

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

**SPECIAL EXCEPTION
22007**

DECISION

Application:	Surface Mining
Applicant:	Holcim-MAR, Inc.
Opposition:	James Lawson et. al
Hearing Date:	April 16, 2025
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 22007 is a request to expand an existing Surface Mining operation to include an additional 328.02 acres of land, in the R-A (Residential Agricultural) (prior zoning) and AR (Agricultural-Residential) Zone, located on the south side of Accokeek (Md Rt 371), between Gardner and Danville Roads, Brandywine, Maryland.
- (2) The Subject Property is located within a larger Property of approximately 683.26 acres of land known as "Gaslight 1". (SE 4402 and SE 4651) which approved Surface Mining and is now in the process of reclamation. "Gas Light II" (SE-4790) approved Sand and Gravel Wet-Processing.
- (3) The Planning Board elected not to review this Application, and the Technical Staff Report recommends approval with Conditions. (Exhibit 43)

FINDINGS

Subject Property

- (1) The Subject Property consists of a total of 328.02 acres in size and is irregular in shape. The Property is zoned AR (formerly R-A) and is located on the south side of Accokeek Road approximately 6,260 feet west of its intersection with McKendree Road. The proposed mining operation of the Site will be conducted by employees of Holcim-MAR, Inc., and will be conducted in four (4) phases as follows:

<u>PHASE</u>		<u>Limit of Disturbance</u>	<u>Limits of Mining</u>
Phase 1	-	29.28 Ac	29.28 Ac
Phase 2	-	123.77 Ac	123.77 Ac
Phase 3	-	40.07 Ac	40.07 Ac
Phase 4	-	37.33 Ac	37.33 Ac
Total		230.45 Ac	230.45 Ac

Each phase will be preceded by the installation of sediment and erosion controls and premining area preparation in accordance with County, State, and Federal regulations. These operations will be substantially similar to ongoing mining operations on the adjacent properties pursuant to prior Special Exception approvals.

Zoning History

(2) SE 4402 was approved with Conditions by the District Council in 2002 and was final after the Court of Special Appeal's confirmation of the District Council's approval in 2004. SE 4402 approved Surface Mining on Gaslight 1, the approximately 684.5 acres in the R-A and R-E Zones surrounding the 82.84-acre instant Application.

(3) SE 4403 was approved with Conditions by the District Council on June 17, 2002, for a Sand and Gravel Wet-Processing facility for period of 15 years on the Subject Property.

(4) SE 4651 was approved with Conditions by the Zoning Hearing Examiner on April 5, 2010, to continue the Surface Mining use for a period of five years on Gaslight 1.

(5) SE 4790 was approved with Conditions by the ZHE on June 6, 2017 to extend the Sand and Gravel Wet-Processing facility onto an additional 82.84 acres of land.

Master Plan/Sectional Map Amendment

(6) The Subject Property is located in Planning Area 85A, abutting Planning Area 84 on the north side of Accokeek Road. The applicable Master Plan is the 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment, approved on July 24, 2013, as administratively corrected by Administrative Correction 20-01 on April 2, 2020.

(7) The Sector Plan's Land Use Map designated the Subject Property for "Rural" Future Land Use.

(8) The Sectional Map Amendment retained the Subject Property in the previously existing R-A Zone, and the 2022 Countywide Map Amendment reclassified it to the comparable AR Zone.

(9) The Growth Policy Map in the May 2014 General Plan placed the Property in the Rural and Agricultural Areas Growth Policy Area. The printed Generalized Future Land Use Map in the General Plan designated it for “Rural and Agricultural” land use.

(10) The Subject Property is within a Priority Preservation Area.

Neighborhood and Surrounding Uses

(11) The neighborhood of the Subject Property was defined in the Technical Staff Report by the following boundaries:

North -	Floral Park Road
East -	Branch Avenue (Maryland Route 5)
South -	Gardner Road
West -	Maryland 210

(12) The Technical Staff’s definition of the neighborhood is curious, as Gardner Road is to the west of the Subject Property (not the south), and Maryland 210 is a consequential distance further to the west of Gardner Road. Given the specific characteristics of the proposed operation, with no new traffic being added to the road network, your Examiner finds that the appropriate boundaries are instead:

North -	Floral Park Road
East -	Branch Avenue (Maryland 5)
South -	Mattawoman Creek (the southern boundary of Prince George’s County)
West -	Gardner Road

(13) The Subject Property comprises three unoccupied, wooded parcels of unsubdivided acreage. It is located on the south side of Accokeek Road, a Planned Arterial roadway, approximately equidistant from the intersections of Accokeek Road with Danville Road and with Gardner Road.

(14) Abutting the Subject Property to the north in a wedge-shaped area between the northeastern portion of the Subject Property and Accokeek Road are three single-family dwellings on largely-wooded parcels and a small cemetery for the Apostolic Faith Church (which itself is some distance to the east on Accokeek Road); this “wedge” is zoned AR. The neighborhood to the north is generally rural and wooded in character, predominantly characterized by single-family dwellings on individual parcels of acreage ranging from a

half-acre to two acres in area in the AR and RE Zones, and including the subdivisions of The Ridge of Brandywine and Pleasant Springs. A number of small churches and a Class III fill Site also occupy this four-and-a-half square mile area.

(15) Abutting the Subject Property to the east is the existing Gaslight I Surface Mine in the AR and RE Zones which is being expanded by this Application, and a tree bank in the AR Zone. The neighborhood further to the east is largely occupied by the Holcim Wash Plant (in the AR Zone), the Gaslight II Surface Mine (in the RR Zone) and the Robin Dale Surface Mine (in the AR Zone). Beyond the mine Sites, closer to MD5/US301, more than a mile to the east of the Subject Property and generally on the east side of McKendree Road are a number of residential subdivisions of both detached and attached dwellings including Timber Village (RE Zone), Rose Creek Estates (RR Zone), McKendree Village (LCD Zone), Chaddsford (LCD & TAC Zones), Calm Retreat (TAC Zone), and Lakeview at Brandywine (RR Zone). Along the eastern edge of the neighborhood, along the west side of MD5/US301 (almost two miles to the east) is generally strip commercial development in the CS and TAC Zones.

(16) Abutting the Subject Property to the south are undeveloped, wooded parcels and the reclaimed Gardner Road Surface Mine in the AR Zone.

(17) Abutting the Subject Property to the west are a single-family dwelling on a parcel of acreage, with a small farm and undeveloped wooded parcels in the AR Zone beyond.

(18) The character of the neighborhood in the vicinity of the Subject Property is rural, with the overwhelmingly-predominant use of current and former Surface Mines, with single-family dwellings on smaller parcels of acreage along the frontages of the nearby roadways. The character transitions to suburban residential to the east, with a further transition to strip commercial along the neighborhood's eastern edge.

Applicant's Request

(19) The proposed use for Special Exception SE-22007 is the expansion of the existing Gaslight I Surface Mine (SE-4402 & SE-4651). Because the Gaslight I Surface Mine is contiguous with the Holcim Wash Plant (SE-4403 & SE-4790), no traffic associated with the mining operations will travel on the existing public roads surrounding the Subject Property, nor are any changes to existing traffic limitations associated with the Wash Plant proposed.

The proposed mining operation expansion will be surrounded by buffers of preserved woods along all Property lines (other than the Gaslight I boundary), and the wooded buffers will be supplemented with 15'- tall berms along Accokeek Road and along the rears of the abutting properties to the north. Expanded buffers of preserved woodland will be provided in the northeast corner and along the southern border to preserve regulated natural features.

Mined material will be transported to the Wash Plant within the limits of the Gaslight I

and III properties via a conveyor belt system and by and intra-Property road which will act to eliminate any need to use public roads for mined material transport. Further, the conveyor will minimize dust generation from intra-mine vehicle travel and minimize the disturbance to regulated natural features for additional new intra-Property roads.

Water trucks will be used to minimize dust generation from traffic on the intra-Property roadways and from wind action on stockpiled excavated materials.

A single proposed vehicular entrance from Accokeek Road will solely be used by supervisory personnel, water trucks, and service personnel coming from offSite to maintain the conveyor or mining equipment.

LAW APPLICABLE

(1) A Special Exception for a Surface Mine in the AR Zone is permitted pursuant to §27-441(b)(7) in accordance with §§27-410(a) and, 27-445.02 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of §27-317.

(2) §27-317(a) states:

- (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;
 - (6) The proposed Site Plan is in conformance with an approved Tree Conservation Plan; and
 - (7) The proposed Site Plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(3) §27-445.02 additionally requires:

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

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

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

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

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

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

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

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

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

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

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

(4) An area containing highly erodible soils.

(4) §27-410(a) requires:

(a) The Surface Mining of natural materials or deposits (including sand, gravel, or clay pits; rock or 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 1-2 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 the R-R Zone which is predominantly undeveloped for a radius of one (1) mile from the operation; or

(B) In the 1-2 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.

(5) §27-625 provides for Sand and Gravel Wet-Processing identification:

(a) **Area.**

(1) Not less than 9, nor more than 16, square feet.

(b) **Location.**

(1) All signs shall be conspicuous and legible.

(c) **Quantity.**

(1) If the Property has frontage on one (1) or more improved public streets, there shall be one sign posted for each one thousand (1,000) feet (or fraction) of street frontage on each street.

(2) If the Property does not have frontage on an improved public street, there shall be one (1) sign posted within the right-of-way or easement which provides vehicular access to the Property.

(d) **Height.**

(1) Not less than four (4), nor more than eight (8), feet above the finished grade of the improved street if it is to be viewed from a public street.

(e) **Contents.**

- (1) Each sign shall contain the following information:
 - (A) Identification of the use as a Surface Mining or sand and gravel wet-processing operation;
 - (B) Size of the Property (in acres);
 - (C) Name of the owner of the Property and operator of the facility;
 - (D) A legal description of the Property, including the subdivision name, lot and block numbers, or liber and folio numbers; and
 - (E) Instructions for obtaining additional information about the operation.

(f) **Applicability.**

- (1) The requirements of this Section apply to both nonconforming operations and those which are in conformance with the existing provisions of this Subtitle.

- (6) The request must also satisfy the general purposes of the Zoning Ordinance, §27-102, the specific purposes of the R-A Zone, §27-426(a) and the specific purposes of the R-E Zone, §27-427(a).

Burden of Proof

- (7) The burden of proof in any zoning case shall be the Applicants. (§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)(26))

Burden of Production and Persuasion

- (8) 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

- (9) 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

(10) It is within the sound discretion of the trier of fact, 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.

(11) 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

(12) "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).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

General Requirements

- (1) §27-317(a)(1) requires that the proposed Use and Site Plan be in harmony with the general purposes of the Zoning Ordinance, §27-102(a), and the specific purposes of the R-A Zone, §27-426(a).
- (2) The general purposes of the Zoning Ordinance are listed in §27-102(a). The instant Application is in harmony with the general purposes of the Zoning Ordinance 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 Surface Mining operation, if carried out in conformance with the provisions of the Special Exception Site Plan and the applicable State and County regulations will afford a high degree of protection to the public health, safety, comfort, convenience and welfare of the present and future inhabitants of the County.

The neighbors to the north will be buffered from noise by the preservation of perimeter wooded buffers and the installation of the proposed berms. The residential neighbor to the west will be buffered by the preservation of a larger amount of wooded area and a preserved stream beyond the Special Exception Area.

The impacts to air quality will be sufficiently small such that air quality in the vicinity of the proposed mining operation will remain in conformance with the National Ambient Air Quality Standards, with the minor exception of the existing regional shortfall for ozone, which the proposed mining activity will not materially affect.

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

Water quality in the surrounding watershed will be protected by the interception and treatment of all surface runoff into sediment traps and basins prior to discharge into the receiving stream system.

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

The relevant Plans which apply to this Site are the 2014 General Plan, the 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment*, and a number of Functional Master Plans, including the Resource Conservation Plan (which includes the Green Infrastructure Plan), the County Master Plan of Transportation, the Public Safety Facilities Master Plan, The Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

General Plan

As noted *supra*, the General Plan classified the subject Site in its Growth Policy Map³ in the Rural and Agricultural Areas category. The printed Generalized Future Land Use Map⁴ designated it for Rural and Agricultural land use.

“Rural and Agricultural Areas” are described by the General Plan as “areas with significant natural and agricultural resources that are best suited for low-density residential development on well and septic, agricultural activity, and forest preservation,”⁵ and recommends that, “Rural Areas remain low-density residential or support park and open space land uses and focuses new investment on maintaining existing infrastructure and stabilizing small-scale neighborhood-oriented commercial activities that support the areas’ rural lifestyle and character. Following the Priority Preservation Areas..., Plan 2035 defines Agricultural Areas as areas suitable for agricultural activities and forestry preservation.”⁶

Land Use Policy LU11.3 directs the County to,

“Evaluate the impacts of extractive industries, such as sand and gravel mining, on resource lands, rural character, economic development, and post-reclamation requirements in the Rural and Agricultural Areas. Map remaining sand and gravel natural resources to locate potential future sand and gravel operations, update and revise development standards, and identify post- reclamation land uses, including residential development, agriculture and forestry. Propose comprehensive legislation to revise county codes and identify recommendations for the Zoning Ordinance update”⁷

The provisions of the Additional Requirements of Section 27-5402(jjj) for Surface Mining in the (current) Zoning Ordinance are substantially identical with those of Section 27-410(a) of the

³ M-NCP&PC, *Plan Prince George’s 2035 – Approved General Plan* (May, 2014), p. 107.

⁴ *General Plan*, p. 101.

⁵ *Ibid*, p. 106

⁶ *Ibid*, p. 20

⁷ *Ibid*, p. 117

prior Zoning Ordinance. That the approval of the instant Application would implement these recommendations and the referenced Policy of the General Plan because the Tree Conservation Plan for the Subject Property which accompanies the instant Application provides that post-reclamation, almost all of the Subject Property will be Forest Preservation Area.

Master Plan

As noted above, the applicable Master Plan is the *Approved Subregion 5 Master Plan and Sectional Map Amendment*, approved on July 24, 2013.

One of the three Goals of the “Land Use and Development Pattern” element of the Master Plan for the Rural Tier is to, “preserve access to mineral resources where sufficient and economically viable mining potential exists.”⁸

This Master Plan element contains a number of other discussions relevant to the subject use; in its discussion of Priority Preservation Areas, it includes a highlighted “note on mining in the Priority Preservation Area: The portion of the PPA south of Accokeek Road contains some old, active, and future sand and gravel mines. Including these Sites in the PPA indicates the County’s long-term policy intent to preserve these lands for productive agriculture and forestry. While in the short-term mining may remove some existing forest stands, through careful reclamation mining Sites can be turned into productive land.”⁹ The proposed Type 2 Tree Conservation Plan will implement this Note.

It also contains a specific discussion of Sand and Gravel Resources, noting that, “This resource provides an economic base for jobs, value-added services, and economic benefits.”¹⁰ The discussion continues to direct that, “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. Regulatory tools, such as an overlay zoning district, would help preserve access to the resource and prevent the preemption of sand and gravel mining by other uses until the resource has been extracted.”¹¹

The “Environment” element of the Master Plan also contains an extensive discussion of Sand and Gravel Mining, reiterating the note about the economic base, and including a number of Strategies, quoted following:

- “Continue to review proposed mining projects for impacts on the integrity of the master Plan, using the following guidelines:
 - “Mining operations should minimize impacts on scenic, historic, cultural, or recreational assets.

⁸ M-NCP&PC, *Approved Subregion 5 Master Plan and Sectional Map Amendment* (July, 2013), p. 53.

⁹ *Ibid.*, p. 58

¹⁰ *Ibid.*

¹¹ *Ibid.*

- “Post-extraction uses should support the Plan’s preservation goals with mined land reclaimed for agricultural and forest uses.
- “Additional considerations for post-extraction uses should be community uses such as parks and trails.
- “Educate the community on the Special Exception review process for mining operations.
- “Increase monitoring and enforcement of the Special Exception Conditions of approval for ongoing mining operations.
- “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. The boundaries of the district could be limited to the PPA. 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. Mitigation could consist of 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.
 - “Increase setback and buffering requirements on potential mining Sites adjacent to residential properties to minimize the potential effects of noise and dust from future mining.
 - “Post-mining reclamation requirements that match preservation, community recreation, and environmental needs. Within the PPA, these should encourage reclamation for agriculture or woodland. “¹²

Because of the Subject Property’s preservation of wooded buffers along Accokeek Road (a designated Historic Road) and the proposed construction of berms behind those preserved buffers, the Special Exception Site Plan actively minimizes impacts on scenic and historic assets and has no impact on cultural or recreational assets. Notwithstanding the lack of an overlay district, the implementation of the proposed Type 2 Tree Conservation Plan will fulfill the intent of the Plan’s goal for mining activities in Priority Preservation Areas.

The “Economic Development” element of the Master Plan also contains an extended discussion of Sand and Gravel Mining, its importance to the region’s economy, and the need to protect access to sand and gravel. This section is quoted in full, following:

¹² *Ibid*, p. 88.

“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 are located in Subregion 5. There is significant potential for future sand and gravel mining due to the existence of large unmined reserves.

“Goal:

The County balances the need for the extraction of sand and gravel resources, and related activities, with the potential negative impact and nuisance to nearby properties and the environment, including restricting sand and gravel mining to the Rural Tier.

“As of August 2008, Subregion 5 supported seven active mines comprising approximately 1,580 acres, and there were approximately 2,130 acres of closed and reclaimed mines. There is a sand and gravel washing and processing Plant¹² on Accokeek Road in Brandywine. Additionally, the mining industry may support other independent businesses in the region, predominantly in the trucking industry, thus generating potential additional economic spin-offs in the local economy, though the specific amount of positive impact to the County has not been quantified in this Plan.

“Because of its high weight-to-size ratio, sand and gravel from the local Brandywine Formation is most cost effective to extract, process, and transport near its local end use. However, the region’s sand and gravel industry faces several issues and challenges:

- “Access to new mining capacity is becoming limited as land is subdivided for development or broken-up into uneconomical units of production.
- “Mining places a traffic burden on a rural and suburban road system that is also increasingly used by commuters, creating traffic conflicts.
- “Public opinion on the effectiveness of mine reclamation often puts the community at odds with the industry, although many mine reclamation issues cited by the public as poor practice are, in fact, related to mining activities that predated current reclamation practices.

“Over time, cost associated with these issues could lead to disinvestment in the industry and its eventual relocation. Improving the public’s understanding and acceptance of the industry and protecting long-term access to the resource is the focus of the following policies and strategies.

“Policies:

- “Restrict sand and gravel mining to the Rural Tier, with enhanced buffering between sand and gravel mining and communities in the Developing Tier.
- “Encourage the mining industry to provide specific evidence of the positive economic benefit of this activity to the County, including documentation of the positive impact of proposed mining for employment of truckers who are Prince George’s County residents.
- “Improve access to financial and work force development incentives to support

economic development of mining regulations.

- “Foster dialogue between community residents and members of the sand and gravel community to address concerns.

“Strategies:

- “Explore the feasibility of developing a mineral overlay zone to protect mineral resources. Issues to be evaluated include:
 - Real estate notices
 - Dispute resolutions
- “Expand easement language in programs such as those run by the Maryland Agricultural Land Preservation Foundation (MALPF) to integrate sand and gravel operations within easement contracts.
- “Integrate the sand and gravel industry within traditional economic development programming such as tax credits and abatements, workforce assistance, and assistance with state and federal small business financing.
- “Conduct community outreach to improve understanding of the sand and gravel industry and to improve industry integration within the rural communities.
- “Ensure that sand and gravel mine Applications address all impacts on surrounding communities, including requiring Applicants to mitigate on and off-Site transportation impacts from mining activities and potentially limiting the daily hours of mining activities and duration of sand and gravel approvals to mitigate the nuisance to nearby communities.”¹³

The Subject Property is located in the Rural Tier, and as such is in keeping with the Goal of the Economic Development element related to Sand and Gravel mining. The buffers and berms provided on the Special Exception Site Plan will substantively mitigate the impacts of noise and dust, and the use of the conveyor and the internal haul roads to transport the raw mined material from the Subject Property without using the public road network, together with the trip and route restrictions already in place for the abutting wash Plan will substantively mitigate traffic impacts. By virtue of these features, the subject Surface Mine would be in harmony with the Master Plan.

Other Applicable Functional Master Plans

The Special Exception area does contain Regulated Areas of the County’s Green Infrastructure Network. With the single exception of a temporary disturbance in the form of a stream crossing for the construction of the proposed conveyor and an intra-Property haul road to connect to the Gaslight I Site and the existing Wash Plant, no disturbance to them is proposed by this requested Surface Mine expansion. After the completion of mining operations and reclamation, the conveyor and haul road will be removed, and the stream and its buffers restored.

¹³ *Ibid*, pp. 153-154.

Forested areas cleared for mining operations will be reforested on Site in full compliance with Subtitle 25 of the County Code. As such, the instant Application conforms to the Green Infrastructure Plan.

The Priority Preservation Area Functional Master Plan is intended to establish policies and strategies which will help to implement the goal of the 2002 General Plan of preserving “large amounts of land for woodland, wildlife habitat, recreation and agriculture pursuits, and preservation of the rural character and vistas that now exist.”¹⁴ Presence of mineral resources is listed as a supporting criterion for determination of areas to be included as Priority Preservation Areas.¹⁵

The Priority Preservation Area Functional Master Plan also contains the following Policy: “Identify valuable mineral resources, seek methods to protect and manage access, and reclaim these areas where possible for future farm or forest enterprises, or agricultural support services.”¹⁶ That policy is supported by two strategies related to reclamation of mined land, and one recommending that surveys be conducted to determine where mineral resources exist in the Priority Preservation Area.

Because the Priority Preservation Area Functional Master Plan recognizes and supports extractive industries in the Priority Preservation Area, the subject Application is in conformance with it.

With regard to the Historic Sites and Districts Plan, no historic Sites or resources are located within 1,000’ of the limits of the Subject Property. Accokeek Road is classified as a designated Historic Road. Because only a single 22’-wide entrance for supervisory and service vehicles is proposed, however, the approval of the subject Application will have only a *de minimis* adverse impact on Accokeek Road’s historic character or the contents of this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed Planning, and as such makes no recommendations which are directly applicable to the subject Application.

No proposed Sites for Public Safety facilities are in the area affected by the subject Application.

The Countywide Master Plan of Transportation classifies this segment of Accokeek Road as an arterial roadway, with an ultimate right-of-way of 120’ (“minimum”). The Plan’s intent is for the road to ultimately be from four to six lanes in a parkway configuration; per the County’s GIS Site, the width of right-of-way along the Subject Property’s frontage is a conventional 120’-wide section. While no improvements are proposed to Accokeek Road, no structures are

¹⁴ M-NCP&PC, *Adopted and Approved Priority Preservation Area Functional Master Plan* (July, 2012), p. 1.

¹⁵ *Ibid*, p. 16

¹⁶ *Ibid*, p. 4

proposed in this ultimate right-of-way area, and as such, the subject Application is in conformance with this Functional Master Plan.

In conclusion, because the subject Surface Mine is not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the subject Application would be in harmony with the Ordinance's purpose of implementing those Plans.

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

Because this Application proposes no mining traffic on the public road network,¹⁷ the only trips associated with this Surface Mine extension will be those associated with the existing Wash Plant, which already has a daily trip cap in place. As such, approval of the instant Application would not adversely affect the adequacy of existing transportation facilities, and thus would be in harmony with this purpose of promoting the conservation of a community which will be developed with adequate public facilities.

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

Approval of the subject Application would recognize the needs of the County's agriculture, industry and businesses by allowing for the extraction of a valuable natural resource to support the region's continuing physical development compatibly with its surrounding land uses, and will support the character of those neighboring uses post-reclamation through the proposed reforestation and forest preservation provided for by the Type 2 Tree Conservation Plan. This reforestation and forest preservation will allow for the ultimate agricultural/silvicultural preservation of the Subject Property, and will in the interim employ workers and supply necessary building materials for the development of the County. As such, approval of the instant Application would be in harmony with this Purpose of the Ordinance.

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

The approval of the subject expansion of the neighboring Surface Mine would be in harmony with this Purpose as the Site will be developed in conformance with the various regulations in the Zoning Ordinance and the Landscape Manual to ensure the provision of adequate light, air and privacy for the neighbors of the Subject Property. These principles include the provision of sufficient distance between the proposed use and neighboring uses including intervening preserved wooded buffers and constructed berms in order to preserve neighbors' access to light and air.

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

¹⁷ Other than *de minimus* traffic from occasional supervisory or service vehicles.

The expansion of the Gaslight I Surface Mine would be in harmony with this Purpose as it has been and will be carried out in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the tables of permitted uses for the various zones as laid out in the Ordinance, and in conformance with the provisions of the Landscape Manual which provide for perimeter landscaping.

More specifically to this Site, being an addition to an existing 682-acre Surface Mine and abutting other previously-mined properties and a large tree bank means that adverse impacts to neighbors are limited to the northern and western edges of the Subject Property, against which buffers of preserved woodlands and constructed berms will provide material protection against visual distance, noise and dust. The lack of mining traffic on the public roads and the use of internal haul roads and the conveyor system will protect adjoining landowners from adverse impacts of additional traffic and the tracking of debris on the surrounding public roads.

For all of these reasons, the approval of the subject Surface Mine expansion would be in harmony with this purpose of the Zoning Ordinance.

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

The approval of the instant Application would be in harmony with this Purpose of the prior Zoning Ordinance as it will be operated in conformance with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, grading regulations requiring sediment and erosion control, and the tables of permitted uses for the various zones. The operational measures proposed to suppress dust will promote clean air, and the buffers and berms will restrict adverse noise impacts.

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

Because the subject use is extractive in nature, this Purpose is not directly applicable to this Application, however, the substantive buffers and berms will preserve the ability of the surrounding area to provide sound, sanitary housing in a healthy living environment.

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

The approval of the expansion of the Gaslight I Surface Mine would be in harmony with this Purpose because it would be able to expand its contribution to the tax base of the County directly, through the employment provided to its workers, and by enabling it to continue to supply necessary building materials for the physical creation of economic development activities throughout the County.

(10) To prevent the overcrowding of land;

The approval of the subject Surface Mine expansion would be in harmony with this Purpose as it will be operated in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, and setbacks.

More specifically to this Site, the substantive buffers and berms which are proposed between the mining operations and adjoining landowners will mitigate any perceptions of overcrowding of land.

(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;

The approval of the subject Surface Mine expansion would be in harmony with this Purpose because it proposes no traffic associated with the extraction and transport of unprocessed, mined raw material on the existing public road network.

In fact, it is likely that the establishment of this use at this Site will result in a reduction in the number of truck trips on the road network, as the use of materials extracted at this Site will be able to be used preferentially to raw material being brought to the adjacent Wash Plant for processing from remote parts of the County (or adjacent counties).

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

As the Zoning Ordinance is the principal tool for the implementation of the Planning process by enacting legal requirements which implement the Planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose.

Beyond that, however, the approval of the subject Surface Mine expansion would promote the economic and social stability of the County by contributing to the tax base, and by providing essential building materials to the surrounding community.

(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 approval of the subject expanded Surface Mining activity would be in harmony with this Purpose because it will be carried out with the practices described *supra* to protect against undue noise, air and water pollution; because the streams and their adjacent wooded buffers will

be preserved and because the forested areas occupying the mined areas will be reforested at the completion of the mining operations.

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

The subject expanded Surface Mine will not consume the open space existing at the Site; rather, and in its final, reclaimed state will continue as open space in the form of a forested area to protect the adjacent stream valleys and their natural features and maintain the scenic beauty of the area. As such, the approval of the subject Surface Mine will be in harmony with this Purpose.

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

The ultimate, post-reclamation use of the Subject Property as forested area will protect and conserve the agricultural industry (as silviculture).

Harmony with the Purposes of the R-A Zone:

(3) In addition to the purposes for the Zoning Ordinance generally, there are also three purposes for the R-A (Residential-Agricultural) Zone specifically, which are laid out in Section 27-426(a)(1) of the prior Zoning Ordinance, as follows:

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

While the subject Application proposes the expansion of an interim, extractive use, it is not in conflict with this purpose. After the exhaustion of the raw sand and gravel deposits in the area, the land occupied by the subject Surface Mine will be available for potential large-lot residential development, for silviculture/forestry and other open space-preserving uses that complement the rural, large-lot single-family development and agricultural/silvicultural character of the neighborhood.

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

The Type 2 Tree Conservation Plans which accompanies the instant Application specifies the preservation of a number of forested areas, and after the exhaustion of the raw sand and gravel deposits in the area, the land occupied by the Surface Mine will be reforested and available for silviculture, large-lot residential use, and other open space-preserving uses.

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

The approval of the proposed Surface Mine expansion includes requirements for conformance to an approved Sediment and Erosion Control Plan.

(4) The other criteria for approval of a Special Exception laid out in Section 27-317(a) of the prior Zoning Ordinance continue as follows:

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

Based upon a review of the proposed Special Exception Site Plan the subject use will be in conformance with all of the applicable requirements and regulations of the prior Zoning Ordinance.

(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;

As discussed *supra* the subject Application is in harmony with the Purposes of the Zoning Ordinance generally to implement the General and Master Plans and to provide for the efficient and desirable use of land in accordance with those Plans. And given its harmony, the approval of this use will not impair the integrity of either the approved Master Plan or the County's General Plan.

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

At a basic level, the conformance of the subject Application with the principles laid out in the purposes of the prior Zoning Ordinance, its compliance with the provisions of the prior Zoning Ordinance, and its compliance with the provisions of other State and County regulations for environmental protection represent a high level of protection against adverse effects to the public health, safety and welfare.

More specifically, however, the proposed perimeter buffers and proposed berms will provide a buffer sufficient to mitigate the noise impacts associated with Surface Mining activities to the acoustic standard that has been accepted as providing sufficient protection to the health, safety and welfare of the adjacent residents.

The berms and perimeter landscaping will also serve as a visual buffer to hide activities at the Site from the neighboring properties and the visual landscape along abutting historic Accokeek Road.

The controls on operation, including: use of water trucks and other dust control methods along the haul road; the use of water and/or sealing or dust-settling materials on material and overburden stockpiles; the use of load covers on the material transport vehicles; the establishment of speed limits on Site; limits on the number of on-Site truck trips per day, and,

the use of low-sulfur diesel fuel will mitigate air quality impacts from the mining activities and heavy equipment operation to within acceptable Federal air quality standards.

The preservation of wooded buffers along all of the regulated areas, as well as a Sediment Control Plan that will require the use of durable best management practices will provide for protection of the regulated environmental areas around the Site.

Groundwater quality will be protected by the limit of the material to be mined lying above the elevation of the groundwater table. As such, there will remain a buffer between surface activities and the groundwater table, and there will further be no need to pump groundwater levels down as a part of mining operations.

Finally, the effects on traffic, because of the Site's location adjacent to an existing Wash Plant will be *de minimis*.

In summary, the protections against noise, aesthetic, air quality, traffic, and impacts to environmental areas represent every reasonable protection to the public health, safety and welfare.

(5) *The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and*

A number of factors indicate that the proposed Surface Mining activity will not be detrimental to the use or development of adjacent properties or the general neighborhood. First, of course, are the various protections to the health, safety and welfare of residents and workers in the area, including buffers, berms, and preservation of the wooded buffers along the streams and along the Site's perimeter.

Second is the lack of direct connection to the surrounding road network. Finally, the temporary character of the proposed mining use as well as the forested character of the post-reclamation use indicate that no detriment to the use or development of adjacent properties or the general neighborhood can reasonably be expected.

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

The Special Exception Site Plan is in conformance with Tree Conservation Plan TCP2-033-2024.

(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.*

With the single exception of a temporary disturbance in the form of a stream crossing for the construction of the proposed conveyor and an intra-Property haul road to connect to the Gaslight I Site and the existing Wash Plant, no disturbance to them is proposed by this requested Surface Mine expansion. After the completion of mining operations and reclamation, the conveyor and haul road will be removed, and the stream and its buffers restored to a natural state.

Finally, as the Site is not located within the Chesapeake Bay Critical Area, the provisions of §27-317(b) are not applicable to the subject Application.

In summary, this Planner believes that the general findings discussed above which are required for approval of a Special Exception can be met.

(5) Specific Requirements 27-410 requires:

- (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;*

No washing, refining or processing is proposed at the Subject Property; as such, this provision is not applicable to the subject Application. It is noted that the adjacent Wash Plant which will be used to process the mined material from the Subject Property was approved pursuant to Special Exceptions SE-4403 and SE-4790.

- (2) *The use shall not be noxious, offensive, or otherwise objectionable by reason of dust, smoke, or vibration;*

The approval is proposed to be conditioned with provisions to limit dust and smoke generation, including prescribing: the use of water trucks or other dust control methods along the haul road; use of water and/or sealing or dust-settling materials on stockpiles; use of covers on material transport vehicles; establishment of speed limits on Site; and, the use of low-sulfur diesel fuel.

- (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;*

A Grading Plan has been submitted with the subject Special Exception Site Plan to provide for the restoration of the Site to approximate pre-existing natural grades. None of the grades provided for on the reclamation Plan will exceed a three-to-one slope.

- (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;*

The Applicant noted in its Statement of Justification that, “The Appellate Court of Maryland held in *East Star, LLC v. Cnty. Comm’rs of Queen Anne’s Cnty.*, 203 Md. App. 477, 38 A.3d 524 (2012) that a local regulations that place time periods on the operation of a Sand and Gravel Mine are preempted by State law and, therefore, illegal. The Zoning Hearing Examiner has previously acknowledged this decision and did not place a time limit on SE-4647 or SE-4651.”

- (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;*

The Applicant noted in its Statement of Justification that the anticipated time for removal of the material is eight years.

- (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;*

As discussed *supra*, no new truck traffic will be generated by the proposed mining activity at the subject Site. The traffic statement filed in the record indicates that the new trip generation will only be the *de minimis* trips of the supervisory and service personnel, and the equipment operators working at the Site.

- (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.*

The single access point to Accokeek Road illustrated on the Special Exception Site Plan, and is identified as to be 22’ wide, and paved with asphalt for a length of two hundred feet.

- (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.*

The inventory is provided as Figure 1.3 and as the latter part of Appendix A in the Technical Staff's Environmental Impact Report.

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

The subject Site is located in the former R-A Zone; as such, this provision is not applicable to the subject Application.

- (b) *In the M-A-C, L-A-C, E-I-A, R-U, R-M, and R-S Zones, no Surface Mining operation may be permitted after a Specific Design Plan for the Subject Property has been approved. An Application for this Special Exception may only be accepted, and the Special Exception granted, if no Specific Design Plan has yet been filed for the Subject Property.*

The subject Site is located in the former R-A Zone; as such, this provision is not applicable to the subject Application.

- (c) *In reviewing the Application, the District Council shall consider the use of techniques which provide for noise attenuation.*

The proposed Special Exception Site Plan features the installation of 15' high earth berms to provide noise attenuation; additionally, the approval is proposed to be conditioned with other provisions to address noise generation, including limiting of the hours of operation, providing for maximum vehicle speeds, and proscribing the use of "Jake" brakes.

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

The subject Site is not located within the Chesapeake Bay Critical Area; as such, this provision is not applicable to the subject Application.

- (e) *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).*

This requirement is noted.

(6) Section 27-445.02(a) Compliance requires:

- (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;*

This requirement is noted.

- (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;*

This requirement is noted. As discussed in connection with the requirement of Section 27-410(d), the Special Exception is proposed to be conditioned with provisions to address noise generation, including providing for maximum vehicle speeds. Additionally, because of the proposed conveyor and direct intra-Property haul road connection to the adjacent Wash Plant, the subject Application will not involve any new truck trips on the neighboring streets, or truck trips associated with the mining operation.

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

This requirement is noted; as observed above, the subject Application will not involve any truck trips on existing public streets.

- (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.*

This requirement is noted.

- (d) *On land which is located within a Chesapeake Bay Critical Area Overlay Zone, Surface Mining, sand and gravel wet-processing, or Wash Plants, including ponds, spoil Sites, and equipment, are prohibited within the Buffer, as defined in the Conservation Manual. In addition, no Surface Mining or sand and gravel wet-processing shall be located within:*
- (1) *Designated habitat protection areas, as described in the Conservation Manual;*
- (2) *The Buffer area, as defined in the Conservation Manual;*
- (3) *Any area where the use would result in the substantial loss of long-range (twenty-five (25) years or more) productivity of forest and agriculture, or result in a degrading of water quality; or*
- (4) *An area containing highly erodible soils.*

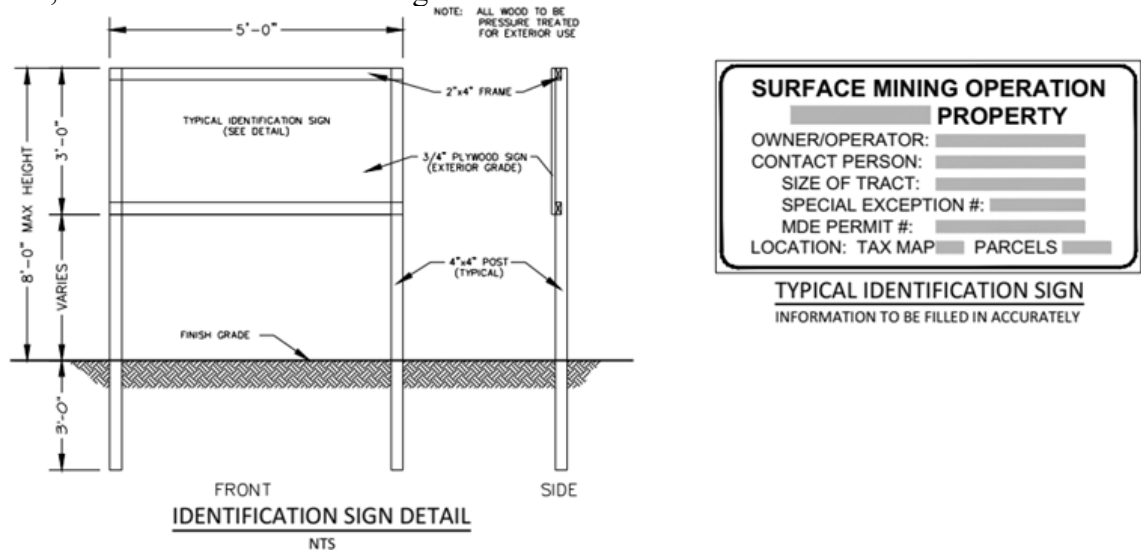
The subject Site is not located within the Chesapeake Bay Critical Area; as such, this provision is not applicable to the subject Application.

- (7) Section 27-625, Surface Mining; sand and gravel wet-processing identification, requires:

- (a) **Area.**

(1) Not less than 9, nor more than 16, square feet.

The sign proposed by the Applicant will be in accordance with this criterion, please refer to the detail of the sign on the Special Exception Site Plan, which includes the following:



(b) Location.

(2) All signs shall be conspicuous and legible.

The sign proposed by the Applicant will be in accordance with this criterion, please refer to the Special Exception Site and Landscape Plan for further details on location.

(c) Quantity.

- (2) If the Property has frontage on one (1) or more improved public streets, there shall be one sign posted for each one thousand (1,000) feet (or fraction) of street frontage on each street.**
- (3) If the Property does not have frontage on an improved public street, there shall be one (1) sign posted within the right-of-way or easement which provides vehicular access to the Property.**

The Subject Property has approximately 2,313± feet of street frontage on Accokeek Road. The Applicant proposes to post one sign fifteen (15) square feet in area adjacent to the proposed entrance onto the Property, as shown on the Special Exception Site and Landscape Plan.

(d) Height.

- (3) Not less than four (4), nor more than eight (8), feet above the finished grade of the improved street if it is to be viewed from a public street.**

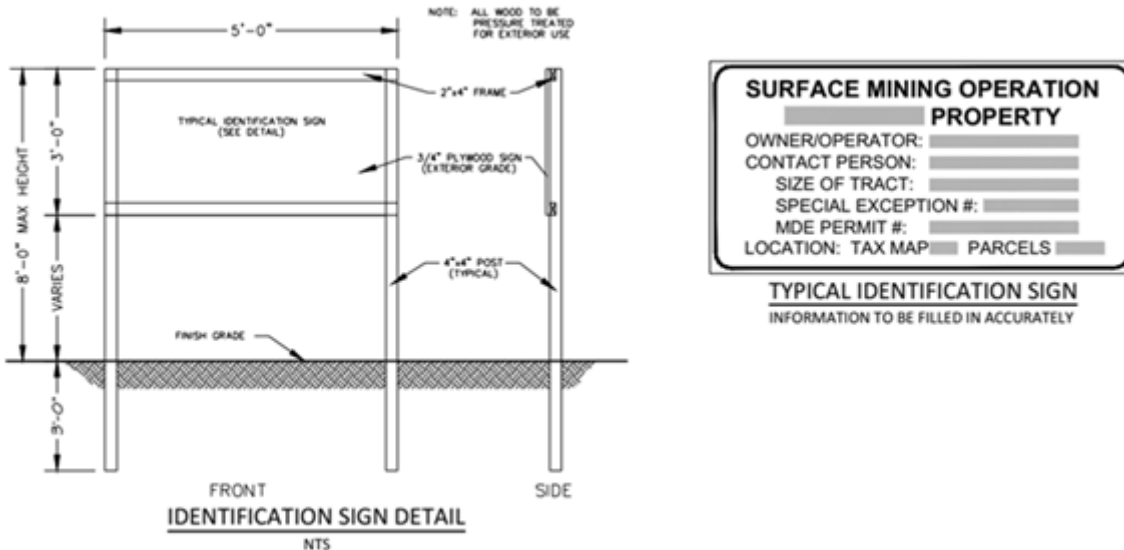
The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details.

(e) **Contents.**

(2) **Each sign shall contain the following information:**

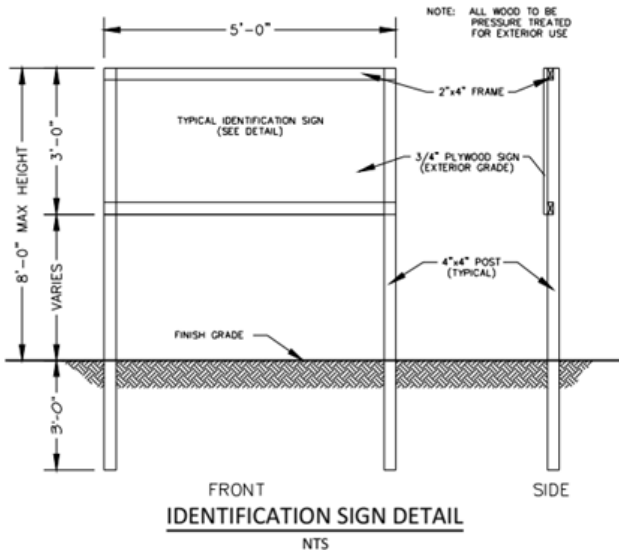
(A) **Identification of the use as a Surface Mining or sand and gravel wet-processing operation;**

The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details. (As depicted below):



(B) **Size of the Property (in acres);**

The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details. (As depicted below):

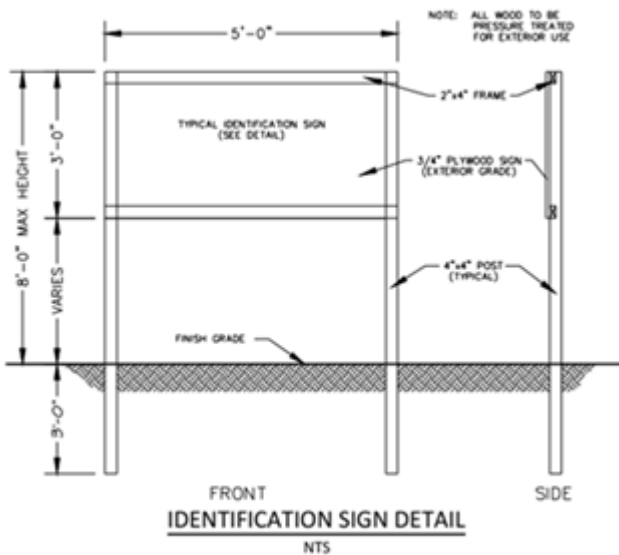


SURFACE MINING OPERATION	
PROPERTY	
OWNER/OPERATOR:	
CONTACT PERSON:	
SIZE OF TRACT:	
SPECIAL EXCEPTION #:	
MDE PERMIT #:	
LOCATION: TAX MAP	PARCELS

TYPICAL IDENTIFICATION SIGN
INFORMATION TO BE FILLED IN ACCURATELY

(C) Name of the owner of the Property and operator of the facility;

The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details. (As depicted below):

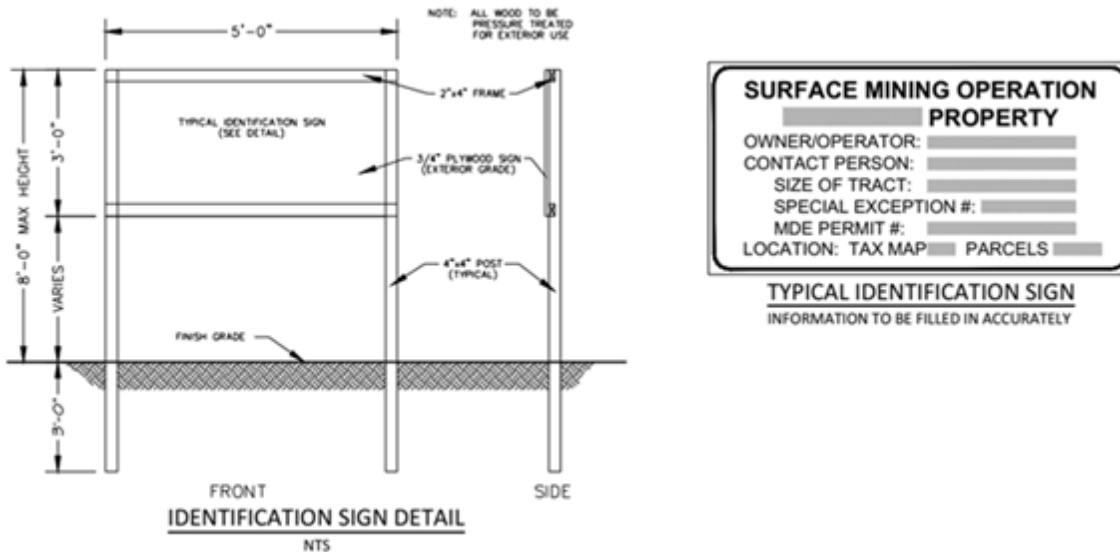


SURFACE MINING OPERATION	
PROPERTY	
OWNER/OPERATOR:	
CONTACT PERSON:	
SIZE OF TRACT:	
SPECIAL EXCEPTION #:	
MDE PERMIT #:	
LOCATION: TAX MAP	PARCELS

TYPICAL IDENTIFICATION SIGN
INFORMATION TO BE FILLED IN ACCURATELY

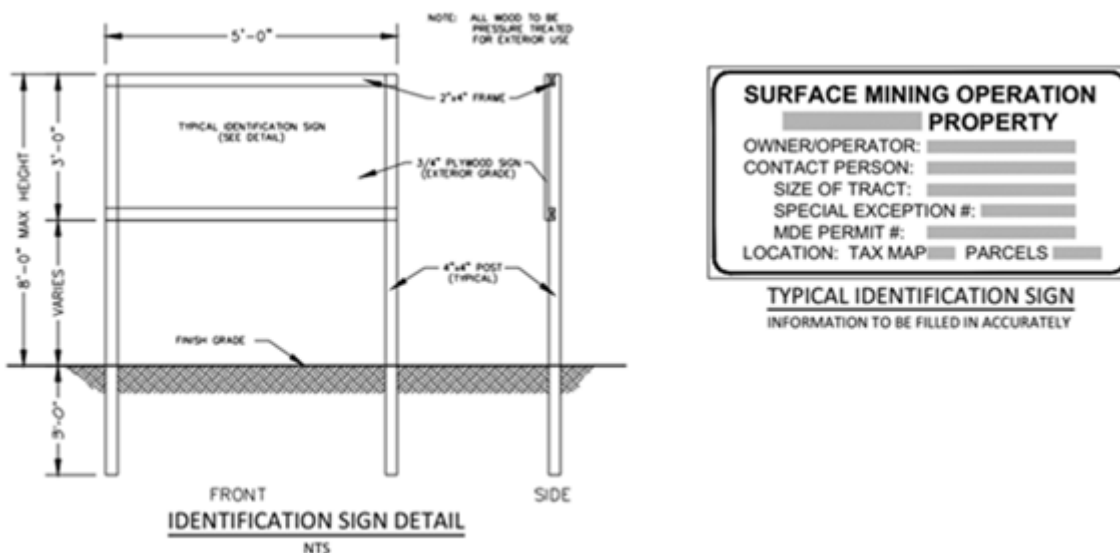
(D) A legal description of the Property, including the subdivision name, lot and block numbers, or liber and folio numbers; and

The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details. (As depicted below):



(E) Instructions for obtaining additional information about the operation.

The sign proposed by the Applicant will be in accordance with this criterion, refer to the Special Exception Site and Landscape Plan for further details. (As depicted below):



2010 Prince George's County Landscape Manual

(8) The proposed development is subject to the requirements of the 2010 *Prince George's County Landscape Manual* (Landscape Manual). Specifically, conformance is required for Section 4.6, Buffering Development from Streets; Section 4.7, Buffering Incompatible Uses, and Section 4.9, Sustainable Landscaping Requirements. Staff find that the proposed landscape Plan meets these requirements.

2010 Prince George's County Woodland and Wildlife Habitat Conservation Ordinance

(9) This Property is subject to the grandfathering provisions of the 2024 Woodland Conservation Ordinance because the TCP2 provided with this Application was accepted for review on or before June 30, 2024. This Application shall conform to the environmental regulations of the 2010 Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO). TCP2-033-2024 was submitted with the instant Application.

Based on the TCP2, the Site's gross tract area is 351.29 acres, with 66.84 acres of 100-year floodplain, resulting in a net tract area of 284.45 acres. The Site contains 284.45 acres of woodland on the net tract and 65.33 acres of wooded floodplain. The Woodland Conservation threshold is 50 percent, and the requirement is 142.23 acres.

The Woodland Conservation worksheet proposes the removal of 226.86 acres in the net tract area, and 0.58 acre within the Floodplain, for a Woodland Conservation requirement of 263.00 acres. The Woodland Conservation requirement is proposed to be met with 57.59 acres of woodland preservation on-Site and 205.41 acres of reforestation on-Site. The entire Woodland Conservation requirement will be met on-Site through preservation and reforestation Plantings. The NRI has identified 17 specimen trees on-Site and the Applicant requests that four specimen trees be removed as part of this Application.

Specimen Trees

Section 25-122(b)(1)(G) of the County Code requires that "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 [Environmental] Technical Manual." The code, however, is not inflexible.

The authorizing legislation of Prince George's County's WCO is the Maryland Forest Conservation Act, which is codified under Title 5, Subtitle 16 of the Natural Resources Article of the Maryland Code. Section 5-1611 of the Natural Resources Article requires the local jurisdiction to provide procedures for granting variances to the local forest

conservation program. The variance criteria in Prince George's County's WCO are set forth in Section 25-119(d). Section 25-119(d)(4) clarifies that variances granted under Subtitle 25 are not considered zoning variances.

A Subtitle 25 variance Application and an SOJ in support of the variance was received for review with this Application and is dated April 24, 2024. The Application area contains 17 on-Site specimen trees with good condition ratings (Specimen Trees ST-3, ST-5, ST-6, ST-7, ST-8, ST-9, ST-10, ST-11, ST-13, and ST-15), fair condition ratings (Specimen Trees ST-2, ST-12, ST-14, and ST-16), and poor condition ratings (Specimen Trees ST-1, ST-4, and ST-17). The mining limits of disturbance proposes the removal of four specimen trees, specifically ST-1, ST-3, ST-6, and ST-17.

Statement of Justification Request

A variance from Section 25-122(b)(1)(G) is requested for the removal of four specimen trees. This variance is requested to the Woodland and Wildlife Habitat Conservation Ordinance, which requires, under Section 25-122(a)(1) of the County Code, that "Woodland Conservation shall be designed as stated in this Division unless a variance is approved by the approving authority for the associated case." Section 25-122(b)(1)(G) requires the preservation of specimen trees. The Applicant provided a Subtitle 25 variance Application and SOJ to demonstrate how the findings of Section 25-119(d)(1) are being met.

The Subject Application is in compliance with the six required findings as follows:

(A) Special Conditions peculiar to the Property have caused the unwarranted hardship;

Specimen Trees ST-1, ST-3, ST -6, and ST-17 are located outside of the REF. These trees are requested for removal to achieve mining extraction areas outside of the on-Site REF areas. Special Conditions peculiar to the Property would cause an unwarranted hardship if the Applicant were required to retain the four specimen trees identified as ST-1, ST-3, ST-6, and ST-17. The condition rating of the trees is two in good condition and two in poor condition; the construction tolerance of the White oak is medium, and the American beech has a poor tolerance; and the four trees are located within the proposed mining area. The mining Application area is mostly wooded, with identified sand and gravel deposits below the surface. As shown on the TCP2, ST-3 and ST-6 are located within the clearing area that will be reforested as WRA-1; ST-1 and ST-17 are located in the clearing area that will be reforested as WRA-2. Requiring the Applicant to retain the four specimen trees on-Site would prevent the Applicant from obtaining all available sand and gravel below the surface, to the extent that it would cause the Applicant an unwarranted hardship. In addition, preserving the REF areas is important due to the proximity to the Mattawoman Creek stream valley, which is identified as a County special conservation area within the Green

Infrastructure Plan. To minimize impacts to REF and their woodland buffers, the mining is limited where possible to outside of the REF.

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

Enforcement of the requirement that all specimen trees be preserved would deprive the Applicant of rights commonly enjoyed by other properties in similar areas. The overall Site contains 17 specimen trees, and the Applicant is proposing to remove four of these trees. If the Applicant were required to save these four specimen trees, the Applicant would not be able to remove the underlying mineral deposits. As a result, it would deprive the Applicant of rights commonly enjoyed by other properties in similar areas.

(C) Granting the variance will not confer on the Applicant a special privilege that would be denied to other Applicants.

This is not a special privilege that would be denied to other Applicants. If other similar mining developments contained specimen trees within mineral deposit areas, it would be given the same consideration during the review of the required variance Application.

(D) The request is not based on Conditions or circumstances which are the result of actions by the Applicant.

The Applicant has taken no actions leading to the Conditions or circumstances that are the subject of the variance request. The removal of specimen trees identified as ST-1, ST-3, ST-6, and ST-17 is the result of the location of the subsurface Mineral deposits and the result of the mining extraction process.

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

There are no existing Conditions, existing land, or building uses on-Site or on neighboring properties that have any impact on the location or size of the four specimen trees. Specimen Trees ST-1, ST-3, ST-6, and ST-17 have grown to specimen tree size based on natural Conditions and have not been impacted by any neighboring land or building uses.

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

The removal of four specimen trees will not adversely affect water quality. The project will be subject to the requirements and protections of waterways by the Maryland Department of the Environment, Prince George's County Soil

Conservation District, and the approval of a stormwater concept Plan by DPIE. They will meet their total Woodland Conservation requirements with on-Site preservation and reforestation Plantings.

Tree Canopy Coverage Ordinance

(10) The subject Site is exempt from the requirements of the Prince George's County Tree Canopy Coverage Ordinance in accordance with Section 25-127(b)(1)(D) of the County Code, which exempts properties located in the AR Zone.

Environmental Conformance With Applicable Plans

Plan Prince George's 2035 Approved General Plan (2014)

(11) The Site is located within the Environmental Strategy Area 3 of the Regulated Environmental Protection Areas Map and is in the rural and agricultural area of the General Plan Growth Policy Map, as designated by Plan 2035. The Property is located within a priority preservation area. This area contains subSurface Minerals that need to be extracted to be used for building materials. The General Plan states that priority preservation areas include areas that contain productive agricultural or forest soils; or are capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking. This Application area Plans on harvesting the on-Site woodlands within the mining area, extracting the valuable materials, restoring, and rePlanting the mining areas, and placing the existing and proposed woodlands within a protective Woodland Conservation easement.

Subregion 5 Master Plan and Sectional Map Amendment – Section V: Environment

The Site is located within the *Approved Subregion 5 Master Plan and Sectional Map Amendment* (July 2013). In the Master Plan, the section on Environment contains eight sections (A–H), each of which contain policies and strategies.

Green Infrastructure

- **Implement the master Plan's desired development pattern while protecting sensitive environmental features and meeting the full intent of environmental policies and regulations.**
- **Ensure the new development incorporates open space, environmental sensitive design, and mitigation activities.**
- **Protect, preserve, and enhance the identified green infrastructure network.**

The Application area is not within a Master Plan special conservation area; however, the on-Site stream systems are part of the North Branch of the Mattawoman Creek which eventually flows into the Mattawoman Creek. The main branch of the Mattawoman Creek is identified as a Special Conservation Area. The Site contains mapped regulated area within the Green Infrastructure Plan along the stream systems. The woodland adjacent to the regulated areas is mapped as evaluation areas within the Green Infrastructure Plan. These areas are the highest priority for preservation of REF and woodland.

The 2010 WCO requires priority be placed on the preservation and Planting of floodplain, wetlands, and stream corridors, and emphasizes the preservation of large contiguous woodland within the green infrastructure network. The Site contains mapped forest interior dwelling species habitat, which is an additional high priority for preservation and enhancement of on-Site woodland.

The mining Application proposes to remove all on-Site woodland areas except for the woodlands within the PMA and along MD 373. There is identified mineral product (sand and gravel) below the surface of the Application area. One PMA impact area, for the construction of an elevated conveyor system and access road, is proposed in the southeast corner of the Site. At the end of the mining extraction process, the Applicant is required to reclaim, regrade, and rePlant the Site to the former natural Conditions. The Woodland Conservation worksheet on the TCP2 shows the removal of 226.86 acres of woodland in the net tract area, and the removal of 0.58 acre of woodland within the floodplain, resulting in a Woodland Conservation requirement of 263.00 acres. According to the worksheet, the requirement is proposed to be met with 57.59 acres of woodland preservation on-Site and 205.41 acres of reforestation on-Site. All of the Woodland Conservation requirements will be met on-Site with on-Site preservation and reforestation Plantings. The NRI has identified 17 specimen trees on-Site, and this Application requests the removal of four specimen trees.

Impacts to REF are limited to those required or only necessary for development, such as one elevated conveyor system and access road impact.

Water Quality, Stormwater Management, and Groundwater

- **Encourage the restoration and enhancement of water quality in degraded areas and the preservation of water quality in areas not degraded.**
- **Protect and restore groundwater recharge areas such as wetlands and the headwater areas of streams.**

The instant Application is for new Surface Mining area which is reviewed by several state and local government agencies for SWM. All mining activities are

reviewed by MDE – Minerals, Oils, and Gas Division. The areas outside the mining activity are reviewed by DPIE.

The submitted TCP2 and Special Exception Site and landscape Plan show the proposed sediment basins and traps for the on-Site reclamation efforts. Active Surface Mining controls stormwater within the actual mining excavation pit. Stormwater is directed towards the pit, where sediment can be filtered through the existing mineral deposits. The stormwater outside the excavation area will flow towards the existing drainage pattern.

The Applicant has submitted an unapproved DPIE 55642-2024-SDC Site Development Concept Plan with this Application that is in review with DPIE. The submitted Plan is for the construction of the employee and visitor entrance road off of MD 373. No wetlands or stream impacts are associated with the proposed access road.

The Application proposes one temporary elevated conveyor and access road crossing, which will impact an intermittent stream system, stream buffer, and PMA. This proposed impact area was approved by the MDE–Nontidal Wetland Division. The remaining on-Site streams, wetland, associated buffer, and 100-year floodplain are proposed for preservation with this Application.

Watersheds

- **Ensure that, to the fullest extent possible, land use policies support the protection of the Mattawoman Creek and Piscataway Creek watersheds.**
- **Conserve as much land as possible, in the Rural Tier portion of the watershed, as natural resource land (forest, mineral, and agriculture).**
- **Minimize impervious surfaces in the Developing Tier portion of the watershed through use of conservation subdivisions and environmentally sensitive design and, especially in the higher density Brandywine Community Center, incorporate best stormwater design practices to increase infiltration and reduce run-off volumes.**

The Subject Property is located within the Environmental Strategy Area 3, which was formerly the Rural Tier. This proposal is for a new sand and gravel Surface Mining operation with woodland preservation of the on-Site PMA. A conservation subdivision is not proposed, nor is the Property within the Brandywine Town Center. The three on-Site stream systems are unnamed tributaries to the North Branch of Mattawoman Creek. There are identified deposits of minerals (sand and gravel) on-Site that are part of a larger mineral deposit area. The adjacent Property is actively mined by the same owner and is identified as Gaslight I Wash Plant facility. The on-Site woodlands that are not within the PMA are proposed to be

removed to extract the mineral resources. All of the proposed development impacts will be outside of the environmentally sensitive areas except for one combined impact, to construct an elevated conveyor system and access road across an intermittent stream system. The remaining wooded REF will be preserved. The use of environmentally sensitive designs (sediment traps and basins) is proposed with the Stormwater Concept Plan.

Chesapeake Bay Critical Area

- **Enhance the County's Critical Area protection program in response to local, regional, and statewide initiatives and legislative changes.**

The Subject Property is not located within the Chesapeake Bay Critical Area.

Air Quality and Greenhouse Gas Emissions

- **Reduce air pollution through transportation demand management (TDM) projects and programs.**
- **Promote "climate-friendly" development patterns through Planning processes and land use decisions.**
- **Increase awareness of the sources of air pollution and greenhouse gas emissions.**

Air quality is a regional issue that is currently being addressed by the Council of Governments.

Green Infrastructure Plan

(12) The 2017 Countywide Green Infrastructure Plan was approved with the adoption of the *Approved Prince George's County Resource Conservation Plan: A Countywide Functional Master Plan* (CR-11-2017) on March 7, 2017. According to the Green Infrastructure Plan this Site does contain regulated and evaluation areas.

POLICY 1: Preserve, enhance, and restore the green infrastructure network and its ecological functions while supporting the desired development pattern of Plan Prince George's 2035.

1.1 Ensure that areas of connectivity and ecological functions are maintained, re-stored, and/or established by:

- a. **Using the designated green infrastructure network as a guide to decision-making and using it as an amenity in the Site design and development review processes.**

- b. Protecting Plant, fish, and wildlife habitats and maximizing the retention and/or restoration of the ecological potential of the landscape by prioritizing healthy, connected ecosystems for conservation.**
- c. Protecting existing resources when constructing stormwater management features and when providing mitigation for impacts.**
- d. Recognizing the ecosystem services provided by diverse land uses, such as woodlands, wetlands, meadows, urban forests, farms and grasslands within the green infrastructure network and work toward maintaining or restoring connections between these.**

1.2 Ensure that Sensitive Species Project Review Areas and Special Conservation Areas (SCAs), and the critical ecological systems supporting them, are preserved, enhanced, connected, restored, and protected.

- a. Identify critical ecological systems and ensure they are preserved and/or protected during the Site design and development review processes.**

The Application area is not located within a sensitive species project review area or Special Conservation Area. The nearest Special Conservation Area is the Mattawoman stream valley system, located to the south. There are designated evaluation and regulated areas as defined in the Green Infrastructure Plan on the Subject Property. On-Site REF such as three unnamed tributaries to North Branch Mattawoman Creek, associated stream buffers, nontidal wetlands, wetland buffer and 100-year floodplain were identified on the approved NRI. The Site is mostly wooded with open canopy areas within floodplain areas.

This mining Application is required to restore the areas that are proposed for mining activities. The restoration measures include the filling, regrading, and replanting of the mining area once all mining activities have ceased. The on-Site reforestation Planting and preserved woodlands will be further protected when placed in a woodland and wildlife habitat conservation easement.

To further protect the existing REF during the proposed mining, SWM facilities will be reviewed by DPIE, the sediment and erosion control measures will be reviewed by the Prince George's County's Soil Conservation District, and the mining activities by MDE – Division of Minerals, Oils, and Gas.

POLICY 2: Support implementation of the 2017 GI Plan throughout the Planning process.

2.4 Identify Network Gaps when reviewing land development Applications and determine the best method to bridge the gap: preservation of existing forests, vegetation, and/or landscape features, and/ or Planting of a new corridor with reforestation, landscaping and/or street trees.

The Application area does not contain network gap areas as the Site is almost entirely wooded. The Site will be restored upon conclusion of the mining operations.

2.5 Continue to require mitigation during the development review process for impacts to regulated environmental features, with preference given to locations on-Site, within the same watershed as the development creating the impact, and within the green infrastructure network.

This mining Application is required to restore the areas that are proposed for mining activities. These restoration effort areas include the proposed REF impact area. The Applicant proposes to fully meet their woodland and reclamation requirement on-Site with woodland preservation and reforestation Plantings.

POLICY 3: Ensure public expenditures for staffing, programs, and infrastructure support the implementation of the 2017 GI Plan.

3.3 Design transportation systems to minimize fragmentation and maintain the ecological functioning of the green infrastructure network.

- a. Provide wildlife and water-based fauna with safe passage under or across roads, sidewalks, and trails as appropriate. Consider the use of arched or bottomless culverts or bridges when existing structures are replaced, or new roads are constructed.**

No fragmentation of REF by transportation systems is proposed with this SE. The proposed elevated conveyor system and access road will impact 0.80 acre of REF. Wildlife will still be able to move from woodland area to woodland area, across the proposed impact area. Woodland within the impact area will be replaced once the reclamation work is completed.

- b. Locate trail systems outside the regulated environmental features and their buffers to the fullest extent possible. Where trails must be located within a regulated buffer, they must be designed to minimize clearing and grading and to use low impact surfaces.**

No trail systems are proposed with this Application.

POLICY 4: Provide the necessary tools for implementation of the 2017 GI Plan.

4.2 Continue to require the placement of conservation easements over areas of regulated environmental features, preserved or Planted forests, appropriate portions of land contributing to Special Conservation Areas, and other lands containing sensitive features.

The proposed on-Site preservation and reforestation areas will be placed in a Woodland and Wildlife Habitat Conservation Easement at the conclusion of the mining activities. As part of the Site's Reclamation Plan, the TCP2 proposes the entire Site be reforested and, as a result the development, will meet their entire Woodland Conservation requirement all on-Site. The Property does not contain Special Conservation Areas. The nearest Special Conservation Area is located to the south and that is the Mattawoman stream valley system.

POLICY 5: Improve water quality through stream restoration, stormwater management, water resource protection, and strategic conservation of natural lands.

5.8 Limit the placement of stormwater structures within the boundaries of regulated environmental features and their buffers to outfall pipes or other features that cannot be located elsewhere.

5.9 Prioritize the preservation and replanting of vegetation along streams and wetlands to create and expand forested stream buffers to improve water quality.

The Special Exception Site, Landscape Plan, and Tree Conservation Plan shows sediment traps and basins as part of the reclamation efforts to control stormwater. The active mining of the Application will be in four mining phases. Stormwater will be controlled during the active mining phase with several basins within the mining pit. No SWM structures during or after the mining activities will be within, or draining into, the on-Site REF areas. All on-Site REF areas will remain undisturbed other than the impacts proposed for the elevated conveyor and access road.

POLICY 7: Preserve, enