls into Mataponi Creek and an unnamed tributary. The site contains six-groundwater monitoring wells.

The hauling aspect is accomplished with typical dual-axel dump trucks that collect fly ash from the power generating sites and bring it to the site. The applicant’s traffic report indicates the following:

- The site is proposed to process up to ten truckloads of fly ash during the weekday morning and afternoon peak hours.
- Haul trips are proposed to be distributed throughout the day so as to minimize impacts on the Brandywine Road intersections.
- Operation records indicate that hauling activity during peak winter and summer months consists of approximately 60 truckloads. Typical weekday haulage activity is approximately 70 percent of the seasonal peaks.
- Based on these records, as well as field observations, the report indicates that actual hauling activity is likely to be significantly less than the 100 truckloads currently approved.
- State accident records for the past three years indicate that the study area road network operates without any significant safety deficiencies.

**(b) The District Council shall determine the period of time for which the Special Exception is valid.**

**Staff Comment:** Staff agrees the requested extension is reasonable in view of existing operating conditions as described in the applicant’s May 9, 2005, rubblefill needs assessment. The applicant anticipates the requested maximum 15-year extension of the current use should allow for the completion of the fill site. The 15-year extension will expire in 2021 if approved in 2006. The applicant projects reaching ash fill capacity within 13 years, or by the end of 2017 (accepting only in-county ash from Chalk Point). If ash continues to be accepted from the Potomac River plant in Alexandria, Virginia, along with Chalk Point ash, capacity will be reached in just over seven years, or into mid-2012. Upon reaching fill capacity, the applicant should notify the

Department of Environmental Resources and District Council so that appropriate procedures can be initiated to terminate the special exception and remediate the site.

- (c) **In the R-E Zone, the landfill is only allowed if the neighborhood is substantially undeveloped and the landfill is an extension of an existing sanitary landfill on abutting land for which the approved Special Exception has not expired. This is not an amendment to an approved Special Exception under Subdivision 10 of Division 1, above.**
- (d) **An application for a sanitary landfill or rubblefill that includes a "rock crusher" on the site must show the location of the proposed rock crusher on the site plan.**

**Staff Comment:** Sections (c) and (d) are not applicable to this application. The property is in the O-S Zone and a rock crusher is not proposed.

- (e) **The applicant shall provide a traffic study that is prepared in accordance with Planning Board Guidelines for Analysis of Traffic Impact of Development Proposals.**

**Staff Comment:** The State Highway Administration (September 8, 2005, letter) indicates that the existing access and use of county roads (North Keys Road) for conveying traffic to and from the facility are subject to the requirements of the Prince George's County Department of Public Works and Transportation (DPW&T).

The Transportation Planning Section staff (January 3, 2006, memorandum) evaluated the applicant's traffic study based on the following standards applied to the General Plan's Rural Tier policies:

- **Links and signalized intersections:** Level-of-service (LOS) C, with signalized intersections operating at a critical lane volume (CLV) of 1,300 or better.
- **Unsignalized intersections:** The *Highway Capacity Manual* procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The traffic study assumed an increase in through traffic of 1.05 percent along key roadways in the study area. It examined impacts for seven intersections under three scenarios:

- Impacts resulting from existing traffic conditions.
- Impacts resulting from the addition of 13 background developments whose impact would affect some or all of the study intersections.
- Impacts resulting from traffic volumes representing total background conditions combined with projected rubblefill site trip generation (20-year buildout projection).

The third analysis revealed the following impacts on the seven intersections:

<b>TOTAL CONDITIONS</b>		
Intersection	AM LOS/CLV/delay	PM LOS/CLV/delay
North Keys Rd/Gibbons Church Rd ** (unsignalized)	B/13.8 seconds	<b>A/9.8 seconds</b>
MD 381/North Keys Road ** (unsignalized)	<b>F/129.1 seconds</b>	C/14.1 seconds
MD 381/US 301 (signalized)	<b>F/2353</b>	<b>F/2357</b>
MD 381/Baden Westwood Road ** (unsignalized)	<b>F/53.5 seconds</b>	B/12.4 seconds
MD 381/Croom Road ** (unsignalized)	<b>F/70.5 seconds</b>	<b>F/174.3 seconds</b>
Link—MD 381 (US 301—North Keys Road)***	E/0.76	D/0.63
Link—MD 381 (Croom Road—North Keys Road)***	C/0.50	C/0.38
Figures in <b>boldface</b> represent failing levels of service		

The traffic study concluded that the proposed fly ash rubblefill operation would have a minimal or negligible traffic impact on the defined study area network.

However, Planning staff notes that: “the traffic engineering staff at the DPW&T and the Maryland State Highway Administration (SHA) also reviewed the applicant’s traffic study. Since most of the affected infrastructure is under the maintenance of DPW&T, the response from SHA was minimal. Essentially, SHA required the applicant to address the failing levels of service at the above-mentioned intersections. The intersection of MD 381 and US 301 is a signalized and SHA-controlled facility. The traffic study shows that this intersection operates inadequately based on existing traffic volumes (LOS E in the AM) and will worsen significantly with the inclusion of approved background developments. Pursuant to SHA’s comments, the applicant has offered no improvements that would ameliorate the inadequacies at that intersection.”

The following referral comments from DPW&T, however, are a lot more expansive (referring to the August 31, 2005, DPW&T memorandum to staff). DPW&T indicates the following:

- “Existing North Keys Road, from Brandywine Road to Gibbons Church Road, is approximately 24 feet wide with a grass shoulder; the road is deteriorating due to heavy truck traffic. Resurfacing with 12.5 mm PG 70-22 Superpave asphalt of North Keys Road, from Brandywine Road (MD 381) to Gibbons Church Road, is required.
- “All roadway improvements within the public right-of-way as dedicated to the public shall be in accordance with the County Road Ordinance, DPW&T's Specifications and Standards and the Americans with Disabilities Act.
- “Drainage improvements along North Keys Road shall be in accordance with DPW&T's and the Department of Environmental Resources' requirements.
- “Renewal of the haul road permit to haul materials on North Keys Road must be obtained from DPW&T.
- “A standard street construction permit for the roadway improvements is required. Posting of the necessary bonds and payment of the permit fee is required.



- “The installation of all necessary signing and pavement marking associated with North Keys Road is required.
- “Raised pavement marker installation on the centerline along the North Keys Road frontage is required.
- “Installation of street lights at the driveway entrance and the access roads intersecting County roadways is required.”

Transportation planning staff indicate “that the issues and recommendations expressed by DPW&T (if implemented) will not bring about adequacy as defined in our guidelines, those improvements will go a long way in enhancing the flow of traffic from a safety and operational perspective. And for these reasons, the Planning staff fully concurs with the recommendations of DPW&T. The required finding for a special exception is that an approval of the subject application will not negatively impact the health, safety and welfare of the community. It is the opinion of staff that approval of this application to extend the rubblefill operation will negatively impact the health safety and welfare of the community, unless the applicant takes the necessary steps to address the traffic-related issues identified above.” Conditions recommended by the DPW&T to ensure adequate and safe roadways are included in the conclusion section of this staff report.

**(f) The applicant shall provide a visual analysis of any proposed mounds and should include cross sections and results from balloon tests.**

**Staff Comment:** A visual analysis has not been provided. However, the submitted plan (Drawing 88-407-F8; revised July 9, 1990, for the previous SE-4002) shows embankment cross-sections with elevations and refers to Drawings 88-407-F2, F4, and F7 for detail. Drawing 88-407-F8 shows typical embankment cross-sections. Phase One elevations range from 204 to 260 feet MSL, with the topmost benched slope at approximately 250 feet. Phase Two elevations range from approximately 200 to 260 feet MSL, with the top benched slope at 253 feet MSL. Drawing 88-407-F9 shows pond and drainage channel cross sections. Should there be a need to increase elevations beyond these points, the applicant shall submit revised plans with a visual analysis and cross sections that demonstrate compliance with Section 27-406(f).

**(g) The applicant shall address how odors emanating from fill materials will be mitigated.**

**Staff Comment:** The application does not address odors per se. However, staff is not aware of evidence that suggests a problem. Fly ash is a combustion by-product of coal-fired furnaces. Fly ash is the very fine, light ash that is carried from the boiler units in the stack gases. The ash is removed from stack gases by precipitators before it can pass into the atmosphere. A small amount of ash is heavy enough to fall to the furnace bottom where it is collected as “bottom ash.” Therefore, any odors associated with the fly ash disposal use would likely emanate from truck exhaust and dust from the gravel access drive (if not suppressed by truck watering from on-site retention ponds). In March 2002, the property was approved to use a synthetic dust suppressant (Syntec Petrotac PT1000) on the ash. The applicant indicates the site has an excellent record of environmental compliance and has been monitored by the Department of Environmental Resources and the Maryland Department of the Environment (MDE) on a continuing basis.

**(h) The Technical Staff Report prepared in response to the application shall include a current, Countywide inventory of the locations, dates of approval, and conditions of approval concerning haul routes and estimated loads per day for all approved and**

**pending Special Exceptions for sand and gravel wet-processing, sanitary landfills and rubblefills, and surface mining, as indicated by the record in the case. The inventory shall also include the locations of all nonconforming sand and gravel wet-processing, sanitary landfills and rubblefills, and surface mining operations throughout the County that were certified after September 6, 1974**

**Staff Comment:** The Planning Department's latest inventory is dated January 19, 2006 (see Attachment 1).

- (i) In reviewing the application for compliance with the required findings set forth in Sections 27-317(a)(4) and 27-317(a)(5), the District Council shall consider the inventory required in Section 27-406 (e) [h] (sic).**

**Staff Comment:** As discussed in Section (j) below, the Environmental Planning Section has not included the subject fly ash rubblefill in previous need assessments because of its unique and sole use as the county's only fly ash disposal site. However, the subject property and use is listed as an active rubblefill in the current inventory maintained by the Environmental Planning Section (Site No. 2001).

- (j) The Technical Staff Report prepared in response to an application for a rubblefill shall include an analysis of need based on the most current available projections of residential and employment growth in Prince George's County over a fifteen-year period. The District Council shall consider this analysis when determining compliance with the finding required in Subsection (h), below, and when determining the period of time for which the Special Exception is valid.**

**Staff Comment:** Need assessments for rubblefills were required beginning in November 1992 (CB-85-1992). The previous Special Exception (SE-4002; approved in January 1991) did not include such an analysis. Also, previous county rubblefill needs assessments, prepared by the Environmental Planning Section, do not include the subject fly ash fill in the evaluation of countywide capacity because of its specialized use only for disposal of fly ash from two local electrical generation plants.

The technical staff is charged with the responsibility to prepare the needs study. The Environmental Planning Section staff (September 23, 2005, memorandum) indicates they have reviewed the applicant's submitted *Rubblefill Needs Assessment – Ash Fill of MIRANT MD Ash Management LLC* prepared by Gershman, Brickner & Bratton, Inc. (May 2005). Based on the review, staff has determined that: "The report thoroughly evaluates the generation and disposal of fly ash as a specialized material related to only two contributing sources. The report further states that during 2005 and beyond, the generation of disposable coal ash quantities generated in Prince George's County is assumed to continue to follow the fixed constraints of utility power plant sizing and coal-combustion capacity, versus the population and employment growth of the county. The county's continued population growth dictates that adequate, affordable electric power service be provided. In order to meet this future demand, it is necessary than an adequate disposal site for the ash by-project be maintained close to the existing power generating facilities. The submitted report demonstrates that the proposed use as a rubblefill for fly ash is necessary to serve the generation of electricity to serve the projected growth in Prince George's County because it is the only fly ash fill site available in the region."

Staff believes that the applicant's May 2005 needs assessment fulfills the requirements of Section 27-406(j) by demonstrating the need for such a use. The report further demonstrates that the

requested 15-year extension period for the special exception is supported by the maximum capacity of the site and the amount of fly ash to be placed.

- (k) **When approving a Special Exception for a rubblefill, the District Council shall find that the proposed use is necessary to serve the projected growth in Prince George's County, by applicant proof that without the proposed use the County's projected growth will be adversely affected. Proof of a future deficit in or absence of County-wide fill capacity does not by itself constitute proof that a proposed fill is necessary to serve the projected growth in the County.**

**Staff Comment:** As stated above, the Environmental Planning Section staff has reviewed the applicant's submitted Rubblefill Needs Assessment (May 2005). Staff is satisfied that the report thoroughly evaluates the generation and disposal of fly ash. The county's continued population growth dictates that adequate, affordable electric power service be provided. Therefore, it is necessary that this single specialized fly ash disposal site be maintained and continued in order to support the generation of electricity to serve the projected growth in Prince George's County. The applicant's "Rubblefill Needs Assessment—Ash Fill of MIRANT MD Ash Management LLC," prepared by Gershman, Brickner & Bratton, Inc. (May 2005), is contained in this special exception case file.

- H. **Parking Regulations:** The Permit Review staff (September 12, 2005, memorandum) indicates the site plan fails to show parking and must be revised to provide parking schedules for required and provided parking. All parking shall be in conformance with the requirements of Part 11 of the Zoning Ordinance.
- I. **Landscape Manual Requirements:** The site plan for prior SE-3106 shows existing buildings and a parking area. In the event new structures are planned, they must be shown on the site plan and conform to the requirements of the Landscape Manual in accordance with Section 27-328.02.
- J. **Zone Standards:** Section 27-441(b) permits rubblefills through approval of a special exception. The subject property conforms to all development regulations of the O-S Zone (Section 27-442).
- K. **Sign Regulations:** The previous special exception (SE-4002) required placement of a sign at the access road intersection with North Keys Road as a condition of approval. Staff noticed during the field inspection on January 13, 2006, that the sign was not at the entrance. The facility manager explained that the sign had been hit earlier in the week and he was preparing to reattach it to a new 4-inch x 4-inch post that staff observed. This same condition is carried forward.
- L. **Other Issues: Section 27-296(c)(1)(B)**—This section requires that site plans shall show all existing and proposed improvements and uses on the subject property and the use and zoning of adjacent properties. The justification statement indicates the presence of two above-ground fuel and oil storage tanks that must be shown on the site plan. The site plan should also show the location of the existing truck washing and parking areas. The justification statement also indicates the presence of a dwelling 350 feet south of the property. All adjacent land uses must be shown or otherwise described on the site plan.

**Public Facilities**—The Public Facilities Planning Section (August 16, 2005, memorandum) indicates that continuation of the existing use as a fly ash disposal operation is not considered a fire hazard. Staff indicates that the first due fire station is Brandywine Fire Station-Company 40. Also, the property is within the service area for Police District V-Clinton. As of January 2, 2005, the county has 1,302 sworn officers and 43 student officers in the academy for a total of 1,345

personnel, which exceeds the standard of 1,278 officers. Therefore, existing police service is adequate.

**MDE Permits**—A September 8, 2005, letter from MDE indicates there does not appear to be any mining or excavation at the site and, therefore, a surface mine permit is not required for ash disposal activities. The applicant is advised that other MDE permits such as National Pollutant Discharge Elimination System (NPDES), Water Quality, and Air Quality may be required. The applicant's justification statement indicates that the property is operating on an expired NPDES permit (MD0065836; expired February 28, 2002) that requires the monitoring of ten surface water parameters at four ponds, such as metals, pH, and hardness. Also, the NPDES permits require the monitoring of receiving streams at three outfalls for ten similar parameters. Also, as part by the current NPDES permit, a MDE-issued Groundwater Permit requires quarterly monitoring of six wells. A report prepared by the applicant as part of the draft NPDES permit examined the wells and concluded that there was little or no potential for off-site groundwater to be affected due to differences in aquifer elevations. A subsequent report in 2003 that reflected monitoring between 1989 and December 2002 found that "although there have been occasional spikes of fly ash constituents in the onsite groundwater over the years, there have been stable or improving trends in most of the monitoring wells since 1993, and no evidence of significant impacts from long-term releases to either ground water or surface water." The report was submitted along with the current application. The applicant also indicates that there have been no reported on-site diesel fuel and oil storage tank leaks or spills. **Note:** During the field inspection on January 13, 2006, staff was given a copy of the site's MDE Discharge Permit (02-DP-1389) and NPDES Permit (MD0054836), both issued by MDE with an effective date of September 1, 2005, to August 31, 2010 (Attachment 2).

**Archeology**—The Historic Preservation and Public Facilities Planning Section staff (September 9, 2005 memorandum) indicates a Phase I archeological survey is not recommended because the entire area has been disturbed. However, the applicant is advised that any Section 106 review by state or federal agencies may require an archeological survey. North Keys Road is a designated historic road.

**Park and Trail Facilities**—The Park Planning staff (August 15, 2005 memorandum) anticipate no impacts on existing and future parkland. The Transportation Planning Section staff (September 8, 2005, memorandum) indicates that, due to the nature of the ash storage use and possible safety or liability issues, no hiker-equestrian trail easement and/or trail construction is recommended at this time. Rather trail easements or construction can be required at the time of ultimate development upon closure of the ash disposal facility.

**Water and Sewer**—The WSSC staff (August 15, 2005, memorandum) anticipates no impacts to the water distribution or wastewater collection systems because the use of public water and sewer is not expected from the existing fly ash use. However, the Subdivision Section staff (August 23, 2005, memorandum) indicates that no building permits may be issued until Health Department approval is granted for withdrawal of well water or septic use, or public water and sewer are available (see Plat VJ 189@97; Note 3, attached to the memorandum). The applicant withdraws from the Patapsco aquifer an average of 1,500 gallons of groundwater on a yearly basis and a daily average of 2,000 gallons a month under a current MDE Water Appropriation and Use permit that requires triennial review by the agency. The use is for potable supply, sanitary facilities and truck washing.

**M. Required Findings:**

**Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:**

- (1) The proposed use and site plan are in harmony with the purposes of this Subtitle.**
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.**
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Map Plan, the General Plan.**
- (4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.**
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

**Staff Comment:** During their review of the site's previous Special Exception (SE-4002), the District Council found that the use generally meets both the specific findings for rubblefills (Section 27-406) and the general special exception findings shown above. The applicant now seeks to renew the special exception and has submitted information that suggests that the use will, with the imposition of additional conditions, continue to operate in accordance with the applicable requirements for this use. With improvements made to area roadways in accordance with DPW&T recommendations, the continuation of the existing use will remain compatible with county planning goals to improve the health, safety or welfare of residents and workers. Eventual reclamation and reuse of this site for recreation, forestry or agriculture activities is consistent with Rural Tier goals and policies. With the recommended conditions, the use or development of adjacent properties and the general neighborhood will be enhanced.

- (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.**

**Staff Comment:** The Environmental Planning Section staff (September 23, 2005, memorandum) indicates the following:

1. "A forest stand delineation was submitted in June 1990, with the previous special exception, and found to fulfill all technical requirements.... No revisions are required for conformance to the NRI."
2. This property is subject to the provisions of the Woodland Conservation Ordinance because it is greater than 10,000 square feet, has more than 10,000 square feet of existing woodland, and more than 5,000 square feet of woodland clearing is proposed. "A Type II Tree Conservation Plan (TCPII/105/90) was approved with the previous special exception approval. The woodland conservation threshold for this site is 106.00 (50 percent of the net tract), but the amount of 100-year floodplain was not subtracted from the gross tract area because this site is subject to the 1989 Woodland Conservation Ordinance, which has less stringent requirements. Because there were only 43.10 acres of existing woodlands on the gross tract area, the woodland conservation threshold was reduced to 43.10 acres or 20.33 percent." Therefore, the amount of woodland conservation required is 43.10

acres, based on the amount of clearing currently proposed which requires 1 to 1 replacement.

“The TCPI has proposed to meet the requirement with 42.80 acres of on-site preservation and 0.30 acres of on-site afforestation for a total of 43.10 acres of woodland conservation to be provided on-site.... No revision is required to the approved Type II tree conservation plan for the proposed extension of the Special Exception timeframe.”

3. “The special exception site plan shall be in compliance with the previously approved Type II Tree Conservation Plan (TCPII/105/900) approved, or as amended as part of this application...[which] precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved tree conservation plan and will make the owner subject to mitigation under the Woodland Conservation/Tree Preservation Policy.”

### **CONCLUSION:**

Based on the above analysis, staff recommends APPROVAL of Special Exception SE-4520, subject to the following conditions:

1. The site plan shall be revised prior to review by the Zoning Hearing Examiner to provide the following:
  - a. Parking schedules for required and provided parking. All parking shall be shown on the site plan and shall be in conformance with the requirements of Part 11 of the Zoning Ordinance.
  - b. A note indicating that the site plan shall be subject to compliance with the restrictions shown on the previously approved Type II Tree Conservation Plan (TCPII/105/900), which precludes any disturbance or installation of any structure within specific areas.
  - c. The location of two above-ground fuel and oil storage tanks.
  - d. The location of the existing truck washing area.
  - e. The location of or note describing all adjacent land uses.
  - f. A note indicating that prior to issuance of any building permits, Health Department approval is required for use of well or septic systems, or public water and sewer are available.
  - g. A note indicating that the site plan shall be subject to compliance with the mound height elevations shown on the previously approved site expansion sheets (Drawings 88-407-F1 to F14).
2. The applicant shall provide the following in accordance with the recommendations of the Department of Public Works and Transportation (DPW&T):
  - a. Resurface North Keys Road from Brandywine Road (MD 381) to Gibbons Church Road with 12.5 mm PG 70-22 Superpave asphalt.

- b. Dedicate all roadway improvements within the public right-of-way in accordance with the county Road Ordinance, DPW&T's Specifications and Standards, and the Americans with Disabilities Act.
  - c. Provide drainage along North Keys Road in accordance with DPW&T's and the Department of Environmental Resources' requirements.
  - d. Obtain from DPW&T the renewal of the haul road permit to haul materials on North Keys Road.
  - e. Obtain from DPW&T a standard street construction permit for all roadway improvements required. Posting of the necessary bonds and payment of the permit fee is required.
  - f. Install all necessary signing and pavement marking associated with North Keys Road.
  - g. Install raised pavement markers on the centerline along the North Keys Road frontage.
  - h. Install street lights at the driveway entrance and the access roads intersecting county roadways.
3. Continuation of the following conditions approved in the prior special exception (S.E.-4002):
- a. In addition to any other sign required, the operator of the fill shall maintain a double sided, freestanding sign at the entrance to the haul road which is clearly visible from North Keys traffic, perpendicular to that road, giving the name of the operator, its mailing address and local phone number;
  - b. A minimum 50-foot-wide wooded buffer be maintained along the north, east and south property lines.
4. This special exception shall expire 15 years after final approval action or upon reaching site capacity to accept fly ash rubble. The applicant shall notify the Department of Environmental Resources and District Council upon cessation of use.