

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

SPECIAL EXCEPTION

4674

DECISION

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| Application: | Surface Mining |
| Applicant: | Alvin Jenkins/Maryland Natural Resource Solution, LLC |
| Opposition: | None |
| Hearing Date: | August 11, 2010 |
| Hearing Examiner: | Joyce B. Nichols |
| Disposition: | Approval with Conditions |

NATURE OF PROCEEDINGS

- (1) Special Exception 4674 is a request for permission to use approximately 81.45 acres of land in the O-S (Open Space) Zone, located on the east/northeast side of Aquasco Road (MD 381) approximately 1,500 feet south of Orme Road, Brandywine, Maryland, for Surface Mining.
- (2) The Planning Board (Exhibit) and the Technical Staff (Exhibit 35) both recommended approval with conditions.
- (3) The Greater Baden-Aquasco Citizen's Association and the Brandywine-TB-Southern Region Neighborhood Coalition both testified in support of the instant Application (T. pgs. 5-8, 13-18)
- (4) The record was kept open for several documents and upon receipt of which the record was closed on September _____, 2010.

FINDINGS OF FACT

Subject Property

- (1) The subject property is a large, irregularly shaped single deed parcel approximately 81.45 acres in size. The subject property has not been subject of any prior applications, plans or development approvals.
- (2) The subject property is predominately wooded with cleared areas which were utilized for agricultural purposes. It has become an unofficial dumping ground with numerous piles of trash and debris. The property has been improved with two (2) single family detached dwellings, one (1) which is in ruins, located towards the center of the subject property, which are accessed via a long

driveway from MD 381. There are also scattered agricultural structures such as tobacco barns and sheds throughout the subject property. All existing structures are proposed to be removed.

Neighborhood and Surrounding Uses

(3) The neighborhood is generally defined by the following boundaries.

- North - Baden-Westwood Road
- East - Croom Road (MD 382)
- South - Swanson Creek (Charles County boundary) and Croom Road (MD 382)
- West - Horsehead Road

The neighborhood is predominantly undeveloped with wooded parcels, scattered residences, sand and gravel mines, and agricultural fields.

(4) The subject property is surrounded by the following uses:

- North - Large tracts of wooded land, reclaimed mining areas, and agricultural uses in the O-S Zone
- Northeast - A sand and gravel mine (SE-4462) in the O-S Zone
- East - Undeveloped land in the O-S Zone
- South - Across Aquasco Road (MD 381) are single-family residences, a vacant store, undeveloped land, agricultural uses in the O-S Zone, and the W.S. Schmidt Environmental Education Center in the R-O-S Zone
- West - A single-family residence and undeveloped land in the O-S Zone.

Master Plan and Sectional Map Amendment

(5) The instant Application conforms to the recommendations of the 2009 Subregion 6 Master Plan, which shows the subject property as a rural land use consisting of open space and forest. Following the five (5) year mining record, the site will be reclaimed in accordance with State regulations. Once reclaimed, the subject property will be retained in open space and as a tree reclamation site, both of which further the Master Plan's recommendations.

(6) The 2009 Subregion 6 Master Plan and Sectional Map Amendment retained the subject property in the O-S Zone.

(7) The 2002 Prince George's County Approved General Plan places the subject 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 while preserving areas of woodland, floodplain, and other sensitive environmental features. The policy further recommends that special studies be prepared to ensure that mining operations are compatible with existing neighborhoods.

Applicant's Proposal

(8) The Applicant is proposing a sand and gravel mining operation. The Amended Statement of Justification notes that 58.6 acres of the total 81.45 acres is proposed to be actively mined. The balance of the property includes floodplain, tree conservation, wetlands, steep slopes, and bufferyards which will be preserved. (Exhibit 13) Mining is proposed to take place in three (3) phases. The only structure proposed for the site is a scale house and scale to be located along the proposed access drive/internal haul road. The material is proposed to be trucked north on Aquasco Road/Brandywine Road (MD 381) to Crain Highway (US 301). From there, the material will be dispersed to job sites and processing plants throughout the region. Mining activities are proposed to take place between the hours of 7:00 a.m. and 6:30 p.m. on weekdays and 7:30 a.m. and 3:00 p.m. on Saturdays. There will be no mining activity on Sundays and Federal holidays.

LAW APPLICABLE

(1) Surface Mining of sand and gravel is permitted in the O-S Zone pursuant to §27-317, 27-410 and 27-445.02 of the Zoning Ordinance.

(2) Section 27-317 requires:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Type II Tree Conservation Plan; and
 - (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible.

(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.

* * * * *

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

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(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 states 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) “T[he] 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). . . .

[T]he 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 OF LAW

(1) The instant Application is in conformance with the general purposes of the Zoning Ordinance, §27-102, 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 proposed use will meet or exceed the State and County requirements for noise and air pollution, protecting the safety of residents of the County while providing processed materials for use in local infrastructure projects that would promote the comfort, convenience, and welfare of present and future inhabitants of the County. The proposed mining operation will be conducted to meet or exceed all applicable laws and safety regulations of the Federal, State, and County Governments via the permit review process.

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

The subject property is located within the area encompassed by the 2009 Subregion 6 Master Plan and Sectional Map Amendment, (Planning Areas 77, 79, 82A, 82B, 85B, 86A, 86B, 87A and 87B), adopted September 15, 2009 (i.e., 2009 Master Plan). The proposed use will implement the Policies of the Mineral Resources section (pp. 52-53) and the Sand and Gravel section (pp. 155-156) of the 2009 Master Plan.

This basic philosophy of the 2009 Master Plan that promotes the protection of valuable mineral resources by recommending their extraction before permanent development of those resource laden properties occur has been recognized in master planning documents for Prince George’s County for more than 35 years. The proposed sand and gravel mine is in harmony with the implementation of the 2009 Master Plan by adhering to the strategy of extracting finite aggregate resources prior to the future development of the site. The approval of this Special Exception will help to ensure that there will be an adequate supply of sand and gravel for the Metropolitan Area for the next five (5) years.

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

The proposed use and ultimate development of the subject property will occur in a comprehensive and staged manner, taking into account the adequacy of public facilities and services and their impacts on adjacent communities. Reclamation plans are designed to enhance the environmental features such as drainage areas, steep slopes, woodlands, etc. and to prepare the site for the character and intensity of development as recommended by the 2009 Master Plan. Following the cessation of the proposed use, the subject property will become open space, whereby much of the site will be reforested, preserving the open space aspect of the community. This reforestation (56± acres), combined with approximately fifteen (15±) acres of woodland preservation will provide a significant amount of permanent open space. Approximately four (4) acres of this open space are to be dedicated to the community for their future use as ball fields.

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

The proposed use is for the surface mining of the subject property, the mined resultant product being a necessary raw material for the building industry. Indirectly this will also contribute to the orderly growth and development of business and housing.

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

A minimum fifty (50) foot wide setback strip is proposed around the entire perimeter of the subject property that is designed according to those standards required to meet State of Maryland mining plan requirements, or Prince George's County zoning regulations, whichever is stricter. The combination of the fifty (50) foot setback, type "D" landscape buffer, and screening berms are designed to provide a sight and sound barrier for neighboring residential properties from the mining operation.

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

This proposal will promote the most beneficial relationship between the uses of land and buildings and protect landowners from the adverse impact of adjoining development. The Application proposes the creation of eighteen (18) feet high by seventy-four (74) feet wide at the base earthen berms. These berms are proposed adjacent to large sections of the subject property perimeter areas where the subject property adjoins Aquasco Road, parts of Parcel 9 and Parcel 30 (i.e., the site's southern boundary, with the exception of the access point) as required to meet the noise abatement regulations of the State of Maryland. In those perimeter areas where woodlands are present, the woodlands will be preserved within the fifty (50) foot wide setback strip. In those areas where there are no existing woodlands, the Applicant proposes to use supplemental plantings and afforestation as a mechanism for enhancing the existing vegetative cover.

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

The instant Application will not result in the creation of a dangerous situation as it will meet all applicable County, State and Federal safety regulations through the permit review process. No mining activities will occur within regulated buffers.

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

This proposal is for the establishment of a sand and gravel mine, which is a necessary raw material for the building industry. As such, it will provide the building industry with the raw materials necessary for the construction and maintenance of sound, sanitary housing, contributing towards a suitable and healthy living environment within the economic reach of all County residents. The proposed use does not include the development of housing or other dwellings. The proposed use is in accordance with restrictions on disturbance to environmentally sensitive areas and thus provides a platform for future development in a healthy living environment.

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

The proposed use will contribute to the tax base by providing opportunities for steady employment that can be projected to continue for at least the length of the Special Exception duration. Based on the most current data available, *“Sand and gravel deposits are significant generators of economic activity in Subregion 6 with five mine operators generating approximately 60 jobs and representing approximately 14 percent of the total state output in the mining industry sector....”* In addition to providing employment, the proposal will also contribute to the tax base through the sales tax generated therein.

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

The instant Application will not overcrowd the land. There are no permanent buildings proposed on the site plan and the use is only temporary, estimated to conclude within five (5) years.

(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;*

This proposal will lessen the danger of traffic on the streets through the continued utilization of the existing driveway entrance onto MD Route 381. The access driveway will be constructed as required by the State Highway Administration. The Applicant's traffic engineer, as well as the Technical Staff, have found that the proposed mining operation at the subject property will not reduce the capacity of neighboring roadways to unacceptable levels.

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

The proposed use promotes social and economic stability by providing a local source of aggregates to support construction activities and following the conclusion of the mining of this site, the bulk of the property will be reclaimed for the establishment of open space and woodlands in keeping with the goals and objectives of the Master Plan. Further, Prince George's County is a leading aggregate resource in the State, and the extraction and sale of this resource provides a significant economic benefit to 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;*

This proposal will protect against undue noise, and air and water pollution. Sediment control basins will be provided to protect against water pollution, and a minimum width fifty (50) foot buffer will be provided to protect adjoining properties against noise pollution. As further protection to the adjoining community, the Applicant is proposing to construct the eighteen (18) foot high screening berm fifty (50) feet behind the southwest (Aquasco Road) property line. However, once the initial mining activities have been completed along the Aquasco Road frontage portion of Phase 1A, the Applicant has agreed to replace that section of the berm along Aquasco Road by moving its location an additional 100 feet further back (150 feet total) from Aquasco Road towards the east or interior of the property.

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

Following the conclusion of the mining of this site, and in keeping with the Policies and Strategies of the 2009 Master Plan, large portions of the property will be held, upon reclamation, in a natural state for open space and tree conservation, providing large tracts of forest and contributing to the scenic beauty of the County. This reforestation (56± acres), combined with approximately fifteen (15±) acres woodland preservation will provide a significant amount of permanent open space. It is noted that approximately four (4) acres of this open space are to be dedicated to the community for their future use as ball fields.

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

The proposed sand and gravel mine is in harmony with the implementation of the 2009 Master Plan by adhering to the strategy of extracting finite aggregate resource prior to the future development of the site. This proposal, by allowing for the orderly extraction of sand and gravel prior to development in the area, conserves these resources rather than waste them, which would be the case if the land were to be developed prior to their removal. This is in keeping with Policy 4 of the 2009 Master Plan (stated on page 53): "*To preserve access to mineral resources where sufficient and economically viable mining potential exists.*" Furthermore, the proposed development of the site will not encroach upon wetlands nor regulated buffers. §27-317(a)(1)

(2) The instant Application is also in conformance with the purposes of the Open Space Zone, §27-425(a), as follows:

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

Following the conclusion of the mining of this site, and in keeping with the Policies and Strategies of the 2009 Master Plan, large portions of the property will be held upon reclamation, in a natural state for open space and tree conservation, providing large tracts of forest, and land that will be available for low-density development.

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

No mining will occur within any fifty (50) foot wide stream buffers, or twenty-five (25) foot wide wetland buffers. The internal access roads that will connect the various phases of the operation were located to minimize environmental disturbances to the extent possible. Following the conclusion of the mining of this site, and in keeping with the Policies and Strategies of the 2009 Master Plan, large portions of the property will be held, upon reclamation, in a natural state for open space and tree conservation, providing large tracts of forest and contributing to the scenic beauty of the County.

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

At the conclusion of the surface mining of the site, the use of the reclaimed site will provide over 81 acres of permanent woodlands and open space due to woodland preservation and reforestation. §27-317(a)(1)

(3) Special Exception uses such as Surface Mining are presumed compatible with other residential uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic, parking improvements, and all other regulations are met. The instant Application is in compliance with the regulations and requirements of the Zoning Ordinance. No variances, waivers or departures are required. §27-317(a)(2)

(4) The instant Application is in accordance with the recommendations of the 2009 Subregion 6 Master Plan which shows the site as a rural use consisting of open space and forest. The Master Plan identifies the subject property as being within Planning Area 87A which is part of the Westwood Living Area as shown on the map illustrated on page 6 of the 2009 *Subregion 6 Master Plan and Sectional Map Amendment, (Planning Areas 77, 79, 82A, 82B,, 85B, 86A, 86B, 87Aand 87B)*. The Master Plan recognizes that Prince George's County is a leading sand and gravel resource in the State of Maryland. The Plan also encourages extraction of the sand and gravel resource prior to

permanent development (pages 155-156) prevents the removal of those resources. The Master Plan identifies three (3) basic issues and challenges concerning the sand and gravel resources in Subregion 6. In summary they are:

- (1) The need to protect these valuable resources for future development;
- (2) The need for the minimization of surface mining's impact on the natural environment, neighboring properties and road system; and
- (3) The need to provide for future use of reclaimed, mined. land.

The instant Application ensures the extraction of available sand and gravel from the subject property prior to future development. The phasing of this project help to assure a continuance in the supply of processed materials for use in the local construction and building industries, while ensuring that the surface mine's impact on neighboring properties and the environment will be minimized. Following the conclusion of the mining of the site, and in keeping with the goals and objectives of the 2009 Master Plan, large portions of the property will be held, upon reclamation, in a natural state for open space and tree conservation, providing large tracts of forest and contributing to the scenic beauty of the County.

The sections of the 2009 Master Plan pertaining to sand and gravel mining are generally focused around the concept that development should be directed away from commercially viable sand and gravel deposits until these minerals are extracted, as well as, stressing the importance following the recommendations contained within the EIR (Exhibit 35), and supporting regulation governing restoration of mined sites. For the purpose of guiding the development of the various sites within Subregion 6 that contain sand and gravel resources, the 2009 Master Plan in the Mineral Resources section (Policy 5 and 6; pp. 52-53) and the Sand and Gravel section (Policy 11 and 12; pp. 155-156), sets forth four (4) Policies and nine (9) Strategies that apply to the plan's Sand and Gravel Resources Recommendations in general or in part. The Policies and Strategies are as follows:

Policy 4: *"Preserve access to mineral resources where sufficient and economically viable mining potential exists."*

Strategies: *"1. Develop a mineral overlay zoning district that corresponds to the unexploited sand and gravel deposits avoiding already developed lands.*

- *Delineate boundaries for the district that are limited to the portion of the PPA that does not border the Patuxent River and consider extending the district into Subregion 5."*

“2. Within the overlay district, for parcels 50 acres or larger:

- *Require resource surveys of mineral resources prior to development for other uses,*
- *Guarantee access to mineral resources, if present, prior to development.*
- *Require mitigation for development projects that proceed without extracting the resource by placing a protective easement on other land in need of protection, or payment of a fee-in-lieu to support the county’s land preservation programs.”*

Policy 5: *“Minimize the short and long-term impacts of mining operations on adjacent properties and communities.”*

Strategies: *“1. Increase setback requirements on developing residential properties to minimize potential effects of noise and dust from future mining on adjoining unexploited parcels.*

2. Evaluate the necessity for additional post-mining reclamation requirements, above those already required by law, which would match preservation, community recreation, and environmental needs. Within the PPA these should include consideration of reclamation for agricultural preservation or the establishment of woodlands.

3. Evaluate the need for a mine reclamation study in the county to develop an inventory of reclaimed and abandoned sites, assess compliance with current reclamation requirements, determine the suitability of reclaimed properties for supporting high quality woodlands, and identify mechanisms for financing the reclamation of abandoned sites.”

Policy 11: *“Provide commercial viable access to sand and gravel resources and direct economic development support to associated operations.”*

Strategies: *“1. Prevent the preemption of mineral resources extraction by other uses through the implementation of a mineral overlay zone (see Development Pattern/Land Use chapter).*

2. Improve access to financial and work force development incentives.

- *Integrate sand and gravel industry within traditional economic development programming such as tax credits and abatements, workforce assistance, streamlined permitting, and assistance with state and federal small business financing.”*

Policy 12: *“Improve community integration of the sand and gravel industry.”*

Strategies:

- “1. Conduct community outreach to improve understanding of the sand and gravel industry and to improve industry integration within the rural communities. Traffic, noise, and dust generated by operations must be addressed, along with post-extraction uses. The financial benefits that property owners can receive from pursuing mineral extraction prior to development or some other compatible, rural land use, should also be considered.*
- 2. Involve community members in reviewing new and expanding projects, and in developing requirements for identifying post-reclamation uses as part of an amended special exception process. This work should be done in conjunction with the sand and gravel industry, landowners, government officials, etc. so that post-reclamation land use activities are established in the PPA and all other land where septic systems will be the only means of sewage disposal.”*

Excepting those policies and strategies that require legislative or other direct action by the County, the proposed sand and gravel mine is in harmony with the implementation of the 2009 Master Plan by adhering to the strategy of extracting finite aggregate resource prior to the future development of the site. The approval of this Special Exception will help to ensure that there will be an adequate supply of sand and gravel for the metropolitan area for the next five (5) years. §27-317(a)(3)

(5) The Application is in general compliance with the requirements for surface mining of sand and gravel. Truck traffic, dust, and noise are the primary concerns associated with the proposed use. The Maryland-National Capital Park and Planning Commission, Transportation Planning Section has indicated that from a standpoint of transportation, this Special Exception raises no health, or welfare issues. The Applicant will be required to address dust control measures as part of the air quality permit process for Maryland Department of the Environment.

A Special Exception use, not unlike a comprehensive rezoning, is accorded a strong presumption of validity. A Special Exception use is considered compatible with uses permitted by right within the zone as long as specific criteria are met. Unless unique adverse impacts are identified, the Special Exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties is to show that the proposed use, at the particular location proposed, would have adverse impacts above and beyond those inherently associated with the Special Exception use, regardless of its location within the zone. Although there are clearly negative effects associated with the proposed facility, they are integral to the use and will not result in greater or more unique adverse effects at the proposed location than if the use were located at another site with the same zoning. Therefore, with the recommended conditions and in conjunction with the required State and County permits, it can be reasonably

concluded that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. §27-317(a)(4)

(6) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. The use is located in a sparsely populated section of the county, but does have residential neighbors. Through the use of buffers, screening, berms, and restricting hours of operation, the Applicant will minimize impacts upon adjacent properties and the general neighborhood. §27-317(a)(5)

(7) The Maryland-National Capital Park and Planning Commission, Environmental Planning Section has recommended conditions which will bring the Site Plan into conformance with Type II Tree Conservation Plan TCPII/054/09. §27-317(a)(6)

(8) The Site Plan, Exhibit 29, and the Illustrative Reclamation Plan, Exhibit 72, demonstrate the preservation/restoration of the environmental features in a natural state to the fullest extent possible.

(9) Heavy machinery will be used for excavation and hauling. No on-site washing, refining, or other processing is proposed. §27-410(a)(1)

(10) The Environmental Planning Section reviewed the proposed mining operation and prepared an Environmental Impact Report (EIR) and an amendment thereto (EIR-4674, Exhibit 35). Air quality and noise impacts (Exhibits 27, 59 and 60(e)) were evaluated as part of the EIR. The EIR found that, subject to the appended conditions, the proposed use would not be noxious, offensive, or otherwise objectionable by reason of dust, smoke or vibration. §27-410(a)(2)

(11) In keeping with the goals and objectives of the Master Plan and the General Plan, following the conclusion of the mining of this site, the property will be stabilized and reclaimed in accordance with the standards defined in Prince George's County Woodlands Conservation Ordinance. Large portions of the property are proposed to be held in a natural state for open space and tree conservation, providing large tracts of woodlands contributing to the scenic beauty of the County. Exhibit 72 illustrates the Applicant's compliance with the grading plan requirements of this section. Reclamation and stabilization efforts shall be staged as diligently as possible to follow the direction of mining. (Exhibit 32) The Type II Tree Conservation Plan (TCPII/054/09) (Exhibits 30(a) & (b)) shows the existing and proposed ground elevations of the site, adjacent land, all abutting streets, and that final grade will not exceed 3:1. §27-410(a)(3)

(12) The property is in the O-S Zone, therefore, this Application, if approved, would be valid for a period not to exceed five (5) years from the date of approval. Any request for additional time will require the approval of a new Special Exception. §27-410(a)(4)

(13) The Site Plan, Exhibits 29-32, contain a Note that estimates that the mining will be completed within the initial five (5) year period of validity. §27-410(a)(5)

(14) The Applicant has submitted the required Traffic Study. (Exhibit 17) It proposes a maximum of 250 loads leaving the site daily, heading north on MD 381 to its intersection with US 301 and Branch Avenue (MD 5). There will be no traffic travelling to and from the site to the south on MD 381.

A traffic analysis was also conducted by Transportation Planning Staff and is presented in EIR-4674. (Exhibit 35) The Traffic Study analyzed the transportation facilities within the approved study area based on existing conditions, as well as future conditions with and without the impact of the subject Application.

The analyses of the proposed Application for mining were predicated on several operational assumptions. Those assumptions are:

1. The property will be mined at a rate of 250 truckloads per day, resulting in a total of 500 trips per day.
2. The operations will be confined between the hours of 7:00 AM to 6:30 PM, during weekdays.
3. Mining activity will be concentrated between 7:30 AM and 5:00 PM during weekdays and 7:30 AM to 3:00 PM on Saturdays.

In addition to the on-site mining activity, the Application states that the haul route to be utilized will be northward on MD 381 to US 301. No trucks will use the portion of MD 381 that is south of the subject property.

The total projected traffic volumes were obtained by combining the factored site-generated truck trips with the projected background traffic volumes for the 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 Table 5.9.

| Table 5.9 | | |
|--|------------------|------------------|
| Projected Future Total Traffic for 2011 – Including the Subject Application | | |
| Intersection | AM | PM |
| | LOS/Delay | LOS/Delay |
| MD 381 – US 301 <i>(Including mitigation: extending EB left turn lane)</i> | F/1626 E/1483 | F/1628 D/1420 |
| MD 381 – Cherry Tree Crossing Road * | C/17.5 secs | B/14.0 secs |
| MD 381 – North Keys Road * | C/22.1 secs | B/10.8 secs |
| MD 381 – Site Access * | B/15.9 secs | B/12.5 secs |
| | V/C Ratio | |
| MD 381 – US 301 to Cherry Tree Crossing Road ** | 0.32 | 0.31 |
| MD 381 – US 301 to Cherry Tree Crossing Road** | 0.32 | 0.31 |
| MD 381 – Cherry Tree Crossing Road to North Keys Road ** | 0.38 | 0.35 |
| MD 381 – North Keys Road to Gibbons Church | 0.39 | 0.33 |
| MD 381 – Gibbons Church Road to Site Access ** | 0.34 | 0.32 |
| * Unsignalized intersections are analyzed using the <i>Highway Capacity Manual</i> (HCM) method in accordance with the <i>Guidelines for the Analysis of the Traffic Impact of Development Applications</i> . The results show the level-of-service and the maximum delay in any movement measured in seconds/vehicle. A level-of-service “E” corresponds to a maximum delay of 50 seconds/car, which is the maximum level of delay deemed acceptable per the <i>Guidelines</i> . ** The HCM Link Analysis procedure is applied, and the resulting Volume-to-Capacity (V/C) ratio is indicated. A maximum V/C of 0.80 is acceptable per the “Guidelines.” | | |

The following road facilities were identified in the Traffic Study as the network on which the proposed development would have the most impact:

MD 381 – US 301 (Signalized)
 MD 381 – Cherry Tree Crossing Road (Unsignalized)
 MD 381 – North Keys Road (Unsignalized)

The Traffic Study concluded that under the provisions of mitigation (County Council Resolution CR-29-1994), with the extension of the left turn lane by 335 feet on the eastbound approach of the MD 381/US 301 intersection, the additional pavement would mitigate more than 297 percent of the site’s AM traffic, and 2,871 percent of the site’s PM traffic. The County’s guidelines require a minimum mitigation rate of 150 percent of the proposed site traffic. Consequently, the Applicant’s proposed improvement will exceed county requirements for mitigating improvements. §27-410(A)(6)

(15) The Site Plan (Exhibit 29) shows a single access point from the northeast side of MD 381, near the southern point of the subject property. It is 22 feet in width and 200 feet in length, constructed of asphalt. The Applicant asserts that the sight distance at this location is more than

1,000 feet in either direction. Signs identifying the entrance are shown a minimum of 500 feet prior to the driveway entrance in either direction. A long acceleration lane is to be provided for trucks turning right out of the site onto MD 381. Given the lack of pedestrians along this very rural stretch of road, it is unlikely that the entrance location would pose a danger to person walking along the road. §27-410(a)(7)

(16) 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 Exception for sand and gravel wet-processing, sanitary landfills and rubble fills, and surface mining, is indicated in the record of the instant Application. This inventory, which 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, is contained in Appendix A of EIR-4674. (Exhibit 35) §27-410(a)(8)

(17) The subject property is located in the O-S Zone and, therefore, §27-410(b) & (c) are not applicable.

(18) The Applicant is proposing to mitigate noise as follows:

For those perimeter areas where the Subject Property adjoins Aquasco Road, parts of Parcel 9 and Parcel 30 (i.e., the Site's southern boundary), the buffer yards are designed in accordance with the Prince George's County Landscape Manual. Along this same southern boundary of the site, eighteen (18) foot high berms are proposed adjacent to the interior or inside boundary of the fifty (50) foot setback. The design of the berms are based on the specifications resulting from a noise impact and mitigation analysis that is based on State of Maryland regulations promulgated to limit the amount of noise impacting residential land uses from various sources such as the proposed surface mine. The berm dimensions will measure eighteen (18) feet in height and seventy (74) feet in width at the base (with a two (2) foot top width), constructed of earth which will be stabilized using a grassy cover. The berms are designed to serve as a sight and sound barrier from the mining operation.

Additionally, only the equipment listed in the EIR shall be used on the subject property, and all equipment shall be equipped with a Donaldson TCU05 muffler (or its equivalent of another manufacturer) that provides a least 30 dBA in noise abatement. Similar heavy equipment and machinery may be substituted as replacements are required, provided the noise generated by those vehicles comply with this sound reduction standard. §27-410(d)

(19) The subject property is not located within a Chesapeake Bay Critical Area (CBCA) Overlay Zone and, therefore, §27-410(e) is not applicable.

(20) The proposed mining site is located in a section of the County which has long been mined for sand and gravel. An updated inventory is provided. (Exhibit 35) The inventory identifies one (1)

active mine in direct proximity to the subject property, and there are other mining sites within the Planning Areas that contribute truck trips to MD 381. §27-410(f)

(21) The Applicant is required to obtain all necessary permits from the State of Maryland for the operation of a surface mine, subsequent to the approval of Special Exception 4674. The Applicant is required to operate the surface mine in accordance with all permits and any conditions attached to this Application's approval. §27-445.02(a)(b)&(c)(1)

(22) The operator of the surface mining facility shall take effective measures to ensure the control of the speed of trucks utilizing the facility and the neighboring streets. (Exhibits 73(a)&(b)) §27-445.02(c)(2)

(23) The Applicant has agreed to Conditions which require the Applicant to use a water truck and sweeper truck as needed on its property and nearby roads, to minimize dust and to keep the public roads clear of debris. §27-445.02(c)(3)

(24) The owner of the subject property shall post and maintain a permanent, durable sign identifying the use as a surface mining operation, in accordance with the requirements of Section 27-629. §27-445.02(c)(4)

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

Landscape Manual

(26) The proposed Surface Mining operation is subject to Section 4.7 (Buffering Incompatible Uses) of the Prince George's County Landscape Manual. The Landscape Plan, Exhibit 31, provides the amount types and location of plant materials in conformance with Landscape Manual requirements

Signage

(27) The Site Plan, Exhibit 29, indicates the location and dimensions of permanent, durable signs in accordance with Part 12 of the Zoning Ordinance.

Parking

(28) No parking or loading spaces are required for a Surface Mining operation.

DISPOSITION

Special Exception 4674 is APPROVED, subject to the following Conditions:

1. Mining operations on the site are restricted to the hours of 7:00 a.m. to 6:30 p.m. Monday through Friday, and 7:30 a.m. to 3:00 p.m. on Saturdays, excluding Federal holidays. There will be no operations on Sundays. The hauling of finished materials from the site will be concentrated between 7:30 a.m. and 5:00 p.m. during weekdays and 7:30 a.m. and 3:00 p.m. on Saturdays, not to exceed a maximum of 26 Saturdays per calendar year. Trucks are not permitted to arrive at the site prior to 7:00 a.m.
2. The Applicant shall provide the Environmental Planning Section with copies of all reports submitted to the Maryland Department of the Environment, including, but not limited to, the Mining, Reclamation, Erosion and Sediment Control Plan approved by the Soil Conservation District and the conservation easement referred to in Condition 5.
3. Prior to the commencement of the mining operation, a Special Permit shall be obtained from the Prince George's County Department of Public Works & Transportation. A reforestation bond shall be posted to the issuance of the Special Permit.
4. The area to be mined shall be reclaimed in accordance with the reclamation plan by filling with acceptable materials as described in the Prince George's County Code, Subtitle 4, Building Code, Section 4-303. Upon completion of the restoration process, the area shall be suitable for open space purposes. If future applications propose a use other than open space, the TCP II shall be revised to provide appropriate protection of the reforestation edge.
5. 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.”
6. Noise mitigation shall be provided on-site by implementation of the following:
 - a. Operations on the site are restricted to the hours of 7:00 a.m. to 6:30 p.m. Monday through Friday and 7:30 a.m. to 3:00 p.m. on Saturdays, excluding Federal holidays. There will be not operations on Sundays. Mining activity will be concentrated between 7:30 a.m. to 5:00 p.m. during weekdays and 7:30 a.m. and 3:00 p.m. on

Saturdays. Trucks are not permitted to arrive at the site prior to 7:00 a.m.

- b. The 18-foot-high noise mitigation berms shall be located as shown on the plans submitted to protect nearby residential buildings and properties. The berms are to be relocated, as shown on the plans, upon completion of the initial phase of mining along Aquasco Road, and removed at the end of the mining operation.
 - c. Trucks shall not use compression or “Jake” brakes both on-site and on the roadway.
 - d. Speeds on-site shall be restricted to 15 mph for all heavy vehicles.
 - e. All machinery shall be kept in good working order, especially mufflers to insure quiet operation.
 - f. The volume of backup warning devices shall be minimized while still meeting OSHA (Occupational Safety and Health Administration) standards.
 - g. Acceleration for trucks entering the highway shall be held to a minimum.
7. If the operation of the subject sand and gravel mine impacts the water level in any of the wells within a quarter-mile of the subject mining site, 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.
8. 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. A truck wash rack shall be established at the site to remove dust from vehicles prior to entering Aquasco Road.
 - c. The site shall have a 15 mph speed limit to reduce dust generation from travel on the unpaved portions of the proposed haul road.
 - d. 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 a period of five (5) years.
 - e. A VGrid S4 screener, or equivalent, shall be used on-site with the use of ultra-low sulfur diesel fuel.

- f. The dry screening operation shall use a water-based suppression system to control particular matter when needed.
9. The Applicant shall notify the Maryland-National Park and Planning Commission, Environmental Planning Section, prior to the start of work on each phase of this mining operation and schedule a meeting to address reforestation and woodland conservation issues including: timing for reforestation activities associated with the most recently completed phase, timing for restoration for the upcoming phase, changes in the species to be planted, decreases in the quality of trees planted in the event that some natural regeneration has occurred, the need for additional or less site preparation, and other pertinent woodland conservation or reforestation issues. The installation of perimeter sediment control devices shall not be subject to this Condition.
10. Prior to the start of work in any phase or portion thereof, the limits of disturbance for that phase or portion thereof shall be identified and marked in the field. The Applicant or their representative shall walk the limits of disturbance with a representative of the MDE Minerals, Oil and Gas Division, prior to the installation of sediment/erosion control measures and tree protective devices. The Applicant or their representative shall notify the M-NCPPC, Environmental Planning Section, as to the date and time this walk will occur, and they will be afforded the opportunity to participate in this walk and provide their concerns to the MDE representatives.
11. Topsoil shall be stockpiled within the limits of disturbance for use during the reclamation period for each phase.
12. Equipment fueling on-site shall be done in accordance with NFPA 30 (National Fire Protection Association), Flammable and Combustible Liquids Code, Chapters 2 and 3. The mobile fueling trucks shall be operated by trained personnel holding valid oil vehicle operator's certificates as required by COMAR 26.10.01.17. Care shall be taken to minimize spillage. Refueling shall take place as far from streams and wetlands as possible.
13. Prior to the issuance of U & O permits for the site, the Applicant shall construct an eastbound left turn lane at the intersection of US 301 and MD 381 subject to SHA approval.
14. The property will be mined at a maximum rate of 500 truck trips per day.
15. Trucks connected to the Application are prohibited from using the portion of MD 381 that is south of the subject property.
16. The Applicant shall maintain MD 381 (Aquasco Road) north and west of the site entrance free and clear of dirt, gravel, and mud. Street sweepers or water trucks shall be available and utilized on Aquasco Road during all hours of operation of Special Exception 4674.

17. Prior to approval of the Special Exception, the plans shall be revised to indicate that the adjoining property to the southeast is vacant.
18. Prior to any ground disturbance or the approval of any permits which would result in disturbance of archeological sites 18PR979 and 18PR981, the Applicant shall submit Phase II and Phase III investigations if determined necessary by DRD staff. The plan shall provide for the avoidance and preservation of the resources in place or shall provide for mitigating the adverse effect upon these resources. All investigations must be conducted by a qualified archaeologist, must follow The Standards and Guidelines for Archeological Investigations in Maryland (Schaffer and Cole: 1994) and must be presented in a report following the same guidelines.
19. The subject property may not be utilized as a Sanitary Landfill, a Rubblefill or a Class III Fill.

The Approved Site, Landscape and Reclamation Plans are Exhibits 29-32 and Exhibit 72.

The Approved TCP II is Exhibit 30.