



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

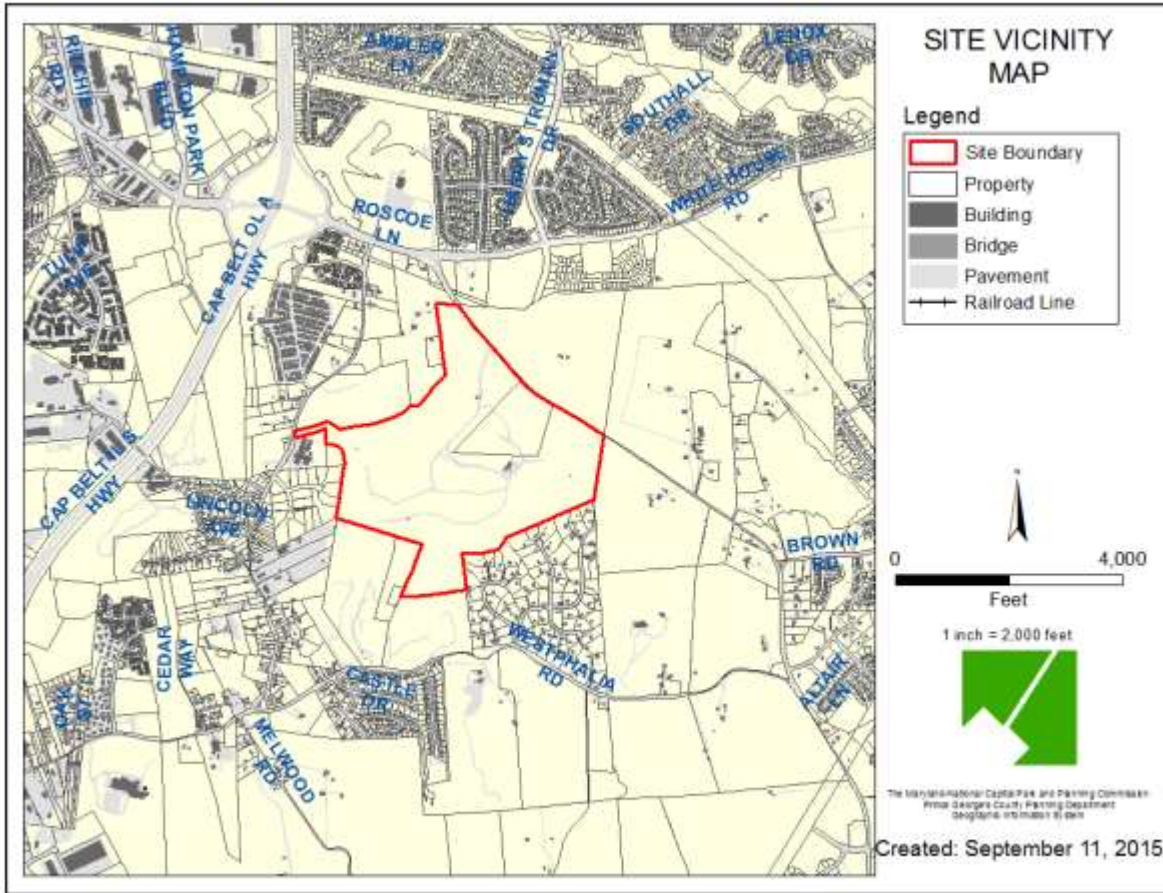
Special Exception

SE-4771

Application	General Data	
Project Name: Ritchie Land Reclamation Rubble Fill Location: On the southwest side of Ritchie Marlboro Road, approximately 3,000 +/- feet south of White House Road. Applicant/Address: Ritchie Land Reclamation Limited Partnership 24024 Frederick Road Clarksburg, MD 20871 Property Owner: Ritchie Land Reclamation Limited Partnership 24024 Frederick Road Clarksburg, MD 20871	Planning Board Review Date:	01/28/16
	Staff Report Date:	01/20/16
	Date Accepted:	10/23/15
	Planning Board Action Limit:	N/A
	Plan Acreage:	289.39 acres
	Zone:	O-S/R-A
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	2
	Planning Area:	78
	Council District:	06
	Election District:	15
	Municipality:	N/A
	200-Scale Base Map:	204SE09

Purpose of Application	Notice Dates	
Major Change to Special Exception Conditions to allow for an extension of the vertical height and life limitations on an existing rubble fill in the O-S and R-A Zones.	Informational Mailing	06/30/15
	Acceptance Mailing:	10/13/15
	Sign Posting Deadline:	N/A

Staff Recommendation		Staff Reviewer: Tom Lockard Phone Number: 301-952-3410 E-mail: Thomas.Lockard@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

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

VIA: Jimi Jones, Supervisor, Zoning Review Section, Development Review Division

FROM: Tom Lockard, Planner Coordinator, Zoning Review Section, Development Review Division

SUBJECT: **Special Exception Application No. 4771**

REQUEST: **Major Change to Special Exception Conditions to allow for an extension of the vertical height and life limitations on an existing rubble fill in the O-S and R-A Zones.**

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of January 28, 2016. 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 addressed to the Prince George's County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. 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 consists of approximately 289 acres located on the west side of Ritchie Marlboro Road, approximately 3,000 feet south of its intersection with White House Road. It is the site of an existing rubble fill. The site is largely cleared as a result of the filling activity, although there are wide forested buffers (100-1,500+ feet) around most of the periphery and along two streams that traverse the property.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-A and O-S	R-A & O-S
Use(s)	Rubble fill	Rubble fill
	312 feet high	372 feet high
	2025 end date	2045 end date
Acreage	289.39	289.39
Parcels	Parcels 70 and 334, Tax Map 82	Parcels 70 and 334, Tax Map 82

- C. **History:** Special Exception Application No. 3515 was approved on February 25, 1985, for a rubble fill on the subject property for a period of five years. On September 16, 1991, the District Council approved Special Exception Application No. 4012, extending the life of the fill 15 years and adding a rock crusher, until the year 2006. On May 15, 2003, the District Council approved a third special exception (SE-4408) for the use, extending the life of the fill until January 1, 2025, extending the elevation from 292 feet to 312 feet and adding a contiguous 30-acre property previously owned by the Board of Education. The District Council approved SE-4408 subject to 23 conditions:

1. The operation shall be limited to approximately 20± acres remaining in Phase I of the fill and 76± acres shown as Phase II as depicted on the site plan.
2. The operation shall be restricted to the placing in a controlled manner of fill consisting of construction or building demolition rubble, including both irreducible materials (e.g., concrete, rock, brick) and those subject to decay (e.g., lumber and root material, brush, tree limbs and stumps). Collection of recyclable materials is permitted as an accessory use as allowed by County and State refuse disposal permits and licenses, provided that the materials originate only at a construction site, and further provided that no single load shall include more than 50 percent by volume of paper and cardboard. This restriction is not intended to affect State permit restrictions on what materials can be placed in the fill. These recyclable materials shall be deposited, separated and stockpiled in the area designated on the site plan. The structure within this accessory use shall not exceed 12,000 square feet.
3. No wallboard or plasterboard material may be placed in the rubble fill if the material, when exposed to water, produces odorous or toxic gas. No asbestos, fiberglass, or hazardous substance may be placed in the fill. For purposes of this condition, "asbestos" means friable asbestos (whose fibers may become airborne) and any other form of harmful asbestos capable of transport and organism invasion by air, water, or contact.
4. A six-foot-high chain-link security fence between the schoolyard and the subject premises, topped by approximately two feet of barbed wire strands slanted at a 45-degree angle, shall be maintained in good condition.

5. The white pine screen buffer between the rubble fill and Arrowhead Elementary School shall be widened from 70 feet to 150 feet.
6. The one and only entrance to the rubble fill shall be the existing road located on Ritchie Marlboro Road.
7. The applicant shall continue to distribute an informational flyer, whose directions shall only bring traffic to the subject property via Central Avenue (MD 214) to Ritchie Road to Ritchie Marlboro Road, and after the opening of the Ritchie Marlboro interchange, from Ritchie Marlboro Road via I-95/495, to general contractors and construction-oriented companies in need of a rubble fill. The informational flyer shall also state clearly that under no circumstances should D'Arcy Road or Sansbury Road be used to enter the rubble fill site.
8. The Special Exception shall terminate on January 1, 2025, unless previously terminated after public hearing for noncompliance with operational requirements and conditions of approval.
9. The rubble fill shall be limited to a height of 312 feet above sea level.
10. All trucks leaving the rubble fill site shall have their wheels and undercarriage washed free of debris.
11. The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday. The fill shall be closed on Saturdays, Sundays and County holidays. Outside the approved hours of operation, trucks shall not be operated on or near the subject property. During times when the operation is to be closed, trucks are not to arrive at, exit, or be operated on the property. The applicant shall instruct all customers about this requirement.
12. The gate at the entrance to the subject property shall be maintained in a locked condition at all times that the rubble fill is not open for business.
13. The applicant shall meet, at least quarterly, with the liaisons designated by the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association.
14. This Special Exception is subject to review by the District Council at its own election every four years. In the year 2016, the applicant shall report to the District Council on the land areas filled and remaining to be filled, and the District Council shall then review the application. The District Council review may result in a modification of the conditions.
15. Copies of the biannual reports to the Maryland Department of the Environment prepared for the applicant regarding regulatory compliance on site shall be made available to the District Council Member representing the area which includes the subject property and the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association. As other civic or homeowners' associations with member properties in the Largo, Little Washington, or Westphalia areas are formed, those associations shall be included in the meetings required in Condition 13 and the reports distribution required in this condition.

