

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

**SPECIAL EXCEPTION**

**4669**

**DECISION**

Application:	Surface Mining and Variance
Applicant:	Chaney Enterprises
Opposition:	Kelly Canavan, et al
Hearing Dates:	September 28 and 29, October 7, 18 and 25, November 9, 2011 and January 19, 2012
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4669 is a request for permission to use approximately 180.93 acres of land in the R-A (Residential-Agricultural) Zone, located on the south side of McKendree Road, approximately one (1) mile west of the intersection of McKendree Road and Robert S. Crain Highway (US 301), Brandywine, Maryland, for Surface Mining.
- (2) Both the Planning Board and the Technical Staff recommended approval with conditions. (Exhibits 27, 95(a)-(b), and 175(c))
- (3) At the conclusion of the evidentiary hearing, the record was kept open for the inclusion of certain documents, upon receipt of which, the record was closed on March 16, 2012.

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject property is a large, irregularly shaped tract of land, approximately 180.93 acres in size, Parcel A and part of Parcels 8 and 10, Tax Map 154, Grids B-4, C-4, D-4 and Tax Map 164, Grids B-1, B-2, C-1, C-2, D-1, E-1 and E-2. (Exhibit 104(c)) It is located on the south side of McKendree Road approximately one (1) mile west of the intersection of McKendree Road and Robert S. Crain Highway (US 301). At the request of the Zoning Hearing Examiner, the Application was amended to delete the original stem road accessing McKendree Road from the north of the subject property as it was not being utilized by the proposed use and the haul road to the south to be used by the instant Application for access to McKendree Road was incorporated into the acreage (and is located in the Developing Tier), the majority of which constituted the haul road for Special Exception 4402, a now defunct Sand and Surface Mining operation.

(2) The subject property is partially wooded with the majority of the subject site having been cleared to accommodate its previous use as the Robin Dale Golf Course. Upon cessation of the golf course use, the cleared areas were used for agriculture. The subject site is improved with several abandoned clubhouse buildings and a centrally located parking lot, all of which will be removed. The previous access was via a long driveway from McKendree Road to the north; this driveway will not be utilized by the proposed use, which will be accessed by a haul road extending to McKendree Road and located to the south of the bulk of the subject property. (Exhibits 103 and 104; January 19, 2010, T. p. 24-25)

### **Neighborhood and Surrounding Uses**

(3) The neighborhood is bounded on the north by McKendree Road, on the east by Robert S. Crain Highway (US 301), on the south by Mattawoman Creek (Charles County boundary) and on the west by Accokeek Road.

(4) The neighborhood is primarily undeveloped. Many of the parcels, being expansive in nature, are almost entirely wooded. There are scattered residential uses as well as currently active sand and gravel mining operations, a wet processing plant, and agricultural fields and uses. East of the subject property towards Robert S. Crain Highway (US 301) is the Timber Village residential subdivision.

(5) The subject site is surrounded by the following uses:

North - Woodlands and undeveloped land in the R-R (Rural Residential) Zone.

Northeast and East - Undeveloped woodlands, beyond which is a residential subdivision located more than 1,000 feet to the northeast of the subject site in the R-E (Residential-Estate) Zone.

Southeast, South, West and Northwest - Sand and gravel mining operations in the R-A Zone.

West and Northwest - Sand and gravel mining operations in the R-A Zone.

(6) The properties immediately abutting the subject property are primarily undeveloped and wooded. Immediately to the north, east and south is property owned by the Dobson family, comprising vast tracks of hundreds of acres of primarily wooded and undeveloped land. To the west is property which is partially wooded and partially utilized by other surface mining operations, both active and defunct, pursuant to a variety of Special Exceptions.

**Master Plan and Sectional Map Amendment**

(7) The 1993 Subregion V Master Plan contained a chapter on Sand and Gravel Resources which recognized the importance of the extraction of minerals in this geographic region prior to development of those sites.

**Goals:**

- To provide for the efficient and sequential extraction of significant mineral deposits and the reclamation and development of the extraction areas, while minimizing impacts on the environment.

**Objectives:**

- To identify those properties containing significant sand and gravel deposits.
- To ensure an adequate supply of sand and gravel for future development of the metropolitan area.
- To phase future development in a manner providing for the orderly extraction of sand and gravel resources and discouraging the premature commitment of these areas to permanent development.
- To plan development so that the rehabilitation of previously extracted areas may be accomplished in an orderly manner.
- To continue to develop and refine guidelines and criteria for evaluating resource extraction proposals that preclude adverse effects on the natural and human environment and reduce conflicts with the surrounding land uses. (Exhibit 90, p. 183)

(8) The 1993 Subregion V Master Plan adopted recommendations and guidelines for Sand and Gravel Resources:

**Recommendations:**

- Sand and gravel resources are both economically important to the County and finite. In addition, the County is the leading resource area in the State. Therefore, this Plan encourages extraction prior to permanent development. Before development occurs on sites containing sand and gravel, reclaimed sites should be developed and abandoned sites should be reclaimed and developed.

**Guidelines:**

- Mining operations should be designed to minimize adverse effects on environmentally sensitive areas.
- Extraction of the area's identified commercially viable sand, gravel and clay deposits should occur in a manner that provides a readily available supply of these basic construction materials and prevents preemption of extraction activities by development.
- Extraction and reclamation activities should be designed to minimize the potential adverse effects on adjacent land uses of dust, noise, vibration, traffic and unsightly storage.
- Mineral storage, processing operations and equipment storage should be screened from direct view along public rights-of-way and from living areas.
- Noise attenuation techniques such as the use of setbacks and earth berms, the retention of periphery vegetation and woodlands, and the construction of acoustical fencing should be utilized to minimize noise intrusion on adjacent uses. Furthermore, extraction proposals should factually demonstrate that their attenuation measures will ensure that surrounding development will not be subjected to noise which exceeds the State's current maximum allowable levels.
- Extraction and reclamation activities should be designed to minimize adverse effects on the public transportation network. (Exhibit 90, p. 186)

(9) The 1993 Subregion V Sectional Map Amendment retained the subject property in the R-A Zone.

(10) The 2002 Prince George's County Approved General Plan places this property in the Rural Tier. The vision for the Rural Tier is for the protection of large amounts of land for woodland, wildlife habitat, recreation and agricultural pursuits, and preservation of the rural character and vistas that now exist. This Application is consistent with the 2002 General Plan Development Pattern policies for the Rural Tier, specifically, that existing natural resources be used wisely. The Applicant is proposing a mining operation preserving areas of woodland, floodplain, and other sensitive environment features. The policy further recommends that special studies be prepared to ensure that mining operations are compatible with existing neighborhoods. (Exhibit 27, p. 2)

(11) The 2009 Adopted and Approved Subregion V Master Plan and Sectional Map Amendment discusses the importance of sand and gravel mining in two (2) separate sections. Discussion and recommendations are found in the Mineral Resources Section of the Master Plan found on pages 43

through 47, inclusive as well as in the section dealing with economic development and in particular, the mining of sand and gravel found on pages 160 through 161 of the Master Plan text. As a preliminary statement, the Master Plan states:

“Under State law, a comprehensive plan must incorporate land use policies and recommendations to balance mineral resource extraction with other land uses; and to prevent the preemption of mineral resources extraction by other uses.”  
(Exhibit 89, p. 49)

The Master Plan also sets forth certain goals to be achieved relative to sand and gravel mining within Subregion V. These goals are as follows:

- Preserve access to mineral resources where sufficient and economically viable mining potential exists. (Exhibit 89, p. 45)
- The County capitalizes on the extraction of sand and gravel resources prior to the land being pre-empted by other land uses. (Exhibit 89, p. 160)

(12) In order to address the ever declining availability to access sand and gravel resources, the District Council, when adopting the 2009 Subregion V Master Plan, endorsed certain Policies and Strategies in order to address this problem. These include:

- Access to new mining capacity is becoming limited as land is subdivided for Development or broken-up into uneconomical units of production. (Exhibit 89, p. 160)
- Provide commercially viable access to sand and gravel resources to accommodate current and future demand. (Exhibit 89, p. 160)
- Prevent the preemption of mineral resource extraction by other land uses. (Exhibit 89, p. 161)
- Consider creating a mineral overlay zoning district that corresponds to the unmined Sand and gravel deposits and require the following:
  - \* Resource surveys of mineral resources prior to development for other uses.
  - \* Offering access to mineral resources prior to development.
  - \* Mitigation requirements for development projects that proceed without mining the resource. Mitigation could include placing a protective easement on land and needed protection elsewhere, or the payment of a fee-in-lieu to support the County's land preservation programs. (Exhibit 89, p. 47)

(13) In addition to encouraging the extraction of sand and gravel, the Master Plan also addresses the necessity to interface with citizens and ensure that mining occurs with minimal impact on surrounding communities. In this regard, the 2009 Subregion V Master Plan endorses the following Policies and Strategies:

- Foster dialogue between community residents and members of the sand and gravel community to address concerns. Discuss the benefits of mining and the mining application approval process.
- Conduct community outreach to improve understanding of the sand and gravel industry and to improve industry integration within rural communities.
- Ensure that sand and gravel mine applications address all impacts on surrounding communities. (Exhibit 89, p. 161)

(14) The 2009 Subregion V Master Plan and Sectional Map Amendment retained the subject property in the R-A Zone.

### **Applicant's Proposal**

(15) The Applicant proposes to mine approximately 153.5 acres of the subject property with the remainder retained in its current state as floodplain, wetland and tree conservation. As the duration of a Special Exception for Surface Mining is limited to five (5) years, the Applicant has proposed the following mining phases:

Phase I	29 acres	1.5 years
Phase II	34.5 acres	1.5 years
Phase III	44.5	1.5 years
Phase IV	45.5	1.5 years

The Applicant testified that the Surface Mining actually may (Exhibit 39 (e)) take a shorter period if there is an upturn in the economy. (September 28, 2011, T. p. 89) Each phase will be preceded by the institution of sediment and erosion control devices to minimize stream sedimentation and soil erosion, and pre-mining area preparation in accordance with County and State regulations. Environmentally sensitive portions of the subject property including floodplains, tree conservation areas, wetlands, steep slope, and buffer yards will be preserved. All existing structures will be removed and no new structures are proposed. Extracted materials are proposed to be trucked south on McKendree Road to Robert S. Crain Highway (US 301), and from there to job sites and processing plants throughout the metropolitan region.

(16) The Applicant is also requesting a variance to the Woodland and Wildlife Habitat Conservation Ordinance for specimen tree removal. (Exhibits 80 and 81) This request is for the removal of 23 of the 41 existing specimen trees, located in scattered locations throughout the central

portion of the subject property. The remainder of the specimen trees, which will be retained, are located within the Primary Management Area (PMA) or along the perimeter of the subject property.

### **MOTIONS**

(1) At the onset of the initial hearing Protestants submitted a Preliminary Motion to Delay Proceedings on the Applicants Pending Compliance with the Public Ethics Law. (September 28, 2011, T. p. 17-21; Exhibit 64) This Preliminary Motion to Delay is predicated upon an alleged violation of the Public Ethics Laws (Ann. Code of Md, State Government Article, §15-829 thru §15-835) by the Applicants failure to file the required Non-Corporate Applicant Affidavit. This Preliminary Motion to Delay Proceedings was denied as the required Affidavit was properly filed on November 8, 2009. (Exhibit 67)

(2) Protestants next submitted a Preliminary Motion for Denial Based on Prohibited Ex Parte Communication. (September 28, 2011, T. p. 21-25; Exhibit 63) The alleged Ex Parte Communication is evidenced by Exhibit 21, dated August 30, 2010, correspondence between Applicants Attorney and the Chief Zoning Hearing Examiner regarding Application submittal requirements and documents. Protestant's counsel admitted that there was no allegation of Ex Parte Communication between the Applicant or Applicants counsel and your Zoning Hearing Examiner. (September 28, 2011, T. p. 23) As your Zoning Hearing Examiner was not party to, nor aware of, any communication Applicant's counsel may have had regarding the instant Application with members of staff during the years prior to the commencement of the instant hearing on September 28, 2011, and as the instant decision is predicated solely upon the evidence adduced during the lengthy evidentiary hearings, this Preliminary Motion for Denial is denied. (September 28, 2011, T. p. 25)

(3) Additionally, Protestants have submitted a Motion to Deny Application Based on Invalidity of CR-61-2009. (Exhibit 169) The Applicants have filed a Memorandum in Opposition to Protestant's Motion to Deny Application (Exhibit 170), and Protestants have responded with its Reply to Applicants Memorandum in Opposition to Protestants Motion to Deny Application. (Exhibit 171) In brief, Protestants assert the invalidity of the 2009 Subregion V Master Plan and Sectional Map Amendment (CR-61-2009) adopted by the Planning Board on June 25, 2009, and approved by the District Council on September 9, 2009, as violative of the Public Ethics Law for its failure to include required affidavits in the record. Protestants further argue that since the subject property was zoned from the O-S (Open Space) to the R-A (Rural Agricultural) Zone by the adoption of CR-61-2009, the 2009 Subregion V Master Plan and Sectional Map Amendment may not be used to support the instant Application.

(4) CR-61-2009 is currently the subject of two (2) appeals to the Circuit Court, CAL-09-31402 and CAL-09-32017, consolidated by Order of Court, February 22, 2010. By Order dated July 26, 2010, the Honorable Judge Hotten remanded these appeals to the District Council for the limited purpose of supplementing the record with any affidavit required by the Public Ethics Law. (Exhibit 169(d))

(5) In its opposition, Applicants correct Protestants misapprehension that the subject property was rezoned by the adoption of the 2009 Subregion V Sectional Amendment Map when in fact the subject property has been in the R-A Zone since prior to the adoption of the 1993 Subregion V Master Plan and Sectional Map Amendment and was similarly retained in the R-A Zone by the 2009 Subregion V Master Plan and Sectional Map Amendment.

(6) The 2002 Prince George's County Approved General Plan<sup>1</sup> placed the subject property within the Rural Tier<sup>2</sup> and the 2009 Subregion V Master Plan and Sectional Map Amendment redrew the boundaries of the Rural Tier, shifting the subject property to within the boundaries of the Developing Tier<sup>3</sup>. Tiers do not constitute property land use Zones, but are more properly described as development areas within which properties are developed pursuant to articulated development standards and policies. (2002 General Plan, p. 4)

(7) It is not within the jurisdiction of the Zoning Hearing Examiner to declare CR-61-2009 to be invalid, §27-127; indeed Protestants have availed themselves of the proper judicial review of CR-61-2009 by filing in the Circuit Court a request pursuant to the Maryland Regional District Act, Article 28, Annotated Code Md. §8-106(e) and Md. Rule §7-201(a). CAL-09-31402 and CAL-09-32017 (consolidated). These Petitions of Judicial Review are currently within the jurisdiction of the Circuit Court and the issue of the validity of CR-61-2009 will be properly disposed of by that Court or one of the Appellate Courts.

(8) The outcome of the challenge to the validity of CR-61-2009 is not dispositive of the instant Application as the record supports the finding that the proposed use will not substantially impair the integrity of either the 1993 or the 2009 Subregion V Master Plan and Sectional Map Amendment. §27-317(a)(3)

### **LAW APPLICABLE**

(1) Surface Mining of sand and gravel is permitted in the R-A Zone pursuant to §27-441(b) of the Zoning Ordinance by Special Exception in accordance with §27-317, §27-410, and §27-426 (a)(1).

(2) Section 27-317 requires:

(a) A Special Exception may be approved if:

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1 "The General Plan is the current approved plan for the physical development of the Maryland-Washington Regional District or for that portion of the "District" in Prince George's County." §27-107.01 (a) (100) It is "the document, that provides long-term, comprehensive guidance for future county development." County General Plan, Glossary of Terms, p. 105

2 "The Rural Tier is the most scenic part of the county and is characterized by fine landscapes; most of the county's remaining farms, extensive woodlands, numerous streams, and diverse wildlife habitat. Development activity includes mining and widely dispersed large lot residential home sites." (2002 General Plan, p. 5)

3 "The largely suburban subarea of the County located primarily in the central portion of the County" (2002 General Plan, Glossary of Terms, p 105). Containing almost half of the County's household and half the employment, it is still an evolving pattern of farms, residential subdivisions, employment parks, and auto-oriented commercial areas. Growth policies in the Developing Tier encourage compact residential neighborhood design and limit commercial uses to designated centers." (2002 General Plan, p. 5)



- (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 Tree Conservation Plan.
- (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 requirements of Subtitle 24-130 (b)(5).

(3) Section 27-410 states in pertinent part:

- (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.

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

\* \* \* \* \*

(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 requires in pertinent part:

(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.

### **Burden of Proof**

(5) The burden of proof in any zoning case shall be the Applicant's. (§27-142(a)) Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance of Prince George's County. (§27-107.01 (a) (266))

### **Burden of Production and Persuasion**

(6) The Applicant has the burden of providing legally sufficient evidence that is accepted into the record from which findings and conclusions can be either made directly or by reasonable inference. However, the Applicant must also persuade the trier of fact that the evidence produced not only permits the approval of the request but also is of sufficient strength or outweighs other evidence to the effect that the request either should or is required to be granted. B.P. Oil Company v. County Board of Appeals of Montgomery County, 42 Md. App. 576, 401 A.2d 1054 (1979).

### **Standard of Proof**

(7) In reviewing the evidence that has been "produced", to determine if the District Council is "persuaded", the District Council must determine whether the answers, findings, or conclusions required or reached are supported by a "preponderance of the evidence" on each issue. While these magic words are not required to be recited, the "preponderance of the evidence" is that evidence, when fairly considered, makes the stronger impression, has the greater weight and is more convincing as to its truth than the evidence in opposition thereto. Williams v. Supt. Clifton T. Perkins Hospital Center, 43 Md. App. 588, 406 A.2d 1302 (1980).

### **Credibility of Evidence**

(8) It is within the sound discretion of the trier of fact, the Office of the Zoning Hearing Examiner or the District Council, to determine certain evidence lacks credibility and to give no weight to that evidence. Md. State Retirement and Pension System v. Martin, 75 Md. App. 240, 540 A.2d 1188, 1192 (1988). In other words, certain evidence may just be ignored. It is given no weight in the conclusion, hence, found not credible.

Credibility findings of a hearing officer or judge are entitled to considerable deference and should not be reversed, absent an adequate explanation of the grounds for the reviewing body's source of disagreement. Anderson v. Dept. of Pub. Safety and Correctional Services, 330 Md. 187, 623 A.2d 198 (1994).

### **Adverse Effects**

(9) "The Court . . . (of Appeals of Maryland) . . . has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. 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 this presumption. The duties given the Board are to judge whether the neighboring properties in the

general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995)

The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently association with such a special exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974).” Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

## CONCLUSIONS

(1) The general purposes of the Zoning Ordinance are contained in §27-102. Special Exception 4669 is in compliance with these purposes as follows:

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

The Environmental Impact Report (EIR-4669) prepared by the M-NCPPC Environmental Planning Section, the Technical Staff Report, the Air Applicability Determination prepared by

Environmental Resource Management, the Acoustical Analysis prepared by Scanteck, Inc., the Traffic Impact Analysis prepared by the Traffic Group, and the Hydrologic Impact Analysis prepared by Advanced Land and Water, Inc. all support a finding that the proposed Application will not adversely affect 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;***

The proposed Surface Mining Application is in conformance with the recommendations of the 2002 Prince George's County General Plan, the 2009 Subregion V Master Plan Sectional Map Amendment and the 1993 Master Plan and Sectional Map Amendment.

***(3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;***

The instant Application will protect all of the environmentally sensitive areas of the subject property including floodplain, wetland, stream buffers and woodland. Future development of the site as possibly a low density residential transition area will not be precluded by mining on this site after reclamation is completed.

***(4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;***

This Application will provide for the orderly growth and development of the county by providing access to sand and gravel mineral deposits that will support job growth and development in other appropriate areas of county. After mining is complete and reclamation has been finalized future development such as low density housing or any other low density residential use will be permitted on the subject property.

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

The reuse of an abandoned golf course in a relatively undeveloped area of the County will not affect the privacy of nearby residents. When the mining is completed, the subject property will be reclaimed with reforestation areas to increase the forest stock in the county, meadow-grassland to provide open space and potential areas for recreation, and two (2) ponds to control the runoff from the property and become focal points for any future development.

***(6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;***

The instant Application will provide access to valuable mineral resources in the County without removing forest resources, and will provide an area for future low density residential development if appropriate. Based on the Air Applicability Determination prepared by Environmental Resource Management, the Traffic Impact Analysis prepared by the Traffic Group, the Acoustical Analysis prepared by Scanteck, Inc, the Hydrologic Impact Analysis prepared by Advanced Land and Water, Inc., the Environmental Impact Report (ERI-4669), and the Technical Staff Report, this Application will not have adverse impacts to adjoining property owners or developments.

***(7) To protect the County from fire, flood, panic, and other dangers;***

The Applicant has applied for and obtained approval of Sediment and Erosion Control Plans from the Prince George's County Soil Conservation District, and will be required to obtain a mining permit from the Maryland Department of the Environment for mining operations on the site and control of any water runoff or flooding.

***(8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

This Application will not preclude the future development of the subject property as a low density transitional residential use after mining has ceased and site reclamation is completed or any other low density residential use.

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

The instant Application will provide for the responsible extraction and use of a valuable mineral resource in Prince George's County, will provide the opportunity for economic development, and will create valuable jobs for residents of Prince George's County.

***(10) To prevent the overcrowding of land;***

The proposed Surface Mining Application is a temporary use of an abandoned golf course, and when mining operations are completed and reclamation finalized, open meadows, reforestation areas, and water features will remain as future usable resources.

***(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;***

Pursuant to the evidence adduced through the Traffic Group, the Department of Public Works and Transportation, and the Technical Staff Report, excellent site distance exists at the haul road intersection with McKendree Road. With improvements being made to the haul road intersection, turning movements can be made in a safe manner. McKendree Road will continue in the future to operate at an acceptable level of service, and with the Department of Public Works and

Transportation's conditions requiring widening and repaving of McKendree Road in certain areas, McKendree Road will operate in a safe manner

***(12) To insure the social and economic stability of all parts of the County;***

With the ability to extract a valuable mineral resource needed for the continued development of Prince George's County, the Applicant will be providing economic development in the County, increased tax base, and employment opportunities for residents of the County.

***(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;***

The proposed use will not cause any adverse impacts from an air quality standpoint; this mining operation will not cause any impacts that will exceed National Ambient Air Quality Standards and will not exceed COMAR requirements for particulate matter. Dust and other contaminants will be controlled by a continuous watering operation along the haul road. The mining operation will not exceed applicable decibel limits at the outer property boundaries of the adjoining properties. As part of the Special Exception Site Plan, a Type II Tree Conservation Plan has been developed to protect all of the the existing woodland area, stream valleys, steep slopes, and environmentally sensitive areas. The Applicant has already obtained approval of their Sediment Control and Storm Water Management Plan from the Soil Conservation District.

***(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and***

The instant Application is a temporary use of an abandoned golf course, and when mining operations are completed and reclamation finalized, open meadows, reforestation areas, and water features will remain as future usable resources, and available for future recreation. This Application will not preclude the future development of the subject property as a low density transitional residential use.

***(15) To protect and conserve the agricultural industry and natural resources.***

The proposed Application will conserve the environmentally sensitive areas of the subject property including wetland, stream buffers, steep slopes, and 100 year floodplain which are all natural resources. After mining is completed, the Applicant will be providing additional reforestation on the site to increase the woodland resources of the County. §27-317(a)(1)

(2) The instant Application is also in conformance with the specific purposes of the R-A Zone, §27-426(a)(1), as follows:

***(A) To provide for large-lot one-family detached residential subdivisions, while encouraging the retention of agriculture as a primary land use;***

This Application is a temporary use of an abandoned golf course, and when mining operations are completed and reclamation finalized, open meadows, reforestation areas, and water features will remain as future usable resources. This Application will not preclude the future development of the subject property as a low density transitional residential use after mining and site reclamation is completed.

***(B) To encourage the preservation of trees and open spaces; and***

As part of the Special Exception Site Plan, a Type II Tree Conservation Plan has been developed to protect all the the existing woodland area, stream valleys, steep slopes, and environmentally sensitive areas. Additional areas of reforestation are proposed after mining is complete as part of the reclamation process. The proposal is for a temporary use of an abandoned golf course, and when mining operations are completed and reclamation finalized, open meadows, reforestation areas, and water features will remain as a future usable resources, and available for future recreation.

***(C) To prevent soil erosion and stream valley flooding.***

The Applicant has applied for the required mining permit from the Maryland Department of the Environment. As part of the mining operation, the Applicant has also obtained the required approval of a Sediment and Erosion Control Plan from the Soil Conservation District. In accordance with these permits, this Application will prevent soil erosion and stream valley flooding. §27-317(a)(1)

(3) With the recommended conditions of approval, the instant Application will be in conformance with all of the applicable requirements and regulations of Zoning Ordinance. §27-317 (a)(2)

(4) The 2009 Subregion V Master Plan and Sectional Map Amendment were adopted by the District Council on September 9, 2009. Although its legality has been challenged by Protestants and is currently under judicial review by the Circuit Court of Prince George's County, its adoption is by presumption of law a validity enacted legislative action and, until this presumption is rebutted and CR-61-2009 is declared invalid by a court of competent jurisdiction, it is this Master Plan and Sectional Map Amendment which the instant Application must be found to not impair. Out of an abundance of caution and in an attempt to forestall possible future legal action, the instant Application will also be analyzed in terms of its possible impairment of the 1993 Subregion V Master Plan and Sectional Map Amendment as well, with the caveat that at the current time, this secondary analysis is not dispositive as CR-61-2009 continues to enjoy the full force and effect of validly enacted legislation.<sup>4</sup>

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<sup>4</sup> The 1993 Subregion V Master Plan and Sectional Map Amendment, the 2002 General Plan, and the 2009 Subregion V Master Plan and Sectional Map Amendment will be addressed in sequential order in time and this order of presentations is not indicative of the legal superiority of



(5) The 1993 Master Plan recognizes that Subregion V is an important source of sand and gravel for the metropolitan area. The Master Plan provides goals and objectives for the extraction of mineral resources:

Goal: *To provide for the efficient and sequential extraction of significant mineral deposits and the reclamation and development of the extraction areas, while minimizing impacts on the environment.*

Objectives: *To identify those properties containing significant sand and gravel deposits.*

*To ensure an adequate supply of sand and gravel for future development of the metropolitan area.*

*To phase future development in a manner providing for the orderly extraction of sand and gravel resources and discouraging the premature commitment of these areas to permanent development.*

*To plan development so that the rehabilitation of previously extracted areas may be accomplished in an orderly manner.*

*To continue to develop and refine guidelines and criteria for evaluating resource extraction proposals that preclude adverse effects on the natural and human environment and reduce conflicts with the surrounding land uses. (Exhibit 90)*

(6) In Subregion V, sand and gravel deposits are found in parts of two (2) geologic units: Upland Gravel of the Brandywine Formation and Terrace Deposits along major streams such as Piscataway and Mattawoman Creeks. Upland Gravel is the primary source of sand and gravel for Prince George's County and particularly for Subregion V. Upland Gravel comprises 35,366 acres of Subregion V while Terrace Deposits cover an additional 3,060 acres, together approximately 68% of the total Subregion. Due to environmental regulations and the inferior grade of its materials, little if any of the Terrace Deposits will be mined. The subject property is within the Brandywine Formation. (Exhibit 89, p. 46) As a result of existing development and environmental regulations, by 1993 only 46% of the Brandywine Formation remained available for mining.

(7) The 1993 Subregion V Master Plan recommended:

- Sand and gravel resources are both economically important to the County and finite. In addition, the County is the leading resource area in the State. Therefore, this Plan encourages extraction prior to permanent development. Before development occurs on sites containing sand and gravel, reclaimed sites should be developed and abandoned sites should be reclaimed and developed. (Exhibit 90) §27-317(a)(3)

(8) The 2002 General Plan classified the subject property in the Rural Tier. Surface Mining is an interior use of land that is not specifically addressed by Rural Tier Development Pattern goals and policies. However, reclamation and reuse of the subject property after completion of the mining activities for recreation, agriculture or forestry would be consistent with Rural Tier Development Pattern goals and policies. §27-317(a)(3)

(9) The 2009 Subregion V Master Plan and Sectional Map Amendment contained amendments to the 2002 General Plan including Revision 18 which redesignated the Robin Dale Golf Course property from the Rural Tier to the Developing Tier. Goals for the Developing Tier as outlined in the 2009 Subregion V Master Plan include:

- Promote a sustainable pattern of development that encourages economic vitality;
- Encourage efficient use of existing and planned public facilities;
- Enhance the quality and character of communities and neighborhoods; and
- Preserve rural, agricultural, and scenic areas and protect environmentally sensitive lands.

(10) The 2009 Subregion V Master Plan carries forward the importance of sand and gravel resources recognized by the 1993 Plan and further emphasizes the recommendations of the 1993 Master Plan.

## **Strategies**

### **Mineral Resource Areas**

- Evaluate the utilization of a mineral overlay zoning district that corresponds to the unexploited sand and gravel deposits, avoiding already developed lands, to protect mineral resources within the overlay district require the following:
  - \* Surveys of mineral resources prior to development for other uses.
  - \* Offering access to mineral resources, if present, prior to development.
  - \* Mitigation requirements for development projects that proceed without exploiting the resource.

## Mineral Resources

Under state law a comprehensive plan must incorporate land use policies and recommendations to balance mineral resource extraction with other land uses; and to prevent the preemption of mineral resources extraction by other uses.

Subregion V contains extensive mineral resources based on the presence of large sand and gravel deposits affiliated with the Brandywine Formation (see **Map IV-4, Major Sand and Gravel Resources, page 46**), and note that the resource extends into much of Subregion 6). This resource provides an economic base for jobs, value-added services, and economic benefits (see Chapter VIII, Economic Development).

Identifying the location of remaining sand and gravel deposits and planning for the land to transition from a temporary mining use to its ultimate land use should be part of a strategic plan for mineral resources.

## Goals

- Preserve access to mineral resources where sufficient and economically viable mining potential exists.

## Strategies

- Considering creating a mineral overlay zoning district that corresponds to the unmined sand and gravel deposits and require the following:
  - \* Resource surveys of mineral resources prior to development for other uses.
  - \* Offering access to mineral resources prior to development.
  - \* Mitigation requirements for development projects that proceed without mining the resource. (Exhibit 89, p. 43-47)

## Sand and Gravel

Sand and gravel is an essential element of new construction in the Washington, D.C., region. Major sand and gravel deposits associated with the Brandywine geological formation (see **Map IV-4, page 46**) are located in Subregion 5. There is significant potential for sand and gravel mining due to the existence of large unmined reserves. It is a diminishing resource because of depletion from ongoing mining and because new development on top of sand and gravel reserves eliminates potential future extraction.

**Goal**

- The county capitalizes on the extraction of sand and gravel resources prior to the being pre-empted by other land uses.

Because of its high weight-to-size ratio, sand and gravel from the Brandywine Formation is most cost effective to extract, process and transport near its local end use.

- Access to new mining capacity is becoming limited as land is subdivided for development or broken-up into uneconomical units of production.

**Policies**

- Provide commercially viable access to sand and gravel resources to accommodate current and future demand.
- Prevent the preemption of mineral resource extraction by other land uses (see Chapter IV).

**Strategies**

- Explore the feasibility of developing a mineral overlay zone to protect mineral resources. (Exhibit 89, p. 160-161)

**Conformance with the Countywide Green Infrastructure Plan**

(11) The site contains Regulated, Evaluation, and Network Gap areas as identified in the Countywide Green Infrastructure Plan. The Regulated Areas are concentrated along the perennial stream located on the western portion of the site as well as a wetland complex located on the northern portion of the site. The Evaluation and Network Gap areas are mapped along the edge of the woodland surrounding the site. Minimal impacts to the green infrastructure network are proposed and are mainly for stormwater management outfalls needed to address the regulations regarding erosion and sediment control and stormwater management. The entire woodland conservation requirement is proposed to be met on-site with a combination of preservation and reforestation in conformance with the Woodland and Wildlife Habitat Conservation Ordinance and will result, over time, in the presence of more woodlands on-site than existed prior to the mining operation. Staff recommends that the proposed use be found to be in conformance with the Countywide Green Infrastructure Plan because the regulated environmental features are proposed to be preserved, with the exception of minor impacts for stormwater outfalls, and all of the woodland conservation requirements are proposed to be met on-site. §27-317 (a)(3)

(12) The Environmental Planning Section, M-NCPPC, in a memo dated June 16, 2011, opined that the subject Application will not substantially impair the integrity of the 1993 Subregion V Master Plan, the 2002 General Plan, or the 2009 Subregion V Master Plan. §27-317 (a)(3)

(13) The Environmental Planning Section and the Transportation Planning Section, M-NCPPC, in accordance with State law, prepared an extensive Environmental Impact Report which concludes that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. (Exhibits 27 and 165) This conclusion is further supported by the Applicant's expert witnesses' oral and written testimony and studies, including but not limited to Exhibits 11, 17, 25, 26, 55, 56, 57, 58, 62, 69, 82, 83, 85, 105, 106, 146, 147 and 161. (September 28, 2011, T. p. 137-221, September 29, 2011, T. p. 127-195, October 2, 2011, T. p. 4-106, October 18, 2011, T. p. 3-49, 63-65, 68-70, October 25, 2011, T. p. 147-160, November 9, 2011, T. p. 37-38, 58-128, January 19, 2012, T. p. 4-81) See also Exhibit 65. §27-317 (a)(4)

(14) The proposed use has been designed and is required to operate in compliance with County and State regulations in such a manner that it will not be detrimental to the use or development of adjacent properties or the general neighborhood. See supporting basis *infra*. See also Exhibit 65. §27-317 (a)(5)

(15) A Type II Tree Conservation Plan (TCP2-061-09) has been recommended for approval by the Planning Board with minor revisions prior to signature approval (Exhibit 175(c)) and it is in conformance with the Special Exception Site Plan. (Exhibit 39) §27-317 (a)(6)

(16) The Site Plan, Exhibit 39, demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible. The TCP2-061-09 provides only minor encroachments into the regulated environmental features. Exhibit 161 provides sufficient justification for the two (2) isolated Primary Management Area disturbances (pipe outfalls) totaling 1,980 square feet which are proposed as a part of the Sediment and Erosion Control Plan. This minimal impact is accepted by the Environmental Planning Section, M-NCPPC as necessary to the orderly development of the subject property. §27-317 (a)(7)

(17) Heavy machinery, specifically two (2) excavators, dump trucks, and one (1) bulldozer will be used on site for excavation and hauling. No on-site washing, refining, or other processing is proposed. §27-410 (a)(1)

(18) The Environmental Planning Section reviewed the proposed mining operation and provided an Environmental Impact Report (EIR-4669). (Exhibit 27) Air quality and noise impacts were evaluated. The Applicant's Air Applicability Determination, Exhibit 82, and its Air Applicability Update, Exhibit 83, presented an evaluation of the predicted impacts on air quality by providing ambient (or background) air quality measurements and adding predicated levels of pollutants that will result from the proposed mining activity. The combined totals were compared to the established air quality standards. The standards are known as the National Ambient Air Quality Standards

(NAAQS) which are established for six (6) criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ground-level ozone, particulate matter, and sulfur dioxide.

The two (2) main concerns with regard to mining operations are particulate matter and carbon monoxide. While lead, nitrogen dioxide, ground-level ozone, and sulfur dioxide were included in the Air Applicability Determination, the amounts created from the mining operation are minimal.

Both the Air Applicability Determination and the Air Applicability Update state that all criteria pollutants are predicted to be below the NAAQS with the exception of ozone, which has existing ambient levels above the NAAQS and is currently in nonattainment for the Washington Metropolitan area. The small amount of ozone-causing emissions from the mining operation is not likely to add to the region's nonattainment status. The Environmental Impact Report recommends conditions addressing issues relating to the air shed and air quality. (October 7, 2011, T. p.'s 68-107) §27-410 (a)(2)

(19) Land reclamation will be continuously occurring simultaneously with the mining operations. The Reclamation Plan, Exhibit 39(a), shows that the mining site will be graded and stabilized with grasses. Two (2) major ponds will remain at the completion of the mining operation and will become focal points for any ultimate redevelopment. The TCP2 contains a reforestation element; substantial tree plantings will occur on site once the mining operation has ceased. Buffer area will remain untouched and contain existing tree cover which shall remain undisturbed. Non-tidal wetland areas will also remain undisturbed. The TCP2 shows the existing and proposed ground elevations of the subject property, adjacent land, all abutting streets, and that the final grade of the site will not exceed 3:1. (Exhibit 39 (i)-(j)) §27-410 (a)(3)

(20) The subject property is located in the R-A Zone. This Special Exception will not be valid for longer than five (5) years from the date of final approval. §27-410(a)(4)

(21) The Site Plan, Exhibit 39 (b), contains a note that estimates that the mining operation will be completed within (6) six years. Mr. Hall Chaney testified that "Given the current economic window we're dealing with, I believe we'll be out of the site in about (4) four years." (September 28, 2011, T. p. 88) §27-410 (a)(5)

(22) McKendree Road is posted with signs "No Thru Trucks" and it is the route which is proposed by the Applicant to be traveled from the haul road to Robert S. Crain Highway (US 301). Protestants were under the mistaken belief that this signage prohibited trucks from utilizing McKendree Road. The Department of Public Works and Transportation clarified that this signage was posted to eliminate truck traffic seeking to utilize McKendree Road as a short cut between Robert S. Crain Highway (US 301) and Accokeek Road (MD 373). It should be noted that the meaning of a through truck is one that passes through an area without having an origin or destination within that area; in this case, between US 301 and MD 373. If a truck originates or has a scheduled stop within that roadway, it is not considered a through truck; and therefore, it would not be affected by a through truck prohibition. (Exhibit 133 (b))

(23) Additionally, Protestants expressed concern regarding the safety and condition of the McKendree Road Bridge over Timothy Branch which is proposed to be utilized by the traffic generated by the instant Surface Mining. The Department of Public Works and Transportation determined the subject bridge was built in 1986 and is inspected every two years to the standards and requirements of the National Bridge Inspection Program. The most recent inspection was performed in April 2011. This bridge was in overall excellent condition and is capable of safely carrying all legally loaded highway vehicles. (Exhibit 133 (d))

(24) In July, 2009, the Applicants expert traffic engineer, Mr. Wes Guckert, on behalf of The Traffic Group, submitted its Traffic Impact Analysis for the proposed Special Exception. (Exhibit 11) This transportation analysis was supplemented by its August 19, 2011, revision to Traffic Impact Analysis in order to update traffic counts along McKendree Road and to provide an analysis of the currently proposed haul road with its intersection with McKendree Road. (Exhibit 62) The Traffic Impact Analysis considered a maximum of 200 loads leaving the subject property daily and heading south on McKendree Road to its intersection with Robert S. Crain Highway (US 301).

(25) The Transportation Planning Section, M-NCPPC, received the proposed Special Exception including the 2009 Traffic Impact Analysis (Exhibit 11) and transmitted its findings and recommendations by letter dated June 23, 2001, (Exhibit 27), which were incorporated into the Environmental Impact Report (Exhibit 27) and adopted by the Technical Staff Report (Exhibit 27) and the Planning Board (Exhibit 175(c)). Input was also incorporated from Maryland State Highway Administration and the County Department of Public Works and Transportation. All of these analysis are consistent with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals." (Exhibit 15)

(26) Existing traffic conditions in the area of the subject property are summarized in the following table:

<b>Existing traffic conditions in the area of the subject property are</b>		
Intersection	LOS & CLV (or Delay*)	
	AM	PM
McKendree Road and site access*	Future	<b>Future</b>
US 301/MD 5 and McKendree Road	C/1,228	F/1,603
Roadway Link	V/C Ratio	
	AM	PM
McKendree Road from site access to US 301/MD	0.13**	0.15**
<p>*Unsignalized intersections are analyzed using <i>The Highway Capacity Manual</i> (Transportation Research Board) method in accordance with the “Guidelines for the Analysis of the Traffic Impact of Development Applications.” The results show the level-of-service and the maximum delay in any movement measured in seconds per vehicle. A level-of-service E corresponds to a maximum delay of 50 seconds per vehicle, which is the maximum level of delay deemed acceptable per the guidelines.</p> <p>**The link analysis procedure from <i>The Highway Capacity Manual</i> (Transportation Research Board) is applied, and the resulting volume-to-capacity (V/C) ratio is indicated. A maximum V/C of 0.80 is acceptable in accordance with the guidelines.</p>		

The Traffic Impact Analysis included a summary of crash data along McKendree Road between the subject site and US 301/MD 5 for the years 2005, 2006, and 2007. Over that three-year period, 16 accidents were reported along this section of roadway. Based on average daily traffic volumes along McKendree Road, this degree of accident activity results in an accident rate of 4.40 per one million vehicle miles.

### **Evaluation of Projected Impacts**

A review of the Department of Public Works and Transportation (DPW&T) average daily traffic count list indicates an annual growth in traffic along McKendree Road of 5.6 percent. Similarly, a review of the Maryland State Highway Administration (SHA) traffic database has revealed an annual decline in traffic along US 301/MD 5 of 0.4 percent. These trends in traffic are not expected to continue into the future. A lesser rate of growth is anticipated in the future along McKendree Road because of the local nature of the roadway. In the long term, traffic along US 301/MD 5 is anticipated to grow 1.3 percent annually. These rates of traffic growth are not related to the subject Application and would be assumed to occur regardless of the status of the subject Application.

Collectively, the background developments included in the Analysis plus the four (4) additional developments could generate 3,461 AM peak hour trips (1,592 inbound, 1,879 outbound), and 7,510 PM peak hour trips (3,743 inbound, 3,767 outbound). The 2009 traffic study offered no assumption regarding the timing for the start of operation for this use, and the analysis has not included any factor for traffic growth between 2009 and the start of operations. A two-year start-up is typical and, for that reason, it was assumed that the proposed mining operation would become operational by 2011, and that year is utilized as the “design” year for the purpose of a background analysis. To determine the impact on the transportation network in the future, two years’ worth of



growth is applied to the 2009 traffic counts. The projected traffic from the background developments is added to the estimated future traffic, and the results are analyzed using the methodologies outlined in the “Guidelines for the Analysis of the Traffic Impact of Development Proposals.” Background traffic conditions in the area of the subject property are summarized in the following table. The future contribution of the subject site to traffic conditions without mining could be significant given the zoning (R-A) and the size of the site (over 175 acres). Nonetheless, were the subject site to be otherwise developed, the impacts of the development would have to be tested for transportation adequacy as a part of a subdivision application.

<b>PROJECTED FUTURE CONDITION — WITHOUT THE SUBJECT APPLICATION</b>		
Intersection	LOS & CLV (or Delay*)	
	AM	PM
McKendree Road and site access*	A/9.7*	<b>B/11.5*</b>
US 301/MD 5 and McKendree Road	E/1,520	<b>F/2,439</b>
Roadway Link	V/C Ratio	
	AM	PM
McKendree Road from site access to US 301/MD	0.13**	0.18**
<p>*Unsignalized intersections are analyzed using <i>The Highway Capacity Manual</i> (Transportation Research Board) method in accordance with the “Guidelines for the Analysis of the Traffic Impact of Development Applications.” The results show the level-of-service and the maximum delay in any movement measured in seconds per vehicle. A level-of-service E corresponds to a maximum delay of 50 seconds per vehicle, which is the maximum level of delay deemed acceptable per the Guidelines.</p> <p>**The link analysis procedure from <i>The Highway Capacity Manual</i> (Transportation Research Board) is applied, and the resulting volume-to-capacity (V/C) ratio is indicated. A maximum V/C of 0.80 is acceptable in accordance with the guidelines.</p>		

The analysis of the proposed mining application was predicated on two (2) operational assumptions. These assumptions are as follows:

- The property will be mined at a rate of 200 truckloads per day.
- The operations will be limited to the hours of 6:00 a.m. to 5:00 p.m. during weekdays.

In addition to the on-site mining activity, the Application states that the following haul routes would be utilized:

- All of the truck traffic generated by this site will utilize McKendree Road between the site and US 301/MD 5, and from that point would proceed to the south to continue to the wash plant or the point of use.

Total projected traffic volumes were obtained by combing the factored site-generated truck trips with the projected background traffic volumes for year 2011, which includes reasonable growth

in existing through traffic and traffic that would be generated by approved background development. The resulting projected future traffic conditions for the critical intersections are summarized in the following table:

<b>PROJECTED FUTURE CONDITION — WITH THE SUBJECT APPLICATION</b>		
Intersection	LOS & CLV (or Delay*)	
	AM	PM
McKendree Road and site access*	B/12.6*	<b>B/12.3*</b>
US 301/MD 5 and McKendree Road	E/1,538	<b>F/2,457</b>
Roadway Link	V/C Ratio	
	AM	PM
McKendree Road from site access to US 301/MD	0.18**	0.19**
<p>*Unsignalized intersections are analyzed using <i>The Highway Capacity Manual</i> (Transportation Research Board) method in accordance with the “Guidelines for the Analysis of the Traffic Impact of Development Applications.” The results show the level-of-service and the maximum delay in any movement measured in seconds per vehicle. A level-of-service E corresponds to a maximum delay of 50 seconds per vehicle, which is the maximum level of delay deemed acceptable per the guidelines.</p> <p>**The link analysis procedure from <i>The Highway Capacity Manual</i> (Transportation Research Board) is applied, and the resulting volume-to-capacity (V/C) ratio is indicated. A maximum V/C of 0.80 is acceptable in accordance with the guidelines.</p>		

This analysis indicates the following:

- The unsignalized intersection at McKendree Road and site access, along with the link of McKendree Road between the site and US 301/MD 5, operate acceptably now and in the future regardless of the mining activity within the subject site in accordance with the standards identified by the Planning Board within the guidelines.
- The signalized intersection at US 301/MD 5 and McKendree Road is projected to operate unacceptably now and in the future regardless of this use. The background traffic and the growth in through traffic are sufficient to result in poor levels of service during both peak hours; both CLVs (1,538 AM; 2,457 PM) well exceed the maximum CLV standard of 1,450. All developments in the area of the US 301/MD 5/McKendree intersection are contributing to a road club which would assist in funding major improvements over the long term in the area of that intersection. Because the surface mining use at the site is considered to be a temporary use, and because the findings required for Special Exception approval are not strict findings of adequacy, the Planning Board and the District Council have not, when reviewing similar Special Exception uses in this area with similar issues in the study area, deemed it necessary to impose conditions requiring either physical improvements or contributions to the road club.

The following significant issues were raised by agencies reviewing the traffic impact study for this site:

- DPW&T has indicated that specific improvements at the site access onto McKendree Road will be needed. This comment was made prior to the access being moved to the location shown on the current plan. Given that a left-turn bypass lane exists on northbound McKendree Road at the currently proposed haul road entrance, no roadway improvements would be needed at this location to serve this use. The signage appeared to be deficient; however, a “No Left Turn” sign for trucks leaving the site is needed.
- DPW&T noted that the pavement on the haul road proposed for use, while nominally meeting the standard set in Subtitle 27 of the Prince George’s County Code, is in poor condition and the existing pavement should be overlaid and marked as appropriate.
- SHA has requested an operational and delay analysis at the intersection of US 301/MD 5 and McKendree Road as a condition of this use. The Applicant has specifically indicated that the wash plant to be employed for resources mined at this site is to the south, meaning that virtually all trucks leaving the site will turn right onto US 301/MD 5, and virtually all trucks entering the site will approach from the south and turn left onto McKendree Road. It is noted that there is an acceleration lane for traffic turning right onto US 301/MD 5 from McKendree Road. Furthermore, vehicles turning left onto McKendree Road have a signalized left turn movement. Given that the use is temporary, and in consideration of the improvements that exist at that intersection, the additional study would be of limited benefit. Because the subject Application will be reviewed and approved by the Maryland Department of the Environment (MDE), SHA will be able to address this issue through the review of state permits. (Exhibit 27)

(27) In addition to its Traffic Impact Analysis (Exhibit 11) and Revision to Traffic Impact Analysis (Exhibit 62), Mr. Guckert provided photographs (Exhibits 146, 147, 149 and 150), supplementing his written (Exhibit 58) and oral testimony (September 29, 2011, T. p. 127-195, October 18, 2011, T. p. 3-49, November 9, 2011, T. p. 104-128) to address Protestants concerns regarding stacking at the McKendree Road and Robert S. Crain Highway (US 301) intersection and line of sight along McKendree Road. (Exhibits 27 and 175(c)) §27-410(a)(6)

(28) Regional access to the subject site is provided by US 301/MD 5 and local access is provided by McKendree Road. The site is served by an existing haul road. This haul road connects to McKendree Road in the 16300 block of McKendree Road. The haul road serves an existing surface mining site which is a valid use, but which is not being mined at this time. While the haul road is

paved at a minimum width of 22 feet at least 200 feet back from McKendree Road, the pavement is in poor condition and the entrance to the haul road is currently gated and chained closed to prevent its usage.

Robert S. Crain Highway US 301/MD 5 is a north-south, six- to eight-lane, divided roadway with a posted speed limit of 55 miles per hour. Both numbered roadways extend south into Charles County. To the north, the facilities diverge, with US 301 extending northeast to John Hanson Highway (US 50) in Bowie and Branch Avenue (MD 5), extending northwest to the District of Columbia. The intersection of US 301/MD 5 with McKendree Road is signalized.

McKendree Road is a two-lane roadway serving the site. It is oriented from northwest to southeast between Accokeek Road (MD 373) to US 301/MD 5. It is currently two (2) lanes over its entire length and the section from the subject site southeast to US 301/MD 5 has a variable pavement width. The pavement width is a minimum of 24 feet from the 16000 block of McKendree Road to US 301/MD 5. While the portion of McKendree Road north and west of the 16000 block is a substandard 19 feet in width within a limited right-of-way, this portion is beyond the haul route for the use. The speed limit over the entire link of McKendree Road is 25 miles per hour. §27-410 (a) (6)

(29) Two (2) access points exist for the site and are shown on the Site Plan, Exhibit 39 (b) and the Reclamation Plan Exhibit 39 (a). Access from the Robin Dale site onto McKendree Road is limited to an approximately 2,000-foot-long and 22-foot-wide entrance road that is included as part of the subject site (Parcel A); however, the haul route is proposed via a connection to an existing haul road on the property to the south. This haul road was approved under Special Exceptions S.E. 2970 and S.E. 4479. The entrance to the subject property (Parcel A) is located approximately 4,000 feet north of the existing haul road entrance and will not be used to haul sand and gravel.

The sight distance along McKendree Road at the location where the existing haul road enters McKendree Road is greater than at the location of the subject property's own access point. A greater sight distance promotes greater safety for trucks entering traffic along McKendree Road, making the existing haul road a more desirable location with regard to safety.

Because the use of an existing haul road is being proposed, pavement of the haul road at its connection to the property boundary is not practical. The haul road should be paved at its entrance onto a county road. The existing haul road entrance may require minor improvements for the required distance of 200 feet from McKendree Road. Given the lack of pedestrians along this very rural stretch of road, it is unlikely that the entrance location would pose a danger to persons walking along the road. (Exhibits 66 and 78) §27-410 (a)(7)

(30) The Technical Staff Report, Exhibit 25, includes 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. This inventory also includes 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. (Exhibit 27, EIR, Appendix A) §27-410(a)(8)

(31) As the subject property is in the R-A Zone the provisions of §27-410 (b) and (c) are not applicable.

(32) The Environmental Impact Report reviewed the noise studies (Acoustical Analysis) prepared for the subject property by Scantek. (Exhibits 10, 20, 26 and 37(a)) Mr. Richard Peppin, the Applicant's expert Acoustical Engineer, prepared prefiled testimony, Exhibit 56, and testified at length regarding the data used for the noise studies and the noise alteration features such as berms being employed to insure that noise levels will be within State noise standards and regulations (COMAR 26.02.03). (Exhibit 106; October 7, 2011, T. p. 4-67, November 9, 2011, T. p. 37-38). The Environmental Impact Report also reviewed the Temporary Easement Agreement, Exhibit 65, which contains relevant restrictions with regards to noise.

(33) Noise impacts are evaluated with respect to how the predicted noise levels compare with state noise standards and regulations (COMAR 26.02.03). The state noise standards apply to noise receptors and are established based on land use categories (industrial, commercial, and residential). The maximum allowable noise levels for receiving residential uses is 65 dBA during the daytime. It should be noted that the mining operation will have only daytime hours of operation and that the noise generated from mining operations is instantaneous noise, not the level day/night (Ldn) standard used in Prince George's County with respect to traffic noise. Instantaneous noise levels are more restrictive, defined by COMAR, and used for the evaluation of noise emanating from mining sites. Traffic generated noise is regulated using the level day/night average.

The noise environment in the project area will be affected by noise from two (2) types of sources; point and non-point. Point source noise emanates from the various excavation equipment used on-site. Non-point source noise emanates from the flow of vehicular traffic along a roadway or haul road. The main source of vehicular related noise in relation to mining operations comes from the dump trucks moving around on the site, entering the site empty, and full trucks hauling material away.

### **Existing Conditions**

The existing noise environment within the vicinity of the proposed mining is typical of a low-density rural area. The major noise sources surrounding the proposed mining site include truck traffic along McKendree Road. There are residential buildings located along McKendree Road in the vicinity of the Robin Dale site; however, the Timber Village subdivision is located within close proximity to the proposed off-site haul road.

Noise measurements were performed by Scantek, Inc. using the FAST meter response method to determine the noise levels produced by the typical operation of surface mining equipment. This was done by taking measurements of existing equipment under maximum working conditions.

The equipment measured included an excavator (Cat-330) and dump trucks. A dozer (Cat D6) is proposed to be used on-site; however, the noise generated by the dozer was not included because the dozer is proposed to be used for reclamation purposes only and according to the Analysis is quieter than the mining equipment and would generally be operating at a lower elevation. The dozer would also not be operated in the vicinity of the excavator because the two (2) pieces of equipment are used in different phases of the mining operation.

### **Evaluation of the Predicted Impact**

The noise levels measured for the equipment proposed to operate on-site were used to predict the point source noise associated with the proposed mining operation for two (2) different scenarios: with sound abatement in the form of berms without sound abatement (no berms). A third evaluation is presented in the report for the evaluation of episodic noise generated by the dump truck trips proposed along the off-site haul road. This third evaluation is referred to as a “pass-by” analysis and applies regardless of whether or not berms are provided on-site.

For the evaluation of point-source noise, the following noise sources were used to model the predicted noise impacts by Scantek, Inc.: two (2) excavators and two (2) dump trucks with the excavators being stationary and the trucks making a total of 400 trips per day (200 trucks in and 200 trucks out). The measured noise data from the various pieces of earth moving equipment was entered into a model.

The results of the Analysis indicate that for the first scenario, where berms are proposed, the berms shown on the Mining Landscape, and Tree Conservation Plans are needed to mitigate noise levels to the state standard of 65 dBA at the Robin Dale property boundary. The configuration of the berms shown on the Plans is designed to provide mitigation for all portions of the property boundary with exception of the western property boundary, abutting Parcels 2 and 27. The noise levels predicated for this portion of the property boundary are estimated to be between 66 and 78 dBA. Parcels 2 and 27 are currently approved as an existing mining operation under Special Exceptions 4218 and 4479 respectively. Based on the unlikelihood that Parcels 2 and 27 will move forward with residential development over the five (5) year time frame of the Robin Dale Special Exception approval, combined with the noise levels predicted to be only slightly above the state standards on this portion of the site, noise levels at the property boundary abutting Parcels 2 and 27 are at acceptable levels and do not require mitigation. The berms, should they be needed, are proposed to be located along the northwestern property boundary, adjacent to Parcels 14 and 41, along the northern property boundary adjacent to Parcel B, along the eastern boundary adjacent to Parcel B, the Country Club Estates subdivision and Parcel 8, and along the southern property boundary adjacent to Parcel 8, as shown in Figure 5 of the noise report.

The Robin Dale site is surrounded by residentially-zoned properties, and based on the state standards, the noise levels are required to be 65 dBA or less at the shared property boundary. The residentially-zoned properties surrounding the Robin Dale site are owned by the Dobson family and the Applicant has provided an agreement between themselves and the Dobson family specifying an

understanding between the two (2) parties. This understanding outlines the Applicant's intention to mine the Robin Dale site without the construction of berms along these specific property lines and that any residential development proposed by the Dobson family over the five (5) year term of the agreement would require the Applicant to install berms at that time. The agreement has the option for a one (1) time extension of two (2) years. Based on this agreement, the noise report also evaluated noise impacts without the construction of berms. The noise Analysis concludes that noise levels at the farthest property boundary of the abutting properties, are anticipated to be below the state standard of 65 dBA.

For the evaluation of non-point source/traffic noise, the Acoustical Analysis prepared by Scantek, Inc. indicates that the dump trucks entering McKendree Road will mix in with existing traffic levels and that the trucks will contribute a negligible amount to the entire existing and future traffic volume. The Acoustical Analysis also provides an evaluation of the dump truck traffic along the off-site haul road, labeled as a "pass-by" evaluation in the report. This evaluation was performed to address the proposed noise impacts along the off-site haul road; specifically those potentially impacting the Timber Village subdivision located within close proximity to the haul road (Figure 1.1). The pass-by evaluation was modeled using the maximum sound output of a single pass of a dump truck measured every two (2) meters along the length of the off-site haul road at three (3) different receiver locations: two on Parcel 10 and one (1) on Lot 35 of Timber Village. The "pass-by" evaluation concludes, as stated in the April 22, 2011, analysis prepared by Scantek, Inc., that sound levels at all three (3) receiver locations are expected to be below the 65 dBA state standard. (Exhibit 26) §27-410 (d)

(34) The subject property is not located within a Chesapeake Bay Critical Area Zone. §27-410 (e)

(35) The subject property is located in an area of the County which, due to the existence of the Brandywine Formation, has long been actually mined for sand and gravel. Attachment A of the Environmental Impact Report, Exhibit 27, is the inventory of Sand and Gravel mines, Wash Plants, Sanitary Landfills and Rubble fills located in Prince George's County. This inventory identifies one (1) active mine in close proximity to the west and south of the subject property along with additional mining sites within Subregion V which contribute truck trips to Robert S. Crain Highway (US 301). §27-410 (f)

(36) The Applicant will obtain all necessary permits from the State of Maryland for the operation of a Surface Mine and shall operate the proposed Sand and Gravel Mining operation in accordance with all permits. §27-445.02 (a)(b) and (c)(1)

(37) Conditions of approval address truck speed, monitoring, maintenance and ownership. §27-445.02 (c)(2)

(38) Condition 14 requires the Applicant to use a water truck and a sweeper truck as needed on the subject property and nearby roads to minimize dust and to keep the public roads clear of debris. §27-445.02 (c)(3)

(39) Required signage shall be posted in compliance with all regulations. §27-445.02 (c)(4)

(40) The subject property is not located within a Chesapeake Bay Critical Area Zone and no mining operations or equipment are located in any area prohibited by §27-445.02 (d).

### **Aquatic Ecosystem**

(41) Mr. Robert Murphy, qualified as an expert witness in the field of Aquatic or Marine Biology, testified at length with regards to possible adverse impact from the proposed use on the aquatic ecosystem. (October 25, 2011, T. p. 59-127) In particular, concerns were articulated regarding: (1) the unnamed tributary/intermittent stream located along the western portion of the subject property and emptying into the Mattawoman Creek, (2) the Warmouth Bass and the Blue Spotted Sunfish, both species being on the State of Maryland threatened and endangered species watch list, and (3) the beavers. Although the Applicant provided expert opinions to rebut the potential impact, conditions have been attached to this approval which will prevent resultant harm to the aquatic ecosystem.

### **National Resources Inventory/Woodland Conservation**

(42) The National Resources Inventory/Forest Stand Delineation, NRI/004/09 has been approved and provides for a Primary Management Area (PMA) comprised of streams, stream buffers, wetlands, wetland buffers, and 100 year floodplains. (Exhibit 85) The Forest Stand Delineation (FSD) indicates the presence of two (2) forest stands totaling 37.60 acres and the location of 41 specimen trees.

(43) The Woodland Conservation threshold for the subject property is 59.94 acres of which 8.59 acres are provided by on-site preservation and the remaining 51.35 acres are provided by on-site reforestation.

### **Variance for Specimen Tree Removal**

(44) Section 25-122 (b)(1)(G) requires:

(1) The following design criteria shall be followed on all TCPs unless a variance has been approved by the appropriate approval authority per Sec. 25-119(d).

(G) Specimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the critical root zone of each tree in its entirety or preserve an appropriate percentage of the critical root zone in keeping with the tree's condition and the species' ability to survive construction as provided in the Technical Manual.



(45) A variance from the provisions of Division 2 of Subtitle 25 (Woodland and Wildlife Habitat Conservation Ordinance) can be granted provided all of the required findings in §25-119 (d) can be met and provided that the request is not less stringent than the requests of the applicable provisions of the Code of Maryland Regulations (COMAR). §25-119 (d) provides as follows:

d) Variances

(1) An applicant may request a variance from this Division as part of the review of a TCP where owing to special features of the site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant. To approve a variance, the approving authority shall find that:

(A) Special conditions peculiar to the property have caused the unwarranted hardship;

(B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

(C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;

(D) The request is not based on conditions or circumstances which are the result of actions by the applicant;

(E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

(F) Granting of the variance will not adversely affect water quality.

(2) Notice of a request for a variance shall be given to the State of Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.

(3) Variances shall be approved by the Planning Board, Zoning Hearing Examiner, and/or the District Council for all tree conservation plans that are associated with applications heard by them. The Planning Director may approve variances for tree conservation plans that are not associated with applications heard by the Planning Board, Zoning Hearing Examiner and/or the District Council. The Planning Director's decisions are appealable to the Planning Board.

(4) Variances granted under this Subtitle are not considered zoning variances.

(46) The Statement of Justification for the specimen tree variance seeks to address the required findings for the 23 specimen trees requested to be removed in a group as they are all similarly situated and are governed by identical circumstances. The Technical Staff Report and Planning Board agreed with this approach to the Analysis because they are clustered together centrally on the subject property and each expressed similar concerns regarding the tree's location, species and condition. (Exhibits 27, 81 and 175)

(47) The Statement of Justification details the fact that significant sand and gravel deposits are located on the subject property. While there are other properties containing sand and gravel deposits within Prince George's County, not every property contains such deposits. The subject property is also fairly large in size (180.93 acres) lending to the economic viability of mineral extraction on-site. These are special conditions peculiar to the subject property.

The Statement of Justification also addresses the background and goals listed in the 2009 Subregion V Master Plan which support the extraction of sand and gravel. Retaining the trees located centrally on this site, where the mineral extraction is proposed, would cause an unwarranted hardship because the mining area would have to be reduced significantly in order to ensure that the trees are

protected sufficiently to survive changes in the water table that will result from mining. §25-119 (d)(1)(A)

(48) Preventing the mining of sand and gravel on the Robin Dale site within the area of the specimen trees would prevent the Applicant from enjoying rights commonly enjoyed by other property owners with sites containing sand and gravel deposits that may not have specimen trees on-site. If other properties containing sand and gravel deposits are proposed to be mined and encounter trees in a similar condition and in a similar location, the same considerations would be provided during the review of the required variance application. §25-119(d)(1)(B)

(49) The extraction of sand and gravel is a priority for the County and the Applicant is not seeking a special privilege that would be denied to others. §25-119 (d)(1)(C)

(50) The existing conditions or circumstances are not the result of actions by the Applicant because the Applicant has taken no action on the subject property to date. §25-119 (d)(1)(D)

(51) The request to remove the 23 specimen trees does not arise from any condition relating to land or building use or a neighboring property. §25-119 (d)(1)(E)

(52) Granting a variance to remove the specimen trees will not adversely affect water quality based on the findings of the Hydrologic Impact Analysis prepared on behalf of the Applicant by Advanced Land and Water, Inc. and through the testimony of Mr. Mark Einer, expert Hydrologist. (Exhibits 17, 55, 59 and 105; November 9, 2011, T. p. 83-103) The Application is also subject to the erosion and sediment control requirements of the Maryland Department of the Environment (MDE) and the Prince George's County Soil Conservation District for water quality purposes. (Exhibit 72) The trees to be preserved (Specimen Trees 1-3, 13-16, 30-38, and 41) are located either in the PMA or along the perimeter of the site and will provide a water quality benefit, with regard to providing canopy cover to slow down or filter falling rain, providing areas for water infiltration in the root zone, preventing soil erosion, and by providing a variety of other eco-services such as reducing the ambient temperature of stormwater run-off. Specimen trees excel at providing these benefits because of their extensive canopy coverage. §25-119(d)(1)(F)

### **Landscape Manual**

(53) The instant Application is subject to the Prince George's County Landscape Manual as there is a proposed change of use to one in a higher use category (from a golf course to Surface Mining) and the Landscape Plan, Exhibit 39, is in compliance through the retention of wide areas of woodland along the periphery of the subject property.

### **Signage**

(54) All signage will be in accordance with the Sign Ordinance.

**Zone Standards**

(55) The proposed use meets the general height, bulk and setback requirements for the R-A Zone.

**DISPOSITION**

Special Exception 4669 and the Variance for the Removal of Specimen Trees are APPROVED, subject to the following conditions:

1. Prior to certification of the Special Exception, the Mining Site Plan shall be revised to show proposed paving on the haul road at its entrance point onto McKendree Road, for a distance of no less than 200 feet. Details for the paving shall also be provided on the Mining Site Plan and shall include, at a minimum, the following information: length and width of pavement (minimum of 200 feet long and 22 feet wide), type of paving material, and timing (prior to the commencement of mining).
2. The Applicant shall notify the Maryland-National Capital Park and Planning Commission (M-NCPPC), Environmental Planning Section, prior to the start of reforestation and schedule a meeting to address reforestation issues. This meeting shall address any proposed changes in species to be planted, any decrease in the quantity of trees to be planted in the event that some natural regeneration has occurred, and the need for additional or less site preparation.
3. Prior to the start of mining for any portion of the site, the limits of disturbance for the entire site shall be staked on the ground or flagged on the existing trees. The Applicant or their representative shall walk the limits of disturbance with a representative of the M-NCPPC, Environmental Planning Section, prior to the installation of sediment/erosion control measures and tree protective devices. The appropriate representative of the Environmental Planning Section shall be available to walk the site within five (5) business days of receiving written notice from the Applicant.
4. Prior to certification of the Special Exception, the Type II Tree Conservation Plan shall be revised as follows:
  - a. Revise the worksheet so that the row labeled as “Cumulative Woodland Conservation Required” is filled-in.
  - b. Revise all floodplain notes located on any sheet within the entire plan set (Sheet 1 through 13) to refer to a floodplain study number and to remove the name of the individual who prepared the study.
  - c. Remove all woodland preservation hatching and labels for woodland within the floodplain.

- d. Revise Woodland Conservation areas to ensure that all areas labeled as preservation are located outside the limits of disturbance (LOD) and all areas labeled as clearing are located within the LOD. Revise the LOD as necessary so that it encompasses all areas of proposed clearing.
  - e. Provide a sheet within each of the Plan subsets (landscape and TCP) to show the entire length of the proposed off-site haul road.
  - f. Show all sediment and erosion control measures on the Plan (outfall pipes, rip-rap, etc.).
  - g. Show temporary tree protection fence along all clearing edges including vulnerable edges along the property boundary.
  - h. Revise the symbol for the permanent reforestation signs located along the edge of all reforestation areas to be larger.
  - i. Remove the symbol for proposed treeline from the Plan.
  - j. Provide a Woodland Conservation summary table similar to Table A-6B of the Technical Manual for the the Woodland Conservation Ordinance (for a summary of all woodland conservation statistics for each phase of mining).
  - k. Revise the Woodland Conservation worksheet to ensure that the areas used for calculation purposes match those shown on the Plan and as summarized in table form.
  - l. 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 certification of the Special Exception, a copy of the approved Sediment and Erosion Control Plan shall be submitted to M-NCPPC.
6. Prior to the commencement of the mining operation, a Special Permit shall be obtained from the Prince George's County Department of Public Works and Transportation. A reforestation bond shall be posted at the time of issuance of the Special Permit.
7. 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 Subtitle 4, Building Code, Section 4-303 as presently codified.

8. A Conservation Easement shall be recorded in the Land Records that describe 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 and 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. Prior to certification of the Special Exception, the Applicant shall provide a revised Easement Agreement demonstrating entitlement to utilize appropriate portions of Parcels 8 and 10 for access to the site from McKendree Road. Prior to commencement of grading for the mining operation, the Applicant shall record in the Land Records of Prince George’s County a notice of the Easement Agreement in such form as deemed legally sufficient by the M-NCPPC Office of the General Counsel or by the County Attorney)

10. A notice of easement will be recorded in the Land Records for Prince George’s County, Maryland within ten days of the receipt of all zoning approvals, licenses and permits necessary for the removal of sand and gravel from the property. Said approvals, licenses and permits shall include but not be limited to final approval of Special Exception 4669 for sand and gravel mining, a Surface Mining permit, and an Operating Permit, which said approvals, licenses and/or permits are final in nature, and are not subject to further appeal, and have been issued in a manner and subject to conditions which are satisfactory to the applicant/grantee in its sole and absolute discretion.

11. 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, excluding federal holidays. There will be no operations on Sundays. There will be no hauling of materials on Saturdays. Trucks shall not be permitted to arrive at the site prior to 7:00 a.m.
- b. Trucks shall not use compression or “Jake” brakes either on-site or on the roadway.
- c. Speeds on-site shall be restricted to 15 miles per hour for all heavy vehicles.
- d. All machinery shall be kept in good working order, especially mufflers, to ensure quiet operation.
- e. The volume of backup warning devices shall be minimized while still meeting OSHA (Occupational Safety and Health Administration) standards.

- f. Acceleration for trucks entering the highway shall be held to a minimum.

12. The Mining, Site, Landscape and Type II Tree Conservation Plans shall be revised to clearly label all abutting properties with the following information: lot or parcel identification, current owner, and if it is subject to the agreement between the Applicant and the Dobson family. The properties included in the agreement shall also be provided in list form on the cover sheet of each Plan subset (i.e. the Landscape Plan set, the TCP Plan set, etc.).

13. Should residential development commence on any part of abutting property now owned by the Dobson family at any time during the duration of the mining operation, those berms needed to buffer noise at required levels abutting the area of the Dobson 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 property being residentially developed.

14. 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. Sweeping of the paved roads with road sweeper will occur as needed.
- c. Open-bodied vehicles transporting materials shall be covered at all times when in motion. Alternate means may be employed to achieve the same results as would covering the vehicles.
- d. For a distance of 50 feet prior to the point where the haul road across the Dobson family property is paved, the Applicant shall install and maintain a 2" aggregate rip-rap for the entire width of the haul road in order to facilitate removal of dirt and dust from the undercarriage of dump trucks. The construction of this 50 foot section shall conform to the standard specified on the Sediment and Erosion Control Plan as approved by the Soil Conservation District.
- e. The site shall have a 15 mile per hour speed limit to reduce dust generation from travel on the unpaved portions of the proposed haul road.
- f. 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.

15. 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 Code of Maryland (COMAR) 26.10.01.17. Care shall be taken to minimize spillage. Refueling shall take place as far from streams and wetlands as possible.

16. If the operation of the subject sand and gravel mine adversely impacts the water level in any wells within 1,000 feet of the subject mining site, as verified by the Maryland Department of the Environment (MDE), 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.

17. At McKendree Road and the site entrance, the Applicant shall provide a "No Left Turn" turn prohibition sign for trucks exiting the site.

18. The number of truckloads per day shall be limited to 200 truckloads per day in accordance with the assumptions in the Traffic Impact Analysis.

19. The access roadway should be overlaid to a minimum width of 22 feet for a distance of 200 feet. The overlay and any needed signage and pavement markings shall be done to the standards of the Prince George's County Department of Public Works and Transportation (DPW&T).

20. The Applicant will provide three (3) additional copies of the final report detailing the Phase IB archeological investigations prior to any ground disturbance or the approval of any grading permits.

21. All required sediment and erosion control measures shall be installed within any mining Phase area (as shown on the approved special exception site plan) in accordance with approved sediment and erosion control plans prior to the onset of any clearing or grading operations within said Phase.

22. Sediment and erosion control measures abutting the unnamed tributary along the northwest boundary of the property shall be inspected by the Applicant daily and a log of said inspections shall be maintained by the Applicant.

23. Prior to the commencement of mining within Phase I, the Applicant shall obtain an inspection from the Maryland Department of the Environment and submit a report of said inspection confirming that all perimeter sediment and erosion control measures within Phase I have been properly installed. A copy of said report shall be filed with the Environmental Planning Section of M-NCPPC.

24. Prior to the commencement of mining within Phase I, the Applicant shall notify the Environmental Planning Section of the M-NCPPC that all perimeter sediment and erosion control measures within Phase I have been installed. The Environmental Planning Section shall be provided an opportunity prior to the commencement of mining (based upon five (5) business days notice) to observe these installed perimeter sediment and control measures.

25. No discharge from the mining site into the unnamed tributary adjoining the northwest boundary of the mining site shall occur except in strict conformance with a discharge permit issued by the Maryland Department of Environment.

26. The Applicant shall install a staggered and offset double row of Leland Cypress evergreen trees (or other appropriate evergreen tree species agreed to with M-NCPPC) on that portion of the Dobson property abutting the southeast boundary of Lot 36 within Timber Village Subdivision. The exact location of this tree planting area shall be coordinated with staff of M-NCPPC. These trees shall be planted ten (10) feet on center and shall be a minimum of 8 feet in height at the time of planting. The trees shall be installed prior to the commencement of mining operations.

27. Subject to review and approval by the Department of Public Works and Transportation, and any other required review agency, the Applicant shall restripe to eastbound approach of McKendree Road at US Route 301 in order to create a longer right-turn lane on McKendree Road for vehicles turning right onto southbound US Route 301. The length of the additional striping shall be determined by the Department of Public Works and Transportation.

28. Subject to review and approval by the Department of Public Works and Transportation and any other required review agency, the Applicant shall, at its sole expense, install school bus shelters at the pickup locations along McKendree Road for The Rose Creek Estates, Timber Village and Robinswood subdivisions.

29. Berms of sufficient height to mitigate noise in conformance with COMAR, Title 26 Standards shall be installed along that portion of the western boundary of the subject property which abuts other sand and gravel mining sites if those sites cease to be mined or if the Applicant does not obtain a valid easement from the owner of said mining site(s) waiving the requirement to install berms or if those properties are developed with homes while the subject property is being actively mined.

30. If prior to the commencement of mining, the subject property reverts to the Rural Tier by operation of law, the Applicant shall process at staff level a revision to the NRI and a revision to the mining site plan in order to provide an additional 25 feet of PMA area as the required setback in the rural Tier. This requirement shall apply only in the event that the PMA setback area is not preempted by the Maryland Department of the Environment's mining permit.

31. Prior to certification of the Special Exception, the NRI tables and computations shall be revised to include the new land area added to the special exception for the haul road across the Dobson property.

32. This Special Exception shall be valid for a period not to exceed five (5) years from the date of final approval.

33. The subject property shall not be utilized as a Rubble Fill.