

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION  
4646  
Tree Conservation Plan  
(TCP2-047-09)**

**DECISION**

Application:	Surface Mining
Applicant:	Rock Hill Sand and Gravel Corporation/Gudelsky Corporation t/a Anthony George Project
Opposition:	None
Hearing Date:	June 18, 2014
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4646 is a request for permission to use approximately 23.03 acres of land, zoned O-S (Open space), located on the north side of Evergreen Way, north of its intersection with Brandywine Road (MD 381) and approximately 3,478 feet south of the intersection of Brandywine Road and Gibbons Church Road, for the purpose of Surface Mining of Sand and Gravel.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 44) The Planning Board chose not to hold a hearing on the request and adopted the Technical Staff's recommendation as its own. (Exhibit 38(b))
- (3) No one appeared in opposition to the instant request.
- (4) The hearing record was left open to include additional information (T. 175-178). All items were received by July 23, 2014 and the record was closed at that time.

## **FINDINGS OF FACT**

### **Subject Property**

(1) The subject property is a single parcel (Parcel 17 on Tax Map 156, Grid D-2) that is partially wooded and used for pasture and agriculture. Applicant provided an aerial of the site. (Exhibit 16) The site is improved with a single family home on the southeast corner and several barns, sheds and other outbuildings scattered across the site. The resident, Anthony George, has entered into a lease with the Applicant to allow it to engage in the surface mining of sand and gravel. Mr. George will continue to reside on the site.

(2) Sensitive natural features are located in the western, northwestern and northeastern corners of the subject property. These areas will remain undisturbed. The property drains into the Rock Creek watershed and contains two unnamed regulated stream systems including wetlands and 100-year floodplain. The subject property has an approved Natural Resource Inventory Plan (NRI-017-10), approved October 25, 2011 and an approved Floodplain study (FPS 201007). There are no rare, threatened, or endangered species found to occur in the vicinity of the subject property. (Exhibit 44, p. 94) Staff notes that "the regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible based on the limits of disturbance shown on the tree conservation plan submitted for review." (Exhibit 44, p. 112)

### **Neighborhood and Surrounding Uses**

(3) The neighborhood has the following boundaries:

North	–	North Keys Road
South	–	Brandywine Road (MD 381)
East	–	Rock Creek
West	–	PEPCO right-of-way

(4) The neighborhood is sparsely developed with a few single-family dwellings, a sand and gravel wash plant (discussed below) and another sand and gravel mining operation to the northeast. It is rural-residential in nature.

(5) The property is surrounded by a surface mining operation on property known as the A.H. Smith property to the north, in the O-S Zone; scattered single-family detached homes and light farming to the south and east, in the O-S Zone; and, a gravel wash plant operated by Gudelsky Materials to the west, in the I-2 Zone. (Exhibits 44, 59, 66 and 67)

(6) A maximum of 200 trips per day (100 trucks in and 100 trucks out) are proposed. No on-road hauling is proposed.

## **Zoning History**

(7) The subject property is located in an area governed by the 2013 Subregion 6 Master Plan and Sectional Map Amendment. The Master Plan recommends rural land use for the subject property. The Master Plan includes the following policies for the mining of mineral resources and for protecting the environment:

Mineral extraction is a historically important industry in the subregion and county based on the presence of large sand and gravel deposits affiliated with the Brandywine formation (see the Economic Development chapter). Regionally, this industry is undergoing significant change as small mine operations are transitioning out of the industry and being replaced with larger, more consolidated operations. Within the subregion, there are currently five mine operators, generating approximately 60 jobs, which represent approximately 14 percent of the total state output in the mining industry sector. Given the presence of large outside operators, whose income and employment may be reported in other jurisdictions, the job and wealth creation fostered by the mining industry may be large than reported in currently available data. The mining industry also employs other independent businesses in the region, predominately in the trucking industry, generating significant spin-offs to the local economy. Output activities in the industry, such as washing and processing, generally occur outside of the subregion though some do exist here.

(2013 Subregion 6 Master Plan and Sectional Map Amendment, pp. 32-33)

(8) The Master Plan also puts forth several policies that address the extraction of mineral resources. They include the preservation of access to mineral resources where sufficient and economically viable mining potential exists, minimizing the short – and long-term impacts of mining operations on adjacent properties and communities, and developing requirements for identifying post-reclamation uses as part of an amended special exception process. (2013 Subregion 6 Master Plan and Sectional Map Amendment, pp. 52-55; PGCPB No. 13-70, p. 10)

(9) The 2002 General Plan places the subject property in the Rural Tier. The Growth Policy Map set forth in the Plan Prince George's 2035 General Plan places the property within the Rural and Agricultural Areas.

## **Applicant's Request**

(10) Applicant is licensed by the Maryland Department of the Environment as a mining company. (T.30) It currently operates a sand and gravel wash plant on adjoining property to the north and west of the subject property. It has entered into a lease arrangement with Anthony George for the surface mining of sand and gravel on the George property. (Exhibit 64; T.14-15) It requests authorization to mine the subject property from Monday to Friday between the hours of 7:00 a.m. and 5:00 p.m. It also requests authorization to operate on Saturday between the hours of 7:00 a.m. and 12:00 p.m. for the maintenance of equipment. (T. 25)

(11) Applicant proposes to mine 100 loads of material per day. The extraction is accomplished by clearing trees and grasses, removing the topsoil, followed by the layer of overburden, until the sand and gravel layer is reached. Once removed, the materials will be sent to Applicant's adjoining wash plant via an access road that it will construct on the subject property.<sup>1</sup> In that manner there should be no impact on existing public roads – instead the trucks will take the mined material through the subject property to the adjoining wash plant. (Exhibits 37(b) and 70(b)) As a result the use should not generate any noxious, offensive or otherwise objectionable dust, noise or vibration on the public streets. Any dust on the access (haul) road to the adjoining wash plant will be controlled by watering as necessary.

(12) Applicant intends to mine approximately 16 acres in two phases. Phase 1 will occur closer to the wash plant and Phase 2 closer to the dwelling. The entire acreage is not being mined due to environmental features on site and their limits of disturbance. Moreover, Applicant's test pit results indicate that the sand and gravel is close to the surface – no digging is expected below 20 feet from the surface.

(13) Applicant will use one excavator/bulldozer, a backhoe and two haul trucks on site to extract the sand and gravel. (Exhibits 30(b), 61 and 65; T.22) The haul trucks are "off road" trucks that are not licensed to be driven on public roads. (T. 24) Each will be fitted with working mufflers at all times. Applicant's agent explained the mining process, as follows:

After approval from MDE, we will invite MDE out to the mining property, we always have a meeting ... a pre[-]mining meeting as you call it. And we would also allow the representative of Park and Planning to participate as part of this meeting as well. Then and absolutely the first thing you have to do is to install your sediment and erosion control methods that are depicted and required. It's very important we get those in first to get them right.... Then we remove the topsoil and overburden prior to the mining of any sand and gravel. Typically we use a bulldozer to remove the overburden and that material we will use to construct the sound berms if needed prior to the mining process, to the excavation process .... [T]he berms will be along the southern and western boundaries of the property.

(T. 20)

(14) Applicant's agent, Scantek, Inc., submitted a noise analysis for the request. The analysis noted that the estimated maximum sound level at selected locations around the site, with berms in place, will range from a dBA of 43 to a maximum dBA of 64, and concluded "estimated maximum sound levels will be below property line limits at all locations evaluated: maximum sound levels will meet [COMAR] at lot lines and all residences." (Exhibit 11, p. 9)

(15) The subject property is bounded on the west and east by branches to Rock Creek and the areas surrounding the site are served by residential wells. Applicant

---

<sup>1</sup> Applicant's wash plant is permitted by right in the I-2 Zone.

provided a plat of well locations within ¼ mile radius of the subject property. (Exhibit 18)

(16) Robert Keating, accepted as an expert in hydrogeology, submitted an Hydrologic Evaluation that noted that the request will not adversely affect surface water and ground water resources, or impact the health, safety and welfare of surrounding properties, for the following reasons:

The extraction of the sand and gravel will not intercept the water table, and thus will not substantively change the water table conditions or adversely affect the amount or quality of ground water recharge into the branches of Rock Creek. Further, the extraction of the sand and gravel, and commensurate lowering of the land surface, does not interrupt the hydrologic cycle. The reasons for this opinion are as follows:

- The water table will remain at an elevation of 170 to 180 feet above mean sea level surface;
- Rainfall that falls on the property will continue to recharge the ground water;
- Ground water will flow from the higher elevations to the lower elevations; and
- The ground water table will continue to slope towards the branches to Rock Creek, where it will discharge as recharge into the stream.

The ... property represents a very small portion of the watershed that contributes water to Rock Creek. This point can be quantified. The boundary of the Rock Creek watershed extends from the Gibbon Church Road to the west, to the confluence with Tom Walls Branch approximately 5.0 miles to the east. The entire Rock Creek watershed covers approximately 5,600 acres, compared to 18 acres of minable land on the ... property. Therefore, only 0.3 percent of the watershed will be affected by mining....

The well records indicate that residents that live in the area adjacent to the Anthony George property rely on wells to supply water for their homes. Sixteen wells were identified from the MDE well data as being located on Gibbons Church Road and Brandywine Road.... A windshield survey of the area and inspection of a 2006 aerial photograph confirmed that the area contained low density residential housing, and that 16 residential wells within a half-mile of the Anthony George property was a reasonable estimate. MDE records did not identify any wells in the area hydraulically downgradient between the Anthony George property and Rock Creek or on the north side of the creek. Thus, there are no residential wells in this area that would be impacted by the mining operation....

The residential well records obtained from the Maryland Department of Environment and the MGS report may not be comprehensive due to the presence of wells that predate the permit process. However, in the event that there are wells in the Upland Deposits that I have not been able to locate, potential impacts to the wells associated with mining at the site will not be realized in my opinion because:

- Ground water flows northwest and northeast toward the branches of Rock Creek. There are no apparent residences in the hydraulically downgradient area from the proposed mine; and
- There will be no dewatering conducted to support the mining operation. Dewatering has the potential to lower water levels in surrounding wells.

(Exhibit 13, pp.2-5)

(17) Mr. Keating testified that he provided further information in response to questions from the Technical Staff concerning two wells within a ¼ mile radius of the subject property, and that his conclusions regarding any negative impact on ground water and wells remained the same:

Mr. Gibbs: Okay. So based upon your analysis ... do you have an opinion as to what, if any, impact this mining operation ... [will] have on surface water drainage and it's impacts on the environment?

Mr. Keating: In my opinion it will have negligible impact on surface water and ground water .... [Y]ou will still have rainwater infiltrating through the overburden onto the water table recharging ground water which would then discharge to Rock Creek. So the process of mining will not interrupt the relationship recharge of groundwater and surface water....

Mr. Gibbs: Okay. Now you also ... looked at the impact this operation might have on wells in the area, is that correct? ...

Mr. Keating: I obtained information from the Maryland Department of the Environment .... [W]e obtained specific permits and we go through the process of relating those permits to the addresses in the area to the best we can and we put together a table ... that lists the 16 wells that we had identified and they're the wells that are also plotted currently ....

Mr. Gibbs: But you do acknowledge in your report that it's conceivable that there may have been some wells drilled before 1972 or even more remotely that somebody just decided to drill a well and didn't get a permit? ...

Mr. Keating: Yes, the shallowest well was 370 feet deep completed in the Aquia aquifer, the deepest well was 620 feet deep completed in the Magothy aquifer so they were all completed in aquifers that are substantially deeper than the upland deposits where the mining will occur.... I came to the conclusion that the mining operation would have no impacts on those wells because of the depth of the wells....

We [discovered] that three of the addresses we could not find in the well permit database and they were 15510, 15512 and 15544 Brandywine Road.... [M]ost importantly if in the outside chance that these were shallow dug wells that penetrated just the upland deposits, the wells would be located up gradient of where the mining will occur .... It is in my opinion that this mining will have no impact on Rock Creek or residential wells.

(T. 92, 99, 100-104)

(18) However, the Applicant has committed to providing new wells for any property owner within a quarter mile, whose well is negatively affected by the mining.

(19) Applicant submitted a Reclamation Plan that includes the following note:

Post mining reclamation shall consist of backfilling the site to approximate original contours while maintaining a center high point with gentle slopes (approximately 2%) to existing undisturbed low points. The post mining use of this land shall be a pasture for horses. The post mining plantings shall be determined by a landscape architect in conjunction with the property owner. At this time it is planned that any trees to be planted shall be around the perimeter of the mined area with open meadow throughout.

(Exhibits 17, 45(g) and 70(g))

(20) The site contains approximately 7.53 acres of Primary Management Area (“PMA”) along its eastern and western boundaries. The PMA is comprised of 800 linear feet of regulated streams and associated buffers, floodplain, nontidal wetlands and wetland buffers, and areas of steep slopes.

(21) Applicant also has an Approved Natural Resource Inventory Plan (NRI-017-10).

(22) Mark Ferguson, accepted as an expert in the area of land use planning, opined that the Application is in conformance with the 2013 Master Plan for Subregion 6<sup>2</sup>, the 2002 General Plan, and other associated Plans, reasoning as follows:

The 2035 Plan [Prince George’s General Plan] ... [places] the subject property ... in a policy area that they call rural and agricultural areas ... that does roughly correspond to the old Rural Tier. There is now an overlay both in Master Plans as well as the General Plan for priority preservation areas. This site is not within the priority preservation area.... And, broadly speaking, the policies and goals for the rural and agricultural areas are fairly duplicative of those that used to exist for the Rural Tier. So a finding of the staff of conformance to the 2002 General Plan still does apply.... There is a policy in the new General Plan that does address sand and gravel mining and the mineral extraction industry. That strategy directs the County to evaluate the impacts of extractive industries such as sand and gravel mining on resource lands, rural character economic development and post reclamation requirements in the rural and agricultural area which this site is. The County is directed to map remaining sand and gravel and natural resources to locate potential future sand and gravel operations, update and revise development standards and identify post reclamation land uses. This proposed application does in fact do what a private applicant can do and there is a post reclamation land use identified which is a mix of reforestation to work towards the forest conservation requirements including the reforestation associated with the clearing that was done [on site] approximately 10 years ago. And then the remainder of the site as you’ve heard would be re-vegetated to provide pasture land for four horses as so that post reclamation use is certainly keeping within the vision as well of the General Plan....

[T]he site in my opinion is amply in conformance with the Master Plan. There is extensive discussion in the Master Plan about the need to preserve access to mineral resources as well as to do the things which this applicant proposes to do to protect the local and broader neighbors from the impacts of noise and dust and other impacts to air quality. There’s certainly an emphasis on preserving the rural character. This site is visually invisible from the surrounding roads.... No portion of the site is visible not just because of distance, but also intervening woodlands....

(T. 154-157)

(23) Mr. Ferguson also prepared a Land Planning Analysis that explained why, in his expert opinion, he believes the request satisfies all applicable provisions of the Zoning Ordinance. The following is a synopsis of that analysis:

The proposed surface mining operation, if carried out in conformance with the provisions of the Special Exception Site Plan and the applicable State and County regulations [,] will afford a high

---

<sup>2</sup> The witness also examined compliance with the 1993 Master Plan since the 2013 Master Plan has been the subject of litigation. He concluded that the 1993 Master Plan also stressed the preservation of “access to mineral resources, wildlife and the mitigation [of] impacts associated with mining.” (T. 158-159)

degree of protection to the public health, safety, comfort, convenience and welfare of the present and future inhabitants of the County.

Neighbors will be buffered from noise by distance and the installation of the proposed berms.

Neighbors will be further buffered visually by landscape plantings on and adjacent to the berms.

The impacts to air quality will be sufficiently small such that air quality in the vicinity of the proposed mining operation will remain in conformance with the National Ambient Air Quality Standards, as well as the COMAR standards for particulate matter.

Impacts on the surrounding road network will be *de minimis* because no traffic from mining operations will travel on the adjacent public roads.

Water quality in the surrounding watershed will be protected by the interception and treatment of all surface runoff in a sediment basin prior to discharge into the receiving stream system of Rock Creek/Spice Creek. The watershed will receive additional protection by the phasing of mining operations: The vegetative cover which will remain at any one time over a large proportion of the ultimate mining area will cause a substantive reduction in peak runoff rates and volumes and thus enable the sediment basin –designed for the exposure of the entire mining area – to operate more efficiently and safely. Additionally, mining operations will not be carried out deep enough to intercept the groundwater table, minimizing the chance of groundwater contamination.

Water quality of the surrounding wells will be protected by separation both laterally and vertically: No shallow wells are known to exist within a ¼-mile radius from the site's perimeter. Water quality in the three deep wells known to exist within the ¼-mile radius will be protected by the confining impervious geologic strata which exist between the surficial strata to be mined and the aquifer(s) from which these wells draw....

The Landscape Manual provides that surface mining is a High Impact use, and requires that a 40-foot [buffer be] planted between a surface mining activity and adjoining single-family residences. This buffer has been provided on the plan, but an additional setback is provided by preserved woodland and by the proposed berm that will afford noise protection to the adjoining parcels. With the berm, the total setback will range from a minimum of 98' to more than 200'....

The approval of a special exception for surface mining at the subject site would be in accordance with the provisions of the Green Infrastructure Plan because the Regulated Areas will be preserved and protected, and after the reclamation of the site substantial areas will be reforested to enhance the network by providing additional width to the stream corridors at the heart of the Regulated Areas and by maximizing the amount of onsite forest conservation area on a site in the former Rural Tier.....

In summary, this planner finds that the subject application would be in compliance with the Zoning Ordinance's general criteria for approval of a special exception found in [Section] 27-317(a), the specific criteria for approval of a Special Exception found in [Section] 27-410, and the specific requirements for the continued operation of a surface mining activity in Residential Zones found in [Section] 27-445.02(a).

Additionally, it is this planner's opinion that because of : (1) the visual isolation of the subject site from surrounding public roads; (2) the relatively small area proposed for surface mining; and particularly (3) the direct, private haul road connection to the adjacent wash plant site which means that no new truck trips will be added to the surrounding road network, and (4) the fact that the preferential availability of mined material from this site will likely lessen the number of truck trips generated by bringing excavated material from remote sites to the adjacent wash plant for



processing; that the approval of this particular application would entail significantly less adverse impact on the public health, safety and welfare than those inherently associated with surface mining activities, irrespective of their location in the O-S Zone.

(Exhibit 59, pp. 5,8,10, 20-21)

(24) Applicant agreed with most of the conditions recommended by Staff. (T. 25-26, 33) However, Applicant requested the following revisions to/deletions of Staff's recommendations:

Condition 3. We request that this Condition be revised as follows:

Prior to the start of work, the limits of disturbance shall be marked in the field. The applicant or their representative shall walk the limits of disturbance (LOD) with a representative of the MDE Minerals, Oil and Gas Division, prior to the installation of sediment/erosion control measures and tree protective devices if deemed appropriate by MDE. The applicant or their representative shall notify the M-NCPPC, Environmental Planning Section, as to the date and time this walk will occur, and they will be afforded the opportunity to attend.

Condition 6. We request that this Condition be revised as follows:

Prior to commencement of the mining operation, a special permit shall be obtained from the appropriate agency of Prince George's County Government to ensure compliance with the grading plan, the TCP2, and the Landscape plan approved with this Special Exception. The permit shall require the applicant to post a bond reasonably acceptable to M-NCPPC to secure its obligations pertaining to reforestation and landscaping as required by this Special Exception.

Condition 7. We request that this Condition be modified to read as follows:

The area to be mined shall be reclaimed in accordance with the Reclamation Plan by filling with acceptable materials as described in Prince George's County Building Code as presently codified.

Condition 10c. We request that this Condition be revised as follows:

Open-bodied vehicles transporting materials shall be covered at all times when in motion, in accordance with COMAR regulations. Alternate means may be employed to achieve the same results as would covering the vehicles.

Condition 14, 15, and 16. We request that these Conditions be deleted.

It is the Applicant's belief and understanding there is no authority to require an archeological study within the context of a sand and gravel mining special exception. Further, even if Condition 15 were to be imposed, processing of the Special Exception should not be delayed pending a Phase II study.

(Exhibit 69)

**Community Comment**

(25) No one appeared in opposition to the request.

(26) The president of the Brandywine North Keys Civic Association submitted a letter in support of the request. (Exhibits 23 and 47) A representative of the Civic Association also testified that the Vice President of Rock Hill Sand and Gravel is also a member of the association and has briefed the group several times, since 2009, about the scope and status of the special exception request. (T. 4-8)

**Agency Comment**

(27) The Technical Staff recommended approval, with conditions. It provided the following basis for its recommendation:

The operations are required to be conducted in conformance with applicable state and county standards meant to protect adjacent property owners and the surrounding area from adverse impacts. Staff is recommending conditions which will ensure any impacts are minimized and, if necessary, ameliorated ....

With the conditions of approval contained [herein] ..., the proposed use is in conformance with the ... Zoning Ordinance. No other departures or waivers are required to implement the special exception....

The proposed use will not substantially impair the integrity of the Subregion 6 Master Plan. The proposed special exception is in conformance with the recommendations and environmental provisions of the General Plan, the area master plan, and the 2005 Approved Countywide Green Infrastructure Plan.... The proposed use is in conformance with the master plan because the proposed mining operation is in keeping with the sand and gravel section of the Subregion 6 Master Plan.... The regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible.... The impacts are for the installation of a single sediment outfall....

(Exhibit 44, p. 19)

(28) Staff also opined that a type of “special permit” should be issued since “oversight of the proper implementation of the special exception conditions, landscaping, and woodland conservation requirements at the county level is not possible without the issuance of a local permit.” (Exhibit 44, p.13) There does not appear to be any authority for the creation of such a permit, as I note in my discussion below.

(29) Staff submitted an EIR (Environmental Impact Report). (Exhibit 44, pp. 49-92) Pursuant to state law, the EIR evaluated the impacts of the proposed mining activities on noise, watershed and water quality; air shed and air quality; traffic and traffic safety; and other environmental factors relating to the health, safety, and welfare of the residents of the affected area. (Exhibit 44, p. 53) It also included a map showing the location of all active mining sites, wash plants, municipal landfills and rubble landfills within the County. (Exhibit 44, p. 58)

(30) The following summary of the EIR findings were provided:

The mining activity is proposed to include the following tasks for each phase in the order listed: removal of vegetation; removal of topsoil and placement in berms or stockpiles; excavation of materials using excavators; movement of materials on-site using bulldozers and dump trucks; and hauling of materials off-site via a haul road connected directly to the property to the north for processing at an existing facility. A maximum of 200 trips per day (100 trucks in and 100 trucks out) are proposed. No on-road hauling is proposed....

The proposed mining will require the approval of an erosion and sediment control plan containing devices (traps/basins) to control soil erosion and stream sedimentation....

The depth of mining is not expected to alter groundwater levels because the mining is not proposed to occur to a depth below the existing water table. No impacts to surrounding wells are anticipated; however, the applicant has committed to providing new wells for any property owner within a quarter mile, whose well is negatively affected by the mining....

The proposed mining of sand and gravel from the subject property is not expected to have any adverse impacts on the climatology of the immediate area or of the surrounding area....

The particulate matter levels at the site are proposed to be below the National Ambient Air Quality Standards (NAAQS) for both PM<sub>10</sub> (larger "coarse" particles) and PM<sub>2.5</sub> (smaller "fine" particles)....

Minor impacts to regulated environmental features such as streams or wetlands, and their buffers, are proposed for sediment control and stormwater outfalls that are necessary to address the regulations of the county and state code....

Woodland conservation is required on-site to meet the threshold requirements of the Woodland and Wildlife Habitat Conservation Ordinance....

No off-site hauling is proposed. Instead, a direct haul road is proposed to connect the site with the existing processing facility located to the north....

Mining operations on the site are restricted to the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday, excluding federal holidays, and 7:00 a.m. to 12:00 p.m. on Saturdays for activities such as equipment maintenance. There will be no operations on Sundays. Trucks are not permitted to arrive at the site prior to 7:00 a.m....

Berms are proposed along portions of the property boundary of the subject site for noise mitigation purposes. Noise levels are expected to meet the Code of Maryland Regulations residential noise limit (65 dBA) at the property boundary....

The post-mining reclamation and the installation of landscaping and reforestation will provide long-term water quality benefits and provide habitat value to the site....

(Exhibit 44, pp. 53-54)

(31) Staff also noted that the request should not adversely impact the visual aesthetics of the area "because the mining area is located a significant distance from Brandywine Road, approximately 1600 feet, and because the berms proposed along portions of the site boundary will provide adequate visual mitigation to the adjacent properties." (Exhibit 44, p. 91)

(32) Finally, the Transportation Planning Section found that the use will generate no more than 3 A.M. and P.M. peak hour vehicular trips and, therefore, “the proposed surface mining application would have a [de minimis] impact upon roadways in the area of the site.” (Exhibit 38(e))

## **APPLICABLE LAW**

(1) Surface mining of sand and gravel is allowed in the O-S and I-2 Zones upon approval of a special exception in accordance with Sections 27-317, 27-410 and 27-445.02 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

**Sec. 27-317. Required findings.**

- (a) A Special Exception may be approved if:
  - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
  - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
  - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
  - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
  - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
  - (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
  - (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).
- (b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:
  - (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
  - (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-410 provides, in pertinent part, as follows:

**Sec. 27-410. Surface mining.**

- (a) The surface mining of natural materials or deposits (including sand, gravel, or clay pits; rock or stone quarries; and the removal of earth or topsoil) may be permitted, subject to the following:
  - (1) Heavy machinery may be used for the extraction of natural material or deposits from the site. Except in the I-2 Zone, heavy machinery may not be used for washing, refining, or other processing, unless a Special Exception is granted for sand and gravel wet-processing under the provisions of Section 27-405;
  - (2) The use shall not be noxious, offensive, or otherwise objectionable by reason of dust, smoke, or vibration;
  - (3) The land areas exposed by the extraction and removal of natural materials or deposits shall be left suitable for development. A grading plan shall be submitted (along with the site plan) showing the existing and proposed ground elevations of the site, adjacent land, and all abutting streets. The exposed land area shall have a

slope not greater than three-to-one (3:1), except where any portion of the site is developed for port or harbor facilities;

(4) The Special Exception shall be valid for not longer than five (5) years, except where the use is located:

(A) In an R-R Zone which is predominantly undeveloped for a radius of one (1) mile from the operation; or

(B) In an I-2 Zone;

(5) In addition to the requirements of Section 27-296(c), the site plan shall show an estimate of the time required for the removal of the material;

(6) At least sixty (60) calendar days prior to the hearing before the Zoning Hearing Examiner, the applicant shall file a traffic analysis with the Zoning Hearing Examiner for inclusion in the record, and shall send a copy to the Planning Board. The traffic analysis shall include the volume of traffic expected to be generated by the operation, and shall identify the streets to be used between the site and the nearest street (to be used) that has a minimum paved width of twenty-four (24) feet for the predominant length of the street;

(7) Driveways or access points shall be identified on the site plan, and shall be located so as not to endanger pedestrians or create traffic hazards. The surface material to be used on the driveways shall be identified on the site plan. Any access driveway shall be at least twenty-two (22) feet wide, and shall be paved for a distance of at least two hundred (200) feet from the boundary line of the Special Exception.

(8) 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.

(b) In the I-3 Zone, the use shall be staged in conformance with the required Conceptual Site Plan. The District Council may require (as a condition of approval) that this use be terminated prior to a Detailed Site Plan being approved for another use included on the Conceptual Site Plan.

(c) In the M-A-C, L-A-C, E-I-A, R-U, R-M, and R-S Zones, no surface mining operation may be permitted after a Specific Design Plan for the subject property has been approved. An application for this Special Exception may only be accepted, and the Special Exception granted, if no Specific Design Plan has yet been filed for the subject property.

(d) In reviewing the application, the District Council shall consider the use of techniques which provide for noise attenuation.

(e) On land which is located within a Chesapeake Bay Critical Area Overlay Zone, development is subject to Subtitle 5B.

(f) 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 27-410(a)(8).

(4) Section 27-445.02 lists operational requirements with which all special exceptions are to comply once permitted:

### **Sec. 27-445.02. Surface mining; sand and gravel wet-processing.**

(a) In order for any surface mining or sand and gravel wet-processing operation to continue, the requirements of this Section shall be met.

(b) The purposes of this Section are to prevent or control the detrimental effects of surface mining and sand and gravel wet-processing operations upon neighboring properties, and existing and proposed land uses in the general area.

(c) All surface mining and sand and gravel wet-processing operations shall meet the following requirements:

(1) The uses shall be operated in full compliance with applicable extraction and surface mining or sand and gravel wet-processing regulations;

(2) For the safety of residents and property, the operator of the facility shall take effective measures to control the speed of trucks utilizing his facility and neighboring streets;

(3) The operator shall avoid depositing any debris upon any existing streets; and

(4) The owner of the subject property shall be required to post and maintain a permanent, durable sign identifying the use as a surface mining or sand and gravel wet-processing operation, in accordance with the requirements of Section 27-629.

(d) On land which is located within a Chesapeake Bay Critical Area Overlay Zone, surface mining, sand and gravel wet-processing, or wash plants, including ponds, spoil sites, and equipment, are prohibited within the Buffer, as defined in the Conservation Manual. In addition, no surface mining or sand and gravel wet-processing shall be located within:

(1) Designated habitat protection areas, as described in the Conservation Manual;

(2) The Buffer area, as defined in the Conservation Manual;

(3) Any area where the use would result in the substantial loss of long-range (twenty-five (25) years or more) productivity of forest and agriculture, or result in a degrading of water quality; or

(4) An area containing highly erodible soils.

(5) Finally, the request should further the purposes of the O-S Zone, found in Section 27-425 (a) of the Zoning Ordinance:

#### **Sec. 27-425. O-S Zone (Open Space).**

(a) **Purposes.**

(1) The purposes of the O-S Zone are:

(A) To provide for low density and development intensity as indicated on the General or Area Master Plans; and

(B) To provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.

(2) The use of the O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, nonintensive recreational uses, and similar uses.

#### **Special Exceptions/Adverse Effects (Common Law)**

(6) As noted in the seminal case concerning the grant or denial of a special exception, Schultz v. Pritts, 291 Md. 1,11, 15, 432 A.2d 1319 (1981):

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. [A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in Section 27-102. The purposes most applicable to the instant application are :

(1) To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

\* \* \* \* \*

(5) To provide adequate light, air, and privacy;

\* \* \* \* \*

(9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;

\* \* \* \* \*

(11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions; . . .

\* \* \* \* \*

(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

\* \* \* \* \*

(2) These purposes are satisfied by the instant request. First, there will be a limited impact upon adjacent properties and roads given the location adjacent to the neighboring wash plant – as a result the number of truck trips will not increase from those currently imposed upon the surrounding community. Water quality will be protected by the systems in place to intercept and treat all surface runoff in a sediment basin prior to discharge into the stream system. Watershed is also protected by the mining in phases. Mining will not be deep enough to affect any wells in the area.

(3) The policies of the General Plan, Master Plan and functional Master Plans will be implemented. These plans emphasize the importance of a reclamation plan that would show minimal impact to the community. Applicant's phased mining operation will include buffering to protect from noise disturbance, will minimally impact air quality,

should not affect wells, and will protect the watershed. The reclamation plan indicates the property will be used as pasture land.

(4) As noted above, the purposes of the O-S Zone are set forth in Section 27-425(a) of the Zoning Ordinance. The instant application does not conflict with these purposes since it is in conformance with the Master Plan, ensures the appropriate use of a natural resource, and has a limited impact upon adjacent properties. (Section 27-317(a)(1))

(5) The subject proposal is in conformance with all the applicable requirements and regulations of the Zoning Ordinance with no need for a variance. (Section 27-317(a)(2)) The proposed use will not impair the integrity of the 2013 Master Plan for Subregion 6. As noted above, the Master Plan recognizes sand and gravel as a valuable natural resource and recommends mining sand and gravel before development. (Section 27-317(a)(3))

(6) All applicable State and Federal laws will be followed. Upon implementation of the conditions, care will be taken to insure a limited number of truck loads, no interference with wells and groundwater, no impact to air quality, and reclamation to pasture land. The site is sufficiently set back, and berming is sufficiently high to insure no negative impact to the visual aesthetics in the area. Therefore, the proposed use will not adversely affect the health, safety or welfare of residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and (a)(5))

(7) The Application includes a Type 2 Tree Conservation Plan. (Section 27-317(a)(6)) All regulated environmental features that exist on site have been preserved. (Section 27-317(a)(7)) The site is not located within the Chesapeake Bay Critical Area. (Section 27-317(b))

(8) Heavy machinery will be used only to extract the sand and gravel. There will be no processing washing or refining of materials on the subject property. (Section 27-410(a)(1))

(9) The use will not be noxious, offensive or otherwise objectionable by reason of dust, smoke or vibration since there will be no on road hauling of materials, conditions are included to further reduce the possibility of fugitive dust, any noise from the vehicles will be absorbed by the berm, and Applicant's air quality reports indicate that all emissions will satisfy the federal and state standards for all categories with the exception of ozone<sup>3</sup>. (Section 27-410(a)(2))

---

<sup>3</sup> As noted in the report, and agreed with by Staff, "[t]he impacts of a single emissions source on ozone concentrations cannot be evaluated since a single source analysis cannot evaluate the interactions with regional sources." (Exhibit 30(c)) Stated differently, the ambient levels for ozone in the Metropolitan Area are above the national standards (and in non-attainment) and the small amount of emissions from the instant request "is not likely to have a significant impact on the region's nonattainment status." (Exhibit 44, p. 79)



(10) A reclamation plan and grading plan is in the record. Once reclaimed, the land will be used as pasture. (Exhibit 70(g)) The slopes on site will not be greater than 3:1 and the land will be left suitable for agricultural use or other development. (Section 27-410(a)(3))

(11) Applicant has agreed that the requested use will be limited to five (5) years from the date of approval. The estimate of the time for construction is shown on the Site Plan and Mining Plan. (Exhibit 70(d)) (Sections 27-410(a)(4) and (5))

(12) The required traffic study was submitted indicating that the haul route to the adjacent wash plant will not negatively impact the public roadways in the neighborhood, since no new truck traffic will be generated by the proposal. (Sections 27-410(a)(6))

(13) No driveway or access points to a public road is proposed. (Section 27-410(a)(7)) The materials will be trucked from a private gravel access to the north of the site to the wash plant that is also owned by Applicant.

(14) The required Countywide inventory was filed as part of the Staff Report. (Exhibit 44, p. 58) The Environmental Impact Report ("EIR") also listed those mines within five (5) miles of the subject property. (Section 410(a)(8))

(15) Subsections 27-410(b) and (c) are inapplicable since these sections only apply to the I-3, M-A-C, L-A-C, E-I-A, R-U, R-M and R-S Zones.

(16) Noise attenuation techniques are set forth in the conditions of approval. (Section 27-410(d))

(17) Section 27-410(e) does not apply, as the subject property is not in a Chesapeake Bay Critical Area Overlay Zone.

(18) The application also satisfies the operational requirements set forth in Section 27-445.02 of the Zoning Ordinance. Applicant agrees to obtain all necessary permits from the State of Maryland for the operation of a surface mine, and to operate in accordance thereto. (Section 27-445.02(c)(1)) There will be a maximum vehicular speed imposed. There will not be any use of neighboring streets. (Section 27-445.02(c)(2) and (3)) The Special Exception Site Plan notes that signage will be provided, although it should be expressly noted that the use is the surface mining of sand and gravel. (Section 27-445.02(c)(4)) The property is not located within the Chesapeake Bay Critical Area. (Section 27-445.02(d))

### **Recommended Condition**

(19) Section 27-296(c) of the Zoning Ordinance requires all applicants in a Special Exception case to submit "data or explanatory material deemed necessary by the District Council, Zoning Hearing Examiner, or Planning Board...." Section 27-309 of the

Zoning Ordinance requires referral to the Historic Preservation Commission “[w]hen a historic resource included on the Adopted and Approved Historic Sites and District Plan... is located on the property which is the subject of a request for a Special Exception ....” Staff admitted that there is no identified historic resource on the site, but requested Conditions 14 – 16 in the Staff Report for the following reasons:

Based on predictive models developed for the project region, prehistoric sites are likely to be small, scattered sites representing short-term, transitory or seasonal occupation. The project area has a moderate to high probability of containing prehistoric sites....

Previous archeological surveys in the vicinity of the subject property have identified five historic archeological resources within one mile. In addition, there is one county Historic Resource, Gibbons Church Site, School and Cemetery (#86B-001), located within one mile of the subject property....

Staff acknowledges that no local law requires archeological investigations as part of approval of a Special Exception. However, such investigations are important and, therefore, staff looks for applicant concurrence.

(Exhibit 38(g))

(20) Pursuant to Section 4-101 of the Prince George’s County Code, The International Building Code, 2012 Edition (“IBC”) has been adopted by reference as the official Building Code of Prince George’s County. Section 104.2 of the IBC notes that the Building Official is charged with the duties to “inspect the premises for which ... permits have been issued and enforce compliance with the provisions of this code.” Section 4-102 of the Prince George’s County Code notes that the “Building Official” is whomever the Department’s Director designates as the Building Code Official. Thus, if Applicant failed to satisfy the conditions imposed herein, or imposed elsewhere in law, there is a method to ensure compliance. Nonetheless, staff has recommended a condition that would require the creation of a special permit, and the posting of a bond to ensure Applicant’s compliance with other recommended conditions. There does not appear to be any authority in law to impose a special permit and I, therefore, believe it would result in the grant of unbridled discretion if I were to do so. Accordingly, I have slightly revised the language noted in Staff and Applicant Condition 6. There is precedent in requiring the posting of a reasonable bond, and Applicant has indicated its support thereof. (Exhibit 60) Finally, if the various provisions of the Zoning Ordinance are construed together, as required by general tenets of statutory construction, it is reasonable to impose conditions concerning possible archeological resources on the property, given its location in an area wherein five historic archeological sites have already been located.

(21) Applicant also asked that Staff’s Condition 7 be revised to allow the reclamation to be accomplished by filling with acceptable materials as currently described in the Building Code. This would be counter to the general rule that one must comply with whatever law is in place when a permit is issued. I, therefore, do not believe Staff’s recommended condition should be revised in this manner.

(22) Applicant also requested that the following condition be added if the request is approved:

Should residential development commence on any part of abutting property now owned by A.H. Smith, et. al. at any time during the duration of the mining operation, a berm 6 meters in height needed to buffer noise at required levels abutting the area of the Smith property being residentially developed shall be installed by the Applicant or its successors. Those portions of the berms required to buffer residential development shall be installed and completed prior to issuance of the first building permit on the Smith property being residentially developed.

(Exhibit 69)

(23) Considering the entirety of the record, the proposed use will have no adverse effects on the surrounding properties that are unique and different from the effects it would have elsewhere in the O-S Zone. Schultz v. Pritts, supra.

### DISPOSITION

Special Exception 4646 and Tree Conservation Plan (TCP 2-047-09) are Approved subject to the following Conditions:

1. Prior to the issuance of permits conservation easement shall be recorded in the land records in accordance with Section 25-122(d)(1)(B) of the Prince George's County Code. The easement shall describe, by bearings and distances, the areas of woodland conservation shown on the Type 2 tree conservation plan (TCP2) as approved. The easement shall be reviewed by the Environmental Planning Section prior to recordation.
2. The applicant shall notify the Maryland National Capital Park and Planning Commission (M-NCPPC), Environmental Planning Section, prior to the start of reforestation for each phase of this mining operation and schedule a meeting to address reforestation and woodland conservation issues.
3. Prior to the start of work, the limits of disturbance shall be marked in the field. The applicant or its representative shall walk the limits of disturbance (LOD) with a representative of the MDE Minerals, Oil and Gas Division, prior to the installation of sediment/ erosion control measures and tree protective devices if deemed appropriate by MDE. The applicant or its representative shall notify the M-NCPPC Environmental Planning Section as to the date and time this walk will occur, and they will be afforded the opportunity to attend.
4. Prior to the issuance of permits, the Type 2 Tree Conservation Plan shall be revised as follows, and submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:

- a. Provide a phased woodland conservation worksheet in accordance with the Environmental Technical Manual (ETM). A column shall be provided to account for the violation and a column for each proposed phase of mining.
- b. Account for the required reduction of wooded floodplain from the gross tract woodland for calculation purposes.
- c. Provide the entire woodland conservation requirement on-site to the extent practicable. At a minimum, the site's woodland conservation threshold shall be met on-site.
- d. Revise the plan set to remove the plan sheet currently labeled as "Existing Conditions."
- e. Revise the plan to show all existing environmental features, the treeline, and all existing conditions as shown on the approved NRI. The plan shall also be revised to show all proposed information including but not limited to grading, noise berms, and all tree conservation measures per the TCP2 checklist. All symbols shall be in accordance with the ETM to extent practicable. All erroneous hatching shall be removed.
- f. Revise the plan to remove the hatching from the wooded floodplain and update the preservation label.
- g. Revise the notes and details as follows:
  - (1) Revise the standard TCP2 Note 1 to refer to the purpose of the TCP as not only meeting the requirements of the Special Exception, but also to meet the requirements of NOV 29517-2011. Note 1 shall also be revised to remove the entire second sentence.
  - (2) Revise the management plan notes to reflect the standard four-year management notes.
  - (3) Remove the split-rail fence detail.
  - (4) Add the standard details for combined silt fence and tree protection (ETM detail 8), the standard detail for combined earth dike and tree protection (ETM detail 7), and all applicable planting details such as the standard seedling detail (ETM detail 15).
  - (5) Revise the reclamation notes to reflect the proposed planting information shown on the plan and to remove any reference to determination of planting at a later date.

- (6) Revise the reforestation planting tables to reflect the planting areas in acreage, rounded to the nearest 1/100th of an acre and to match the areas shown on the plan. The reforestation tables shall also be revised to account for the correct credit ratio for the proposed shrub planting.
    - (7) Provide the standard soil testing and amendment notes.
  - h. Provide a single-woodland conservation summary table consistent with the areas shown on the plan and in the worksheet.
  - i. Ensure that all required information is shown on the plan and accurately reflected in the legend using the standard symbols found in the ETM, or equivalent.
  - j. Have the qualified professional who prepared the plan sign and date it and update the revision box with a summary of the revisions made.
- 5. Prior to the issuance of permits, a copy of the approved sediment and erosion control plan shall be submitted to M-NCPPC.
  - 6. Prior to commencement of the mining operation, Applicant shall post a bond with the Department of Permitting, Inspections and Enforcement to secure its obligation pertaining to reforestation and landscaping as required by this Special Exception.
  - 7. The area to be mined shall be reclaimed in accordance with the Reclamation Plan by filling with acceptable materials as described in the Prince George's County Building Code.
  - 8. A conservation easement shall be recorded in the land records that describes the primary management area (PMA) by bearings and distances. The conservation easement shall contain the entirety of the PMA as shown on the approved natural resource inventory except for the areas of approved impacts as shown on the approved TCP2. The conservation easement shall be reviewed by the Environmental Planning Section prior to recordation. The recorded easement document shall include the following text:

"These conservation easements are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."

9. Noise mitigation shall be provided on-site by implementation of the following:
  - a. Mining operations on the site are restricted to the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday, and 7:00 a.m. to 12:00 p.m. on Saturdays, excluding federal holidays. There will be no operations on Sundays. Trucks are not permitted to arrive at the site prior to 7:00 a.m.
  - b. The noise mitigation berms shall be located as shown on the plans submitted to protect nearby residential buildings and properties. Berm 1 shall be a minimum of 4.5 meters (14 feet) in height, and Berm 2 shall be a minimum of four meters (13 feet) in height.
  - c. Trucks shall not use compression or “Jake” brakes either on-site or on the haul road.
  - d. Speeds on-site shall be restricted to 15 mph for all heavy vehicles.
  - e. All machinery shall be kept in good working order, especially mufflers to insure quiet operation.
  - f. The volume of backup warning devices shall be minimized while still meeting OSHA (Occupational Safety and Health Administration) standards.
  - g. The property will be mined at a maximum rate of 200 truck trips (100 loads) per day.
10. Mitigation of particulate matter emissions shall be accomplished by implementation of the following:
  - a. The haul road shall be maintained with a water truck or other approved dust control methods.
  - b. The application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.
  - c. Open-bodied vehicles transporting materials shall be covered at all times when in motion, in accordance with COMAR regulations. Alternate means may be employed to achieve the same results as would covering the vehicles, so long as such means are not in contravention of COMAR regulations.
  - d. The site shall have a 15 mph speed limit to reduce dust generation from travel on the unpaved haul road.

- e. All mobile equipment to be used on-site shall use ultra-low sulfur diesel fuel. The fuel supplier certification of the sulfur content of each fuel delivery shall be kept on-site for the duration of the special exception approval period.
- 11. Equipment fueling on-site shall be done in accordance with NFPA 30 (National Fire Protection Association), Flammable and Combustible Liquids Code, Chapters 2 and 3. The mobile fueling trucks shall be operated by trained personnel holding valid oil vehicle operator's certificates as required by COMAR 26.10.01.17. Care shall be taken to minimize spillage. Refueling shall take place as far from streams and wetlands as possible.
- 12. If the operation of the subject sand and gravel mine negatively impacts the water level in any wells within a quarter-mile radius of the subject mining site as verified by the Maryland Department of the Environment (MDE), or the Prince George's County Department of Environmental Resources (DER), corrective action shall be immediately taken by the applicant, including but not limited to, the drilling of a new well to replace the adversely affected well.
- 13. The subject property may not be utilized as a Sanitary Landfill, a Rubblefill or a Class III Fill.
- 14. All extracted materials will be transported off-site by means of a private gravel roadway connecting the subject site to the adjacent Gudelsky wash plant site.
- 15. Traffic to and from the site by employees and visitors will be directed through the Gudelsky wash plant site utilizing the private gravel roadway connecting the subject property to the Gudelsky property.
- 16. If residential development occurs on any part of abutting property now owned by A.H. Smith, et. al. at any time during the duration of the mining operation, a berm 6 meters in height needed to buffer noise at required levels abutting the area of the Smith property being residentially developed shall be installed by the Applicant or its successors. Those portions of the berms required to buffer residential development shall be installed and completed prior to issuance of the first building permit on the Smith property being residentially developed.
- 17. Prior to the issuance of permits, Phase I (Identification) archeological investigations, according to the Planning Board's Guidelines for Archeological Review (May 2005), are recommended on the above referenced property to determine if any cultural resources are present. Areas of the property that possess a high potential to contain archeological resources should be surveyed for archeological sites. The applicant should submit a Phase I research plan for

approval by the staff archeologist prior to commencing Phase I work. Evidence of Maryland-National Capital Park and Planning Commission (M-NCPPC) concurrence with the final Phase I report and recommendations is required prior to approval.

18. Upon receipt of the report by the Prince George's County Planning Department, if it is determined that potentially significant archeological resources exist in the project area the applicant shall provide a plan for:
  - a. Evaluating the resource at the Phase II level, or
  - b. Avoiding and preserving the resource in place.
19. If a Phase II and/or Phase III archeological evaluation or mitigation is necessary, the applicant shall provide a final report detailing the Phase II and/or Phase III investigations and ensure that all artifacts are curated in a proper manner, prior to any ground disturbance or the approval of any grading permits.
20. Prior to the issuance of permits the Special Exception Site Plan shall be revised to add "Special Exception" to the name, and to add a note indicating that the required sign will expressly identify the use as a surface mining or sand and gravel operation.

The Special Exception Site Plan and Mining Plan is Exhibit 70(d).

The Restoration/Reclamation Plan is Exhibit 70(g).

The Tree Conservation Plan (TCP2-047-09) is Exhibit 39(a) – (d).

The Sediment and Erosion Control Plan and Notes are Exhibits 70(e) and (f)