16. Prior to the issuance of any permits, a Type II Tree Conservation Plan (TCP) shall be approved by the Environmental Planning Section. The Type II TCP shall provide detailed information on the location of all off-site mitigation, if necessary, planting schedules, planting plans, reforestation management plans, phasing of the plan implementation, and other pertinent information, as determined necessary by the Environmental Planning Section. To the extent feasible, berms and reforestation shall be placed on the Westphalia Woods and Westphalia Estates side of the property.
17. All appropriate reforestation bonds shall be posted with the Department of Environmental Resources in accordance with the phasing of the activities for this application.
18. Development of the site shall conform to the mitigation measures indicated in a report titled "Environmental Noise Assessment, Ritchie Rubble fill Special Exception" prepared by Staiano Engineering, Inc., dated March 12, 2001, and/or any subsequent report approved by the Environmental Planning Section.
19. The construction of berms and all landscaping for screening of the site along Ritchie Marlboro Road, as shown on the applicant's landscape plan, shall be included in the first Prince George's County permit.
20. In the event that any portion of the subject site is dedicated to public use following completion of fill activities, the following shall apply:
 - a. The main access road shall be clearly identified as 30 feet wide with a minimum grade of five percent.
 - b. If Area Basins 2, 3, 4, 5, 6, 7 and Lagoon 1 are to be maintained after the rubble fill closes, a minimum 12-foot-wide vehicular access road to each shall be provided. If they are to be discontinued after closure, this must be noted on the plan.
 - c. Upon completion of the placement of rubble at the site, the Department of Parks and Recreation (M-NCPPC) will be contacted in writing. At that time, and prior to the placement of the "cap," a rough grading plan to accommodate the recreational uses shall be approved by the Prince George's County Planning Board or its designee.
 - d. The plateau, access roads and maintenance roads shall be free of any obstructions above finished grade.
 - e. All existing structures, temporary or otherwise, shall be removed from the site unless they are to be retained by mutual agreement.
 - f. A uniform, thick stand of grass on topsoil shall be established over the site.
 - g. All conditions regarding future development of the site are subject to modification due to State closure requirements.
21. The Site Plan shall be amended to show 11 off-street parking spaces, or a Departure from Parking and Loading Standards obtained. In the event that the recycling shed is enlarged

to 12,000 square feet, an additional 18 parking spaces must be shown, or an additional Departure from Parking and Loading Standards obtained.

22. The maximum daily number of truck loads received at this facility shall be 280, resulting in a maximum of 560 daily truck trips.
23. Within 90 days of this approval, the technical staff shall forward to the Examiner, for placement in the administrative record, revised projections of usage of the different Phase I and Phase II areas on the subject property. Staff projections now in the record must be broken down into five-year increments, to show how and when the Phase I and Phase II areas will be filled in, over the useful life of the facility. (Zoning Ordinance No. 5, 2003). Filling has continued since that time.

- C. **Master Plan Recommendation:** The *Plan Prince George's 2035* designates this property as Rural and Agricultural and Parks and Open Space. The plan description for the Rural and Agricultural Land Use is "Low-density residential uses with areas of agricultural and forestry production. Agricultural land (cropland, pasture, farm fields), forest, and very low-density residential with a density per acre of less than 0.5." The plan description for the Parks and Open Space land use is "Parks and recreation areas, publicly-owned open space (federal, state, County, municipal, and M-NCPPC), and privately-owned open space."

The 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment* shows the land use for this property as Public/Private Open Space. Policy 7 on page 56 of the sector plan identifies the site being converted to an active park use and Policy 3 on page 43 of the sector plan identifies a trail system within the rubble fill park that links to other community trails. Condition 20 in Zoning Ordinance 5-2003 for Special Exception SE-4408 created conditions to be met if any portion of the site was to be dedicated to public use following the completion of fill activities.

- D. **Request:** The applicant requests permission to once again extend the life of the fill, this time by 20 years, until January 1, 2045. The applicant also proposes the raise the height of the fill from 312 feet to 372 feet above sea level. The site will continue to be accessed by an existing haul road directly from Ritchie Marlboro Road. The applicant proposes the same hours of operations: 7:00 a.m. to 5:00 p.m., Monday through Friday, closed on weekends and County holidays

- E. **Neighborhood and Surrounding Uses:** The site is surrounded by the following uses:

North–	Undeveloped land and scattered single-family residences in the R-E Zone.
East–	Undeveloped land partially used for agriculture in the R-E Zone.
South–	Two Class III landfills and single-family residences (Westphalia Woods) in the R-A and R-E Zones, respectively.
West–	The Arrowhead Elementary School in the O-S Zone and an undeveloped industrial park in the I- Zone.

The neighborhood is defined by the following boundaries:

North and East–	Ritchie Marlboro Road
South–	Westphalia Road

West–

D’Arcy Road and Sansbury Road

This neighborhood is largely rural and undeveloped in nature, although there have been several new residential subdivisions developing since the last site approval, most notably the Westphalia Row subdivision to the north of the site at the corner of Sansbury Road and Ritchie Marlboro Road and single-family residences along Valley Forest Drive to the south. There are also several Class III Landfills along the north side of Westphalia Road, the current operating status of which are unknown.

F. Amendments of Approved Special Exceptions

Section 27-323. - Alterations, enlargements, extensions, and revisions.

- (a) All alterations, enlargements, extensions or revisions of Special Exception uses (including enlargements in land area and area of improvements, revisions of a site plan and in the configuration of land area, and extensions of time) shall require the filing and approval of a new application for the applicable Special Exception use, except as specifically provided for in this Subdivision.**

Comment: The applicant originally proposed this application as a revision of site plan (ROSP-4408-01), however, since they are proposing a substantial vertical enlargement of the use a new application for special exception is appropriate in this instance.

Section 27-324. - Major Changes.

- (a) The District Council may (for good cause) amend any imposed condition or approved site plan without requiring a new application if the amendment does not constitute an enlargement or extension of a Special Exception use.**
 - (1) In the case of an amendment of a condition (imposed as a part of the approval of a Special Exception), the amendment request shall be directed (in writing) to the District Council and filed with the Clerk of the Council. The Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129. The Technical Staff shall analyze the proposed amendment and submit a report to the Zoning Hearing Examiner at least fourteen (14) days prior to the public hearing. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner’s recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council’s Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.**

Comment: The applicant proposes to increase the vertical height of the rubble deposited on the site and extend the life of the fill. In order to do so, the District Council would have to find there was “good cause” to modify four of the conditions imposed in the last special exception approval:

1. **The operation shall be limited to approximately 20± acres remaining in Phase I of the fill and 76± acres shown as Phase II as depicted on the Site Plan.**

Comment: With the proposed increase in the height of the fill, Phase I would now be approximately 78 acres in area, while Phase II would remain 76 acres.

8. **The Special Exception shall terminate on January 1, 2025, unless previously terminated after public hearing for noncompliance with operational requirements and conditions of approval.**

Comment: The applicant is asking that the termination date for the use be extended to 2045. If approved, this “temporary” use has the potential to be in this neighborhood for 60 years, with half of that timeframe being decided by this application.

9. **The rubble fill shall be limited to a height of 312 feet above sea level.**

Comment: The applicant is requesting permission to extend the height of the fill to 372 feet, observing that the Class III Landfills to the south have been approved for that elevation. When the fill was originally approved, it was capped at 292 feet, which matched the highest elevation in the neighborhood. This elevation was increased 20 feet to 312 feet in the last special exception. This request, if approved, would raise it another 60 feet.

14. **This Special Exception is subject to review by the District Council at its own election every four years. In the year 2016, the applicant shall report to the District Council on the land areas filled and remaining to be filled, and the District Council shall then review the application. The District Council review may result in a modification of the conditions.**

Comment: The applicant proposes to change the year to 2030 for reporting to the District Council, consistent with the extension of time to 2045.

Section 27-326. – Extension of Time Limit

- (b) **In order to extend a time limit which is imposed as a condition of a Special Exception approval, a new special exception need not be filed. The extension may be approved in accordance with the requirements and procedures of Section 27-324(a)(1) (Major Changes).**

Comment: Because the time limit was imposed by condition in the last special exception approval, it can be extended through the major change provisions.

G. Specific Special Exception Requirements:

Section 27-406. Sanitary Landfill; Rubble fill

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

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

Comment: The applicant requests the special exception, if approved, remain valid until 2045. If this time period is approved, this “temporary” use will have been in existence in this neighborhood for 60 years. Staff has no reason to believe that the applicant, if approved for the additional time, would deviate from their past exemplary operating practices. However, due to the extraordinary period of time requested, if approved, staff would recommend retaining a condition from the last approval declaring that this special exception is subject to review by the District Council at its own election every five years. This review may result in a modification of the conditions of approval or a termination of approval.

- (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.**

Comment: The site is in the R-A and O-S Zones, not the R-E Zone.

- (d) **An application for a sanitary landfill or rubble fill that includes a “rock crusher” on the site must show the location of the proposed “rock crusher” on the site plan.**

Comment: An existing rock crusher, approved as part of Special Exception SE-4012, is shown on the site plan.

- (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.**

Comment: The Transportation Planning Section, in their referral dated November 17, 2015, made the following observations and conclusion:

A current traffic study was not provided by the applicant. However, according to the justification statement the maximum number daily truck trips allowed by Condition 22 in May 2003 will not change. This was set at 560 daily-truck trips (280 truckloads). In addition, the hours of operation at the site will remain the same from 7 AM to 5 PM on weekdays. No trucks are allowed on the site after these hours of operations. As a result no increases in truck trips are expected at the site. It is expected that the number of AM and PM peak-hour trips cited in a previous traffic study will not change. The count data and information provided by the rubble fill operator indicate that the site generates 51 AM peak-hour trips and 45 PM peak-hour trips. No changes in the maximum or average truckloads are requested by the applicant.

Therefore, the proposed changes presented by the applicant should not impact transportation facilities in the area since truck operations will remain the same as exists today. In addition, since May 2003 two roundabouts have been constructed at Ritchie Marlboro Road and I-95/I-495 improving traffic operations at that location. Condition 7 set by the District Council in May 2003 states that trucks must use Ritchie Marlboro Road via the I-95/495 to access the site. This condition should remain in effect.

The site is served by one entrance on Ritchie Marlboro Road as required by the District Council (Condition 6) in May 2003. This condition should remain in effect. The site is adjacent to Ritchie Marlboro Road. This roadway is listed in the 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment* as an arterial roadway with 120 feet of right-of-way. No structures are proposed within the planned right-of-way of Ritchie Marlboro Road.

Conclusion

The Transportation Planning Section finds that the proposal for would meet the requirements of Subtitle 27 for the approval of a Special Exception from the standpoint of vehicular circulation and transportation.

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

Comment: The applicant has prepared a visual analysis which shows the fill to be hidden from adjoining properties by the use of existing woods and supplementary buffer plantings. The fill had previously been well hidden, however, it is now only too visible from Arrowhead Elementary School and Sansbury Road, as past screening attempts have not kept up with the increase in elevation, particularly since the applicant has exceeded the contour and elevation limits established in the prior approval.

On their approved site plan and in their testimony in SE-4408, the applicant described a gradual slope up from Arrowhead Elementary School (AES), terminating at a 300-foot elevation plateau some 400–500 feet from the shared property line for Parcel 69 (the field behind AES). The site plan we have before us now shows the 300-foot contour approximately 125 feet from the property line and a 320-foot contour at approximately 230 feet from the property line. It is apparent the applicant has significantly overfilled the western section of the site with either dirt, rubble or both, beyond those contour and elevation limits established by the conditions placed by the District Council on the approved site plan for SE-4408. This has resulted in a much steeper grade which creates a towering effect that existing screening cannot ameliorate, to which the applicant proposes an additional 60 feet in height. The applicant does not address this discrepancy. No balloon test was submitted, and no photographs of the existing viewshed from adjacent roadways or properties were submitted. The site plan includes four cross sections of the site: section 111 runs north to south and represents the sight line from the adjacent Cherry Hill sand and gravel site on the north and the Brandywine sand and gravel site as well as the Westphalia Class III fill site to the south; section 222 runs southwest to northeast and represents the sight line from an existing open storage area on the southwest and Ritchie Marlboro Road on the northeast; section 333 runs west to east and represents the sight line from the adjoining undeveloped Sansbury Park residential subdivision on the west and Ritchie Marlboro Road on the east; and section 444 runs northwest to southeast and represents the sight line from the adjoining Arrowhead Elementary School property on the northwest and a residential lot on the southeast.

The top elevation of the mound as previously approved should be 312 feet. All of the cross sections show a portion of the site with existing elevations exceeding the previously approved elevation. The most highly visible viewing locations appear to be from Ritchie Marlboro Road and Arrowhead Elementary school. There is an existing vegetated berm along Marlboro Ridge Road that screens the view of the existing operation, and based on the cross section would continue to screen the view of the proposed higher elevation of fill; however, a balloon test would provide additional data upon which to base the determination. The view from

Arrowhead Elementary school was previously approved to be screened with vegetation. The maximum height of fill (312 feet) was approved to be located approximately 400 feet from the property line of the elementary school, which is at an elevation of approximately 260 feet; this constitutes a slope of approximately 13 percent. The proposed maximum height of fill is 372 feet. From the same elementary school property line, the fill is proposed to reach a height of 370 feet at a distance of 500 feet; this constitutes a slope of approximately 22 percent.

Cross section 444 from Arrowhead Elementary shows proposed 50-foot-tall screening vegetation as a mix of Leyland Cypress and White Pine, to be planted in two double rows between elevation 300 and 320 feet; the size of the material to be planted is 6 - to 8 feet and 8 - to 10 feet respectively. Leyland Cypress is fast growing, but not long-lived. White Pine will take longer to reach maturity and are generally not as dense, but will last longer than the Leyland Cypress. However, additional planting should be provided between the existing screening vegetation and the proposed in order to provide a more robust and long-lived screening option. It is not clear when the screening vegetation proposed under the current application would be installed since the upper row of vegetation appears to be proposed on an area yet to be filled. The vegetation will take time to get established and grow to full size in order to provide adequate screening. A balloon test is needed to better determine if the proposed location and elevation of the proposed planting would provide adequate screening.

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

Comment: The applicant does not address this requirement in their Statement of Justification. Staff has been to this site many times through the years with the only odor being noticed being diesel fumes from the trucks and heavy equipment on site. The applicant does store piles of combustible material on site in the form of mulch, which could result in smoldering fires with unpleasant odors. According to a report from MDE, on October 24, 2007, one of these mulch piles caught fire but was soon extinguished.

- (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 rubble fills, 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 rubble fills, and surface mining operations throughout the County that were certified after September 6, 1974.**
- (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).**

Comment: The Environmental Planning Section (M-NCPPC) prepared the required inventory, a copy of which inventory is attached to this staff report. The inventory lists 79 active sites comprised of 69 sand and gravel mines, 9 wash plants, 1 rubble fill and 2 sanitary landfills (Brown Station Road and the PEPCO Fly Ash Fill).

- (j) The Technical Staff Report prepared in response to an application for a rubble fill 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.

Comment: A rubble fill is a landfill in which construction or building demolition rubble is placed in a controlled manner. Rubble is a type a solid waste that includes land clearing debris, demolition debris and construction debris. It is the policy of Prince George's County to use rubble fills for the disposal of construction and demolition materials and to discourage use of sanitary landfill space for its disposal. It is also the County's policy to locate rubble fills on previously disturbed land such as abandoned sand and gravel mines, in areas where the natural slope is less than 15 percent, where environmental constraints are minimal, and on the basis of demonstrated need. The County discourages clearing and excavation of forests and wetlands for rubble fills. Rubble fills will not be approved if they will affect County groundwater resources or the groundwater resources of other counties.

Recycling has become an increasingly important tool in approaching the problem of waste disposal. It manages the County's solid waste and uses it as a resource. It will reduce, but not eliminate the need other solid waste disposal facilities. The applicant anticipates average yearly volumes decreasing in the years to come as recycling efforts continue to increase and as improved recycling technologies and efficiencies improve. To that end, the current operation is supplemented by facilities such as Brandywine Enterprises C&D Processing Facility on Sheriff Road and the Lawrence Avenue C&D processing and recycling facility that was added to the Plan in 2005. There is no question that rubble fills are necessary as part of the overall disposal program for the County, and that there will continue to be a need for rubble fills and C&D processing facilities in the County over the next 15 years. The County expects this material will be managed by the private sector. The locations of new or expanded fills will be established on a case-by-case basis through the zoning process.

The Landfills Capacity Report submitted in SE-4408 addressed the need for a rubble fill in the county. It evaluated several scenarios with respect to allocation of materials between various sites, growth in demand and the amount of recycling. The report took into account the impending closure of three long-existing fills and also considered the permitted but unbuilt recycling facility located on Dower House Road. The report concluded that County-wide capacity at the existing solid waste facilities would not be sufficient to meet the in-county demand or the total (in and out-of-county) demand during the 15-year planning period (2001-2016). According to the report, capacity to meet in-county demand would be available until May 2007, while capacity to meet the total demand would be available until July 2003.

The report relied on a set of assumptions, the primary one of which was that population and employment increases could be used as a basis to forecast future rubble generation. Now, fifteen years later, we can measure the validity of this assumption. **Table 1** compares the forecast rubble generation to the actual reported amount of rubble accepted by Ritchie (as the sole remaining rubble landfill in the County):

Table 1

**Comparison of Rubble Generation Forecast in Needs Analysis for SE-4408 to
Actual Reported Tons Accepted at Ritchie Land Reclamation Rubble Fill**

YEAR	PREDICTED IN-COUNTY (1)	ACTUAL TONS (2)	+ / - TONS (1-2)	PREDICTED OUT-COUNTY (3)	ACTUAL TONS (4)	+ / - TONS (3-4)	+ / - TOTAL
2014	339,523	135,345	-204,155	332,263	235,783	-96,417	-300,572
2013	336,418	110,542	-225,876	328,973	199,507	-129,466	-355,342
2012	333,313	107,819	-225,494	325,716	258,397	-67,319	-292,813

While this analysis does not take into account potential in-county rubble being taken to out-of-state facilities, the analysis done for SE-4408 recognized this fact as an unavoidable flaw in the methodology, since out-of-state facilities do not report load origins at county levels. Although there is also a possibility of in-county rubble being taken to other facilities in the State, it certainly would not be to the extent suggested by the data. Nor can it be explained by a precipitous decline in population and employment in Prince George's County over the last 15 years. This would seem to suggest that county population and employment are not reliable indicators of future in-county rubble generation.

The most recent information from the Maryland Department of the Environment (MDE) indicates that there are currently two actively permitted rubble landfill operations in the region. One of them is located in Prince George's County (the subject property) and the other, known as the Tolson & Associates Rubble Landfill, is located in Anne Arundel County. Of the two, only the subject site is fully active. The other fills identified in the last analysis (Brandywine Crosstrails, Sandy Hill and PST Reclamation) have all closed, as expected. The Brown Station Road Landfill no longer accepts rubble. According to the Round 8.4 Cooperative Forecasting compiled by the Metropolitan Washington Council of Governments, the population and employment of Prince George's County is expected to increase as shown in **Table 2**:

Table 2

**Population and Employment Forecasts For
Prince George's County, Maryland
(Rounded to Nearest 100)**

YEAR	POPULATION (1)	EMPLOYMENT (2)	TOTAL (1 + 2)
2015	881,400	357,000	1,238,400
2020	899,900	377,900	1,277,800
2025	926,900	403,100	1,330,000
2030	950,000	427,500	1,337,500

Dividing the number of tons of rubble generated in Prince George's County for calendar year 2014 (135,345 tons) by the population and employment total in 2015 results in a yearly per capita rubble generation rate of 0.1092 tons per person. This is significantly lower than the previously calculated rate of 0.26432 and is below the minimum range suggested by the references in the previous needs analysis (0.12).

Multiplying the total population and employment numbers times the per capita rubble generation rate gives us the projected in-county rubble generation figures in **Table 3**. Adding out-of-county rubble at the historic 1:2 ratio:

Table 3

**Projected Rubble Generated In-County/Out-of-County Accepted
Prince George's County, Maryland
(Rounded to Nearest 100)**

YEAR	POPULATION PLUS EMPLOYMENT	RUBBLE GENERATION RATE	PROJECTED IN-COUNTY RUBBLE (TONS)	PROJECTED OUT-COUNTY RUBBLE (TONS)	TOTAL RUBBLE (TONS)
2015	1,238,400	0.1092	135,233	270,466	405,699
2020	1,277,800	0.1092	139,535	279,070	418,605
2025	1,330,000	0.1092	145,236	290,472	435,706
2030	1,337,500	0.1092	146,055	292,110	438,165

Note: These projections are for rubble **generated**, not rubble actually **filled**.

Staff does not believe that population and employment numbers in and of themselves are reliable indicators for the generation of rubble. Rubble generation rates are highly variable, and are influenced by a variety of factors including home construction, business development, employment, reuse and recycling, disposal costs, available disposal space, proximity of generation point to the disposal facility (not only rubble landfills but Class III fills, land clearing debris landfills, etc.) practices of illegal dumping, the importation of rubble waste generated outside the county for disposal, and exportation of rubble wastes generated within the county for disposal elsewhere. Changes to any of these factors will result in a change to the amount of rubble produced, accepted and filled, positively or negatively. Attempting to forecast rubble generation based on one or two of these factors, at the expense of ignoring the others results in unreliable conclusions, in our opinion. Several important changes have taken place over the intervening years which may help explain the reduction in the amount of rubble making its way into the rubble fill (Unless otherwise noted, all data is taken from the Maryland Department of the Environment (MDE) *2014 Maryland Solid Waste Management and Diversion Report*):

1. As of October 15, 2015, five counties in the State of Maryland had rubble landfills and two counties had land-clearing debris landfills. Baltimore County had two rubble landfills, while Prince George's, Anne Arundel, Queen Anne and Washington Counties each had one rubble landfill. The Washington County fill is not currently operational.
2. The Tolson & Associates Rubble Landfill in Anne Arundel County is a 72.38-acre fill site on a larger 184-acre property approximately five miles north of the Prince George's County line in Crofton, MD. This places it approximately 16 linear miles northeast of the Ritchie Land Reclamation Rubble Landfill. The Tolson & Associates Rubble Landfill was issued a Refuse Disposal Permit (No. 2003-WRF-0580) on November 24, 2014, with an expiration date of November 23, 2019. A fact sheet compiled by MDE suggests this fill has an estimated total volume of 5.7 million cubic yards. With an estimated acceptance rate of 306,000 cubic yards per year, the fill has an estimated lifespan of almost 19 years.

Staff Comment: This is a substantial change from the last needs analysis. This fill, once fully operational, will undoubtedly capture some of both the in-county rubble flow as well as some of the rubble now coming to Ritchie from other jurisdictions. The applicant does not address this change.

3. The Grant County Mulch, Inc., facility on Van Dusen Road in Prince George's County is by far the largest Natural Wood Waste (NWW) recycling facility in the State. NWW is considered solid waste until it is recycled and includes trees and other natural vegetative materials including: tree stumps and limbs, brush, root mats, logs, leaves, grass clippings, and unadulterated wood wastes that are generated when land is cleared for construction purposes. Much of this material made its way into rubble fills in the past. In 2013, the facility accepted 113,648 tons of NWW material, more than 28% of the statewide total. This facility was not fully operational at the time of the last needs analysis.
4. During 2013, the State of Maryland accepted 754,117 tons of construction and demolition (C & D) materials. The subject Ritchie Land Reclamation Rubble Landfill accepted 310,049 tons in 2013, representing 41 percent of the total rubble materials in the State of Maryland. It should be noted that not all waste accepted is placed in the fill, due to recycling and reuse. For example, in 2014, Ritchie accepted 384,595.83 tons of material, but after recycling, sorting and onsite reuse, only 212,399 tons (55%) were placed in the fill.
5. According to a 1998 Maryland Environmental Service report, in 1995 Maryland imported about one million tons of rubble; in 2013, Maryland imported 185,711 tons of rubble. This is a substantial reduction from the last analysis.
6. During 2013, in the State of Maryland, the construction and demolition (C & D) component represented 26 percent of the tonnages of total solid waste received at landfills and incinerators in the state; in Prince George's County, this component (C & D) represents 50 percent of the tonnages of total solid waste handled by the county. These percentages are almost identical to those found in the last analysis, which was based on 1999 data.
7. The most recent data available shows that approximately 63.5 percent of the C & D accepted at Ritchie comes from out-of-county sources (see Table 4). The County's only Municipal Solid Waste Landfill, the Brown Station Road Sanitary Landfill, no longer accepts commercial C & D debris and allows limited residentially-generated loads.

Conclusions:

1. Section 27-406(j) requires staff to provide 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. According to the Washington Metropolitan Council of Governments Round 8.4 Cooperative Forecasts, the total population of the County will increase from 881,400 to 950,000 by 2030, a 7.8% percentage change. For that same time period, total employment is forecast to increase from 357,000 to 427,500, a 19.8% percentage change. This increase will result in additional rubble being generated, but even with a corresponding increase in out-of-county rubble at the historic 1:2 ratio and continuing the same

recycling/reuse percentages, the available remaining capacity at an elevation of 312 feet would be sufficient to meet the rubble needs over the next 15 years.

2. The applicant, in a letter (Woodburn to Ensor) dated July 2, 2015, provides an analysis of the current fill capacity remaining at Ritchie based on current fill projections under the current special exception conditions (i.e., at an elevation of 312 feet). They estimate remaining capacity at the site (7.648 million cubic yards) will provide an additional 15.1 years of fill (or until 2030) at a fill rate of 390,000 cubic yards per year. This equals the time period called for in 27-406(j) and corresponds favorably to the conclusion of the last needs analysis, which estimated the remaining capacity of the expanded fill would be reached in 2033. However, the fill rate of 390,000 cubic yards per year far exceeds the current rate of fill, which was 212,399 cubic yards in 2014. Over the nine year period from 2006 to 2014, the fill rate has ranged from 183,444 cubic yards to 291,958 cubic yards, with an average of 245,104 cubic yards. 390,000 cubic yards of fill per year would, in fact, exceed the amount of material **accepted** in 2014, much less the amount actually placed in the fill. Given the 280-truckload per day cap placed on the use, staff cannot conceive of 390,000 cubic yards being placed in the fill on a yearly basis, unless the applicant were to stop recycling and reusing and were to start filling all accepted material indiscriminately. Regardless, even at this remarkable fill rate, the applicant projects that the remaining capacity will be sufficient for the next 15 year period. In their latest report to MDE, the applicant estimates that based on existing fill rates the remaining capacity at the site (which they calculate to be 5.827 million cubic yards) will be reached in 2042 (Table 5). The applicant gives no explanation for this discrepancy.
3. Using population and employment figures to forecast future rubble generation has been shown to be less than reliable. The last such exercise resulted in forecasts that were more than twice the actual figure for in-county generated rubble. Staff has replicated the process for this update, resulting in a much lower per capita generation factor. We consider the resulting data to be similarly suspect.

Table 4
YEARLY TONS OF C&D MATERIALS ACCEPTED AT RITCHIE LAND RECLAMATION RUBBLE
FILL

(Gate Tons of C&D Material for CY 2012-2014, by Place of Generation)

2012			2013			2014		
IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)	IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)	IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)
107,819.67 (29.4%)	258,397.03 (70.6%)	366,216.7 (100%)	110,542.08 (35.7%)	199,507.25 (64.3%)	310,049.33 (100%)	135,345.03 (36.5%)	235,783.11 (63.5%)	371,128.14 (100%)

Source: Solid Waste Tonnage Reports 2012-2014 to MDE for Permits 2010-WRF-0126 and 2010-WRF-0590, Ritchie Land Reclamation, LLC

Table 5
PROJECTED REMAINING CAPACITY AND LIFESPAN OF RITCHIE LAND RECLAMATION
RUBBLE FILL

(As Currently Permitted at 312 Feet Maximum Elevation ASL)

2014		
SOLID WASTE FILLED IN 2014 (Cubic Yards)	REMAINING LANDFILL CAPACITY (Cubic Yards)	YEAR CAPACITY WILL BE REACHED
212,399	5,827,802	2042

Source: Solid Waste Tonnage Report 2014 to MDE for Permits 2010-WRF-0590, Ritchie Land Reclamation, LLC

- (k) **When approving a Special Exception for a rubble fill, 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.**

Comment: The record in this application to this point contains no “applicant proof” that without the extension and expansion sought by the applicant the County’s projected growth will be adversely affected. It is supposed that they will choose to rely on the report and expert testimony from the record in SE-4408, which the District Council found persuasive. Of the 23 counties and one county-equivalent (the City of Baltimore) in the State of Maryland, only five have rubble landfills, of which four are actually operating. Howard, Calvert and Charles Counties have been among the fastest growing in the State, yet none have rubble fills. Montgomery County continues to grow despite the fact that they have no fill. Obviously, the lack of a rubble facility within their boundaries has not caused their growth to be adversely affected. They, and the rest of the counties without fills, simply export their rubble to the nearest county or state that does. In 2014, for example, Ritchie accepted more than 120,000 tons of material from Montgomery County alone. That is the reason that the subject site accepts 41 percent of the State’s rubble material and nearly twice as much out-of-county material as it does rubble generated in Prince George’s County. Staff does not believe this finding is made and quite frankly is somewhat uncertain how it can be made.

- G. **Parking Regulations:** The applicant is required to provide one parking space for each 500 square feet of building area on the site. The site plan shows two buildings, the existing scale house (a 256-square-foot trailer), and the existing 4,800-square-foot recycling shed. This use does not lend itself well to an organized, permanent parking lot since the workers are constantly shifting to different locations on the 289-acre site as they are needed. The trucks coming to and from the site simply off-load and leave without parking. Visitors are few; they park at the scale house where concrete or timber wheel stops define a de facto parking area. Twice previously, the use has been approved without permanent parking facilities shown, with the realization that adequate parking can be provided on-site for the relatively few workers. However, the Zoning Ordinance clearly requires that parking be shown on the site plan or a departure from parking and loading standards obtained. The site plan shows that 35 parking spaces are required, but only 33 spaces are provided. Therefore, the site plan would need to be amended accordingly.
- H. **2010 Prince George’s County Landscape Manual Requirements:** The 2010 *Prince George’s County Landscape Manual* (Landscape Manual) classifies a rubble fill as a low-intensity use. The

proposal must comply with the requirements of Sections 4.2 (Commercial and Industrial Landscape Strip Requirements) and 4.7 (Buffering Incompatible Uses) of the Landscape Manual. These requirements are met by the wide undisturbed forest buffers along the periphery and the proposed 200-foot-wide reforested berm along Ritchie Marlboro Road.

I. **Zone Standards:** The proposal conforms to the requirements and standards for the R-A and O-S Zones, with the exception of woodland conservation requirements.

J. **Sign Regulations:** The existing sign along Ritchie Marlboro Road is shown on the plan.

K. **Other Issues:** Additional Findings

1. **Environmental Impacts:** The Environmental Planning Section (M-NCPPC), in its referral dated January 20, 2016, evaluated this request and made the following findings (in relevant part):

Grandfathering

The project is grandfathered with respect to the environmental regulations contained in Subtitles 24, 25, and 27, that came into effect on September 1, 2010 and February 1, 2012 because the project has a previous Special Exception (SE-4408) and Type II Tree Conservation Plan TCPII-098-04 that has been implemented. The current application is in general conformance with TCPII-098-04.

Site Description

The 288.40-acre site, in the R-R Zone, is located on the west side Ritchie Marlboro Road, approximately 3,000 feet south of its intersection with White House Road. The site is split zoned with 30.11 acres in the O-S Zone (Parcel 70), and 268.43 acres in the R-A Zone (Parcel 334). A review of the information available indicates that there are streams, wetlands and 100-year floodplain on the subject property. The on-site stream is Turkey Branch, a tributary of the Patuxent River, which is mapped as a Tier II waterway and is located within a Stronghold watershed. The predominant soils found to occur according to the US Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey (WSS) include the Udorthents refuse substratum, Udorthents reclaimed gravel pits, Marr-Dodon complex, Croom-Marr complex, Collington-Wist complex, Adelphia-Holmdel complex, and Widewater and Issue soils. Marlboro and Christiana clays are not mapped on this property. Based on information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened or endangered species found to occur on this site. Forest Interior Dwelling Species (FIDS) is mapped on-site. The site has frontage on Ritchie Marlboro Road, a master plan designated Arterial roadway, and a small portion of frontage on Sansbury Road, a master plan designated Collector roadway. Ritchie Marlboro Road is a master plan designated Historic road. The site is located within the Established Communities of the Growth Policy Map and Environmental Strategy Area 2 (formerly the Developing Tier) of the Regulated Environmental Protection Areas Map as designated by *Plan Prince George's 2035 Approved General Plan*. According to the *2005 Approved Countywide Green Infrastructure Plan*, the site is located within the designated network of the Green Infrastructure Plan and includes all three designations; Regulated, Evaluation, and Network Gap areas.

Master Plan Conformance

The current Master Plan for this area is the *2007 Approved Westphalia Sector Plan and*

Sectional Map Amendment (SMA). In the Approved 2007 Sector Plan and Sectional Map Amendment, the Environmental Infrastructure Section contains goals, policies, and strategies. The following guidelines have been determined to be applicable to the current project. The text in **BOLD** is the text from the master plan and the plain text provides comments on the plan conformance.

Policy 1. Protect, preserve, and enhance the identified green infrastructure network within the Westphalia sector planning area.

Strategies:

1. **Use the sector plan designated green infrastructure network to identify opportunities for environmental preservation and restoration during the review of land development proposals.**

According to the 2005 *Approved Countywide Green Infrastructure Plan*, the site contains Regulated, Evaluation, and Network Gap areas. Minor encroachments into the Network Gap Areas and Evaluation Areas were previously approved for stormwater management and sediment control features. No additional impacts to the network are proposed with the current application.

2. **Preserve 480 or more acres of primary management area (PMA) as open space within the developing areas.**

No new impacts to regulated environmental features have been proposed with the subject application.

3. **Place preserved sensitive environmental features within the park and open space networks to the fullest extent possible.**

No park dedication is required with the current application and no new impacts to regulated environmental features have been proposed with the subject application.

4. **Protect primary corridors (Cabin Branch) during the review of land development proposals to ensure the highest level of preservation and restoration possible. Protect secondary corridors (Back Branch, Turkey Branch, and the PEPCO right-of-way) to restore and enhance environmental features, habitat, and important connections.**

The site contains Tier II waters within the Turkey Branch watershed, which is a mapped secondary corridor. No new impacts to regulated environmental features have been proposed with the subject application.

5. **Limit overall impacts to the primary management area to those necessary for infrastructure improvements, such as road crossings and utility installations.**

No new impacts to regulated environmental features have been proposed with the subject application.

6. **Evaluate and coordinate development within the vicinity of primary and secondary corridors to reduce the number and location of primary management area impacts.**

No new impacts to regulated environmental features have been proposed with the subject application.

7. **Develop flexible design techniques to maximize preservation of environmentally sensitive areas.**

No new impacts to regulated environmental features have been proposed with the subject application.

Policy 2. Restore and enhance water quality of receiving streams that have been degraded and preserve water quality in areas not degraded.

Strategies:

1. **Remove agricultural uses along streams and establish wooded stream buffers where they do not currently exist.**

The site does not contain agricultural uses.

2. **Require stream corridor assessments using Maryland Department of Natural Resources protocols and include them with the submission of a natural resource inventory as development is proposed for each site. Add stream corridor assessment data to the countywide catalog of mitigation sites.**

Because no new impacts to regulated environmental features have been proposed with the subject application, no stream corridor assessment has been required.

3. **Coordinate the road network between parcels to limit the need for stream crossings and other environmental impacts. Utilize existing farm crossings where possible.**

No stream crossings are proposed with the subject application.

4. **Encourage shared public/private stormwater facilities as site amenities.**

Stormwater management is discussed in detail in the Environmental Review section of this memorandum.

5. **Ensure the use of low-impact development (LID) techniques to the fullest extent possible during the development review process with a focus on the core areas for use with bioretention and underground facilities.**

Stormwater management is discussed in detail in the Environmental Review section of this memorandum.

Policy 3. Reduce overall energy consumption and implement more environmentally sensitive building techniques.

Strategies:

1. **Encourage the use of green building techniques that reduce energy consumption. New building designs should strive to incorporate the latest environmental technologies in project buildings and site design. As redevelopment occurs, the existing buildings should be reused and redesigned to incorporate energy and building material efficiencies.**

No building is proposed with the subject application.

2. **Encourage the use of alternative energy sources such as solar, wind and hydrogen power. Provide public examples of uses of alternative energy sources.**

The use of alternative energy sources should be encouraged.

Policy 4. Plan land uses appropriately to minimize the effects of noise from Andrews Air Force Base and existing and proposed roads of arterial classification and higher.

Strategies:

1. **Limit the impacts of aircraft noise on future residential uses through the judicious placement of residential uses.**
2. **Restrict uses within the noise impact zones of Andrews Air Force Base to industrial and office use.**
3. **Evaluate development proposals using Phase I noise studies and noise models.**
4. **Provide for adequate setbacks and/or noise mitigation measures for projects located adjacent to existing and proposed noise generators and roadways of arterial classification or greater.**
5. **Provide for the use of appropriate attenuation measures when noise issues are identified.**

Strategies 1 and 2 are specific to noise associated with Andrews Air Force Base. The subject property is located within the outer horizontal surface – right runway (height zone F) and the conical surface (20:1) – right runway (height One E) of the Air Installation Compatible Use Zone (AICUZ) of the 2007 Joint Land Use Study (JLUS); however, it is not located within any of the mapped noise contours.

Strategies 3 through 5 apply to traffic generated noise. The site fronts on Ritchie Marlboro Road, a master planned Arterial roadway; however, given the nonresidential nature of the application traffic generated noise is not an issue for the project.

The site itself is a noise generator. The previous Special Exception SE-4408 was evaluated for noise, specifically with respect to the rock crusher on-site, but also

for the noise generally produced by the fill operation. This is discussed under the previous conditions of approval.

Countywide Green Infrastructure Plan Conformance

The southern portion of the site is located within the designated network of the *2005 Approved Countywide Green Infrastructure Plan* and includes all three designations; Regulated, Evaluation, and Network Gap areas. Minor encroachments into the Network Gap Areas and Evaluation Areas were previously approved for stormwater management and sediment control features. No additional impacts to the network are proposed with the current application. The Regulated and Evaluation Areas are the focus of preservation and afforestation efforts with this and previous applications as appropriate to be in conformance with the Countywide Green Infrastructure Plan.

Conformance with Required Findings for a Special Exception

The required findings for approval of a Special Exception are given in Section 27-317 of the Zoning Ordinance. The **required findings which are environmental in nature are indicated in bold**, and the comments are provided in regular type.

(a) A Special Exception may be approved if:

- (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 Master Plan, the General Plan;**

The proposed special exception is in conformance with the environmental provisions of the General Plan, the Area Master Plan and the *2005 Approved Countywide Green Infrastructure Plan* noted herein.

- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and**

This site is subject to the provisions of the Woodland Conservation Ordinance (WCO) because a Type II Tree Conservation Plan (TCPII-098-04) was previously approved. A copy of the previously approved TCPII was submitted with the subject application; no revisions to the plan have been submitted.

The Woodland Conservation Threshold (WCT) for this 286-acre property is 50 percent of the net tract area or 135.84 acres. The total woodland conservation requirement based on the amount of clearing is 141.91 acres. The approved plan shows the entire woodland conservation requirement to be met with on-site preservation and reforestation. The preservation area is shown on the edges of the property in priority areas adjacent to streams and 100-year floodplain. The reforestation is shown on the berm along Ritchie Marlboro Road for screening purposes, on the edges of the preservation areas at the base of the fill, and 53.15 acres of reforestation on the plateau of the fill.

While the proposed application will not expand the previously approved LOD, the revised grades will be much steeper and provide significantly less area at the plateau of the fill available for reforestation purposes. Staff estimates that the area available for planting at the top will be approximately 13 acres. The proposal will no longer meet the entire woodland conservation requirement on-site as previously approved. The proposal will not meet the site's threshold on-site because approximately 40 acres will need to be met off-site. The transfer of the woodland conservation requirement is not in keeping with the previous approval and it is not in keeping with the woodland conservation requirements for the R-A and O-S zones. The resulting reduction in wooded area on-site subsequent to the Rubble Fill closing is also not consistent with the Master Plan provisions to provide open space. The previous approval allowed for a less severe slope and significantly more woodland area at the plateau in keeping with open space use. The current proposal shows significantly steeper slopes and significantly less area for planting on the plateau.

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

This site contains regulated environmental features that are required to be preserved and/or restored to the fullest extent possible under Section 27-317(a)(7) of the Zoning Ordinance. The on-site regulated environmental features include streams, wetlands and 100-year floodplain on the subject property.

Section 27-296(c)(1)(L) of the Zoning Ordinance requires the submittal of: "A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible." No letter of justification was submitted because no new impacts to regulated environmental features have been proposed. Minor encroachments into the regulated environmental features were approved with previous applications for stormwater management and sediment control features.

The regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible based on the limits of grading shown on the Special Exception Site Plan submitted for review.

Review of Previously Approved Conditions

The following text addresses previously approved environmental conditions related to the subject applications. The text in **BOLD** is the actual text from the previous cases or plans. The PLAIN text provides the comments on the plan's conformance with the conditions.

Zoning Ordinance No. 5-2003; SE-4408

- 5. The white pine screen buffer between the rubble fill and Arrowhead Elementary School shall be widened from 70 feet to 150 feet.**

The site plan shows a single row of existing trees located approximately 50 feet from the shared property boundary with Arrowhead Elementary School. Another single row of trees is shown as existing approximately 100 feet from the property line. The site plan does not show any other existing vegetation on-site in this area. Additional planting is required between the property line and the area of fill for a buffer width of 150 feet in accordance with this condition. The screening of the proposed additional fill is discussed above under the section for Zoning Ordinance Section 27-406(f).

- 9. The rubble fill shall be limited to a height of 312 feet above sea level.**

The current application proposes to increase the height to 372 feet above sea level; an increase of 60 feet. The main environmental concerns with this proposal include impacts on the viewshed, noise, stormwater management, erosion and sediment control including slope stability, and conformance with the Woodland and Wildlife Habitat Conservation Ordinance. These issues are discussed in detail throughout this memorandum.

- 16. Prior to the issuance of any permits, a Type II Tree Conservation Plan shall be approved by the Environmental Planning Section. The Type II TCP shall provide detailed information on the location of all off-site mitigation, if necessary, planting schedules, planting plans, reforestation management plans, phasing of the plan implementation, and other pertinent information, as determined necessary by the Environmental Planning Section. To the extent feasible, berms and reforestation shall be placed on the Westphalia Woods and Westphalia Estates side of the property.**

Type II Tree Conservation Plan TCP-II-098-04 was certified on November 15, 2004 showing all of the standard notes and details regarding reforestation, planting schedules, management plans, and phasing of implementation. The approved plan shows the entire woodland conservation requirement being met on-site with a combination of preservation and reforestation. No revised TCP was received with the current application.

- 17. All appropriate reforestation bonds shall be posted with the Department of Environmental Resources in accordance with the phasing of the activities for this Application.**

The Environmental Planning records indicate that bonding notification forms were prepared for the two phases shown on the TCP2; however, no record of the bonds having been paid were found. The permit associated with the phase 1 bond (13195-2005) expired. Another permit (18184-2004-G) was issued, but abandoned. An '-01' revision to permit 18184-2004-G-01 was permitted; however, no reforestation bond was associated with that permit. There is no record of the bond for the second phase ever having been posted. Evidence must be provided that the Phase 1 bond has been posted and is still active; otherwise, a

new bond must be posted with an active permit. The bond for the second phase will not be required until the fill has reached the final grade and the area of Phase 2 reforestation is available for planting.

18. **Development of the site shall conform to the mitigation measures indicated in a report titled “Environmental Noise Assessment, Ritchie Rubblefill Special Exception” prepared by Staiano Engineering, Inc., dated March 12, 2001, and/or any subsequent report approved by the Environmental Planning Section.**

No additional information with respect to noise was submitted with the current application. The statement of justification indicates that the on-site noise generated by the existing rubble fill and rock crusher will not adversely impact off site residential properties if the mitigation measures continue to be followed as described in the “Environmental Noise Assessment, Ritchie Rubble Fill Special Exception.” However, there is concern that with an increase in the height of the mound, the noise associated with the on-site operations may impact surrounding properties in a different manner than what was evaluated in the previous report. A revised report must be submitted based on the proposed contours of the mound. The report must be prepared and signed by a professional engineer with competency in acoustical analysis.

Environmental Review

Natural Resource Inventory /Existing Features

The site is grandfathered from the Natural Resource Inventory (NRI) process. No NRI or Natural Resources Inventory Equivalence Letter is required for the subject application because the project was originally approved prior to the implementation of the NRI requirement in 2005. No additional information is required with respect to a Natural Resource Inventory.

Stormwater Management

An approved Stormwater Management Concept approval letter (No. 307-2005-03) was submitted; however, no plan was received. The site plan shows numerous settlement basins on the southern portion of the property and another on the eastern portion of the property. The approval letter indicates that the sediment basins shall be designed as permanent ponds. Other conditions of approval dictate how stormwater will be handled upon cap and closure of the mound. A copy of the approved stormwater concept plan must be submitted so that a comparison can be made with the site plan to ensure that the requirements are shown consistently.

Erosion and Sediment Control

The County requires the approval of an Erosion and Sediment Control Plan. The Tree Conservation Plan must reflect the ultimate limits of disturbance not only for installation of permanent site infrastructure, but also for the installation of all temporary infrastructure including Erosion and Sediment Control measures. A copy of the Erosion and Sediment Control Technical Plan must be submitted so that the ultimate limits of disturbance for the project can be verified and shown on the TCP.

Based on comments received from the Soils Conservation District, the facility is operating under a valid Grading, Erosion and Sediment Control Plan (SC #169-86). The

comments indicate that, among other requirements, a revised geotechnical report would be required for the proposed development to address slope stability to account for the increased loading, and to provide a required safety analysis and delineation.

2. **Urban Design:** The Urban Design Section (M-NCPPC), in its referral dated December 2, 2015, evaluated this request and made the following findings (in relevant part):

Zoning Ordinance

Section 27-406 of the Zoning Ordinance includes the following relevant urban design-related required findings for the subject special exception:

- (d) **An application for a sanitary landfill or rubble fill that includes a “rock crusher” on the site must show the location of the proposed rock crusher on the site plan.**

Comment: A rock crusher was proposed, approved and constructed under the previous SE applications. It is proposed to remain unchanged, but is not shown on the site plan. The plan should show the rock crusher and any necessary proposed relocation as the site is filled.

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

Comment: The applicant submitted cross sections demonstrating that the proposed mounds are not visible from adjacent properties, but not any results from balloon tests. This should be submitted for review.

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

Comment: No information was provided demonstrating conformance to this requirement.

Previous Approvals

Special Exception SE-4408, subject to 23 conditions, was approved by the District Council on May 13, 2003 for the existing rubble fill on the subject site. The following conditions are urban-design related and require discussion:

4. **A six-foot-high chain-link security fence between the schoolyard and the subject premises, topped by approximately two feet of barbed wire strands slanted at a 45-degree angle, shall be maintained in good condition.**

Comment: No information was provided demonstrating conformance to this condition.

5. **The white pine screen buffer between the rubble fill and Arrowhead Elementary School shall be widened from 70 feet to 150 feet.**

Comment: No information was provided demonstrating conformance to this condition.

9. **The rubble fill shall be limited to a height of 312 feet above sea level.**

Comment: The applicant now requests a revision to this condition to allow for a height of 372 feet above sea level. The Zoning Section should review the applicant's request subject to conformance to the Zoning Ordinance.

14. **This Special Exception is subject to review by the District Council at its own election every four years. In the year 2016, the applicant shall report to the Council on the land areas filled and remaining to be filled, and the Council shall then review the application. Council review may result in a modification of the conditions.**

Comment: The subject SE was submitted in fulfillment of this condition, in addition to the other revision requests.

21. **The Site Plan shall be amended to show 11 off-street parking spaces, or a Departure from Parking and Loading Standards obtained. In the event that the recycling shed is enlarged to 12,000 square feet, an additional 18 parking spaces must be shown, or an additional Departure from Parking and Loading Standards obtained.**

Comment: The submitted site plan indicates the provision of 33 existing parking spaces on-site in conformance with this condition.

Landscape Manual

The previously approved SE-4408 was subject to Section 4.2, Commercial and Industrial Landscape Strip Requirements, and Section 4.7, Buffering Incompatible Uses, of the 1990 *Prince George's County Landscape Manual*. Therefore, per the 2010 *Prince George's County Landscape Manual*, a Section 1.7 Certificate of Landscape Maintenance needs to be completed demonstrating compliance to Section 1.6(a). The subject SE proposes only to extend the lifetime of the temporary landfill use and increase the height of the landfill, neither of which will have impact nor subject them to new requirements of the Landscape Manual.

Tree Canopy Coverage

This application is not subject to the Tree Canopy Coverage Ordinance (TCC) per Section 25-127(b)(1)(D) because it is located in the R-A and O-S Zones.

3. **Historic Site Considerations:** This site does not adjoin any historic resources.
4. **Additional Height:** Through this application, the applicant is seeking permission to raise the final elevation of the fill by 60 feet to 372 feet. This would place it at the same finished elevation as the adjacent Class III landfills. The applicant has submitted a line-of-sight analysis which they purport shows that a combination of berms, landscaping, existing topography and undisturbed woods will hide the fill from surrounding properties even at an elevation of 372 feet.

Comment: Staff does not support the change in elevation. When this rubble fill was first approved in 1985, staff firmly believed that the finished elevation should be held to 292 feet, which was the then-recognized high point in the surrounding neighborhood. The reasoning being that by holding the finished elevation to that level, the fill would not overwhelm the surrounding area. In 2001, the applicant successfully argued that the fill elevation should be increased to 312 feet based on a sightline analysis which showed a

combination of existing trees and supplemental plantings would keep the fill hidden from adjacent properties, particularly the adjacent school.

A recent visit by staff finds this to not be the case. The existing fill (at 312 feet) is clearly visible from all portions of the school property as well as from the Little Washington Neighborhood Park across Sansbury Road. What appears to be a large wood shredder and several large piles of shredded material sit directly on the edge of the fill overlooking the school playground. The operation is only too visible and it appears that staff's 1985 fears have been realized at the existing 312-foot elevation, much less at 372 feet. An additional 60 feet of fill can only exacerbate the looming presence.

L. 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.

Comment: The purposes are contained in Section 27-102 of the Zoning Ordinance. They are many and varied, but all are predicated on protecting and promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the county. The applicant's proposal, in staff's opinion, would take what has been a fairly unobtrusive operation and make it into a looming presence wildly out of scale with the properties to the north and west. Since 1985, when the original 292-foot maximum elevation was established, staff has endeavored to ensure this does not happen. We are not persuaded that steeper slopes and 60 feet of additional fill can somehow be hidden to the extent that this use will have no additional impacts on adjoining uses than it does at 312 feet.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

Comment: The proposed use meets the specific requirements and regulations for rubble fills and those pertaining to the R-A and O-S Zones, with the exception of required woodland conservation.

(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.

Comment: The Westphalia Sector is experiencing rapid growth. The Westphalia Town Center, Smith Home Farms, Westphalia Row, Marlboro Ridge, and Marlboro Riding are all under construction at the present time. Cabin Branch Village, Cambridge Place at Westphalia, and the Moore property are moving through the planning and permitting processes. The 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment* acknowledged the presence of the Ritchie Land Reclamation Rubble Landfill as it was permitted under SE-4408, however, it neither contemplated the use being active until 2045 nor the height reaching 372 feet with consistent slopes of 20%. The applicant has not adequately proven how the proposed expansion of the use will not be detrimental to the use or development of adjacent properties or the general neighborhood (Section 27-317(a)(5)).

The 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment* shows the land use for this property as Public/Private Open Space. Policy 7 on page 56 of the sector plan identifies the site being converted to an active park use and Policy 3 on page 43 of the sector plan identifies a trail system within the rubble fill park that links to other community trails. Condition 20 in Zoning Ordinance 5-2003 for Special Exception SE-4408 created conditions to be met if any portion of the site was to be dedicated to public use following the completion of fill activities. The applicant's site plan for SE-4408 was consistent with the plan for park and/or trail uses. There were approximately 65 useable acres at the top of the fill area where contours showed slopes ranging between two to five percent (2-5%). A review of the contours proposed in SE-4771 show an almost consistent proposed grade of 20 percent, which exceeds a suitable grade for passive or active recreation and results in a long linear flat area that will not be appropriate for trail or recreation uses. The Parks Department has stated that if the site will result in a conical shape versus a plateau, that they are highly unlikely to take the property for park/trail development. Through the planning process that resulted in the 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment*, the residents knew that the sector would change dramatically to accommodate the planned growth, but they would also benefit from the planned public facilities and parks that would develop simultaneously. Eliminating the conversion of the 288-acre rubble landfill to a park from the sector will substantially impair the integrity of the 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment*.

- (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.**

Comment: There has been an active rubble fill at this site for more than 30 years without apparent deleterious effect on the surrounding neighborhood. The State of Maryland's regulation of rubble fills has become much stricter through the years. Today's fills are subject to regulations including liners, leachate recovery systems, covering every three days, and capping upon completion. These regulations, in concert with the various conditions imposed in past approvals have ensured that the proposed use will not adversely impact residents or workers in the surrounding neighborhood to this point.

However, what the applicant is proposing in this application is wildly out of scale with the original and subsequent approvals. In our opinion, the applicant is seeking too long of an extension.

Section 27-406(j) of the Zoning Ordinance requires a finding of need for a fifteen-year period, and staff does not dispute that there is a need for rubble fills, both for the County and the region in general. They are vitally important to both the building industry and to keep construction rubble out of sanitary landfills. But how far out should they be approved and how high should they be allowed to go? In their annual report to MDE, the applicant estimates that at current fill rates, the site has another 28 years of fill capacity, which takes them to 2042. The Solid Waste Plan estimates capacity until 2035. If approved to 2045 as proposed, the fill will have existed in this neighborhood for 60 years. This is an extraordinary lifespan for a temporary use. An elevation of 372 feet would place it at the same finished elevation as the Class III landfills to the south; a somewhat dubious bit of equity, indeed. It will be argued that the "periodic review" condition allowing the District Council to call up the approval for review every four years provides for additional assurance of compatibility, but feels staff is somewhat superfluous

considering the District Council already has a process in place whereby they can revoke any special exception approval, for cause.

During the latest visit to the site, staff was disturbed to note what appears to be the relocation of a wood waste processing and stockpile area from the center of the site to the western edge of the property, directly overlooking the rear fields and playgrounds of Arrowhead Elementary School. When viewed from the front of the school, the magnitude of the operation is more evident. Staff is aware that the nature of the use is such that it requires the applicant to move the various constituent components around the site from time to time. However, their decision to move this particular part of their operation to this location is unacceptable and shows a certain disregard for their neighbor, in our opinion. Noise generated by the use should be foremost in the applicant's mind, particularly given their location relative to the school. Placing a substantial noise generator like a large shredder/chipper on the periphery of the site adjacent to a noise-sensitive use (a school) with no buffering or screening whatsoever does not protect and promote the health, safety, morals comfort, convenience, and welfare nor does it promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development.

Upon completion, the site will revert to permanent open space. In addition, the Transportation Planning Section (M-NCPPC) has concluded that there will be no significant transportation impacts as a result of this proposed special exception, so long as there is no increase in hauling activity. The maximum number of loads coming to this facility daily is 280, resulting in 560 daily-truck trips. The site has been an unobtrusive neighbor to adjacent properties for 30 years, but does this warrant another 30 years? We feel it is premature to give this use another 20 years at this point, particularly considering it is already approved for another ten as it stands today. To do so could possibly result in peremptorily disenfranchising the concerns of hundreds or thousands of future residents and workers of Prince George's County who are expected to settle in the greater Westphalia area over the coming decades. To do so is not good cause or good planning.

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

Comment: This site is subject to the provisions of the Woodland Conservation Ordinance because a Type II Tree Conservation Plan was previously approved (TCPII-098-04). A copy of the previously approved TCPII was submitted with the subject application; no revisions to the plan have been submitted. The Woodland Conservation Threshold (WCT) for this 286-acre property is 50 percent of the net tract area or 135.84 acres. The total woodland conservation requirement based on the amount of clearing is 141.91 acres. The approved plan shows the entire woodland conservation requirement to be met with on-site preservation and reforestation. The preservation area is shown on the edges of the property in priority areas adjacent to streams and floodplain. The reforestation is shown on the berm along Ritchie Marlboro Road for screening purposes, on the edges of the preservation areas at the base of the fill, and 53.15 acres of reforestation on the plateau of the fill.

While the proposed application will not expand the previously approved LOD, the revised grades will be much steeper and provide significantly less area at the plateau of the fill available for reforestation purposes. Staff estimates that the area available for planting at the top will be approximately 13 acres. The proposal will no longer meet the entire woodland conservation requirement on-site as previously approved. The proposal will not meet the site's threshold on-site because approximately 40 acres will need to be met off-site. The transfer of the woodland conservation requirement is not in keeping with the previous approval and it is not in keeping with the woodland conservation requirements for the R-A and O-S zones. The resulting reduction

in wooded area on-site subsequent to the Rubble Fill closing is also not consistent with the Master Plan provisions to provide open space. The previous approval allowed for a less severe slope and significantly more woodland area at the plateau in keeping with open space use. The current proposal shows significantly steeper slopes and significantly less area for planting on the plateau, which is required to be completed upon closing of the site.

The Tree Conservation Plan is required to be revised to match the proposed site plan; however, because the proposal will result in a plan that can no longer meet the woodland conservation threshold on-site, is not consistent with the previously approved TCP, is not in keeping with the woodland conservation requirements of the R-A and O-S zones, and is not consistent with the Master Plan recommendations for open space, staff **cannot** recommend approval of the proposed application.

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

Comment: This site contains regulated environmental features that are required to be preserved and/or restored to the fullest extent possible under Section 27-317(a)(7) of the Zoning Ordinance. The on-site regulated environmental features include streams, wetlands and 100-year floodplain on the subject property.

Section 27-296(c)(1)(L) of the Zoning Ordinance requires the submittal of: “A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible.” No letter of justification was submitted because no new impacts to regulated environmental features have been proposed. Minor encroachments into the regulated environmental features were approved with previous applications for stormwater management and sediment control features. The regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible based on the limits of grading shown on the Special Exception Site Plan submitted for review.

CONCLUSION

A special exception use is considered compatible with uses permitted by-right within the zone, as long as specific criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties is to show that the proposed use, **at the particular location proposed, would have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the zone.** In this case, staff is concerned with the impact of the proposed use on the elementary school to the west, particularly in light of the applicant’s apparent disregard for the previously approved contour and elevation limits and the placement of stockpiles of material and equipment proximate to the school fields.

While the applicant must produce evidence sufficient to make a positive finding for each criteria of approval, a single negative finding can be fatal to the application. As discussed in this report, staff cannot find that the expansion and extension are necessary to accommodate the next 15 years of rubble generated in Prince George’s County (which even the applicant’s analyses seem to conclude), nor do we believe the applicant has provided proof that without approval of the request the growth of Prince George’s County will be negatively affected. The applicant has not submitted the required balloon tests,

nor have they addressed how the change in contours and movement of noisy equipment on the site will affect the noise impacts on adjoining properties. Approval of the request, as submitted, will result in a plan that can no longer meet the woodland conservation threshold on-site, is not consistent with the previously approved TCP, is not in keeping with the woodland conservation requirements of the R-A and O-S zones, and is injurious to the Master Plan recommendations for open space. None of these deficiencies suggest “good cause” to amend the previously approved conditions for this use. For all of these reasons, staff is compelled to recommend DISAPPROVAL of Special Exception Application No. SE-4771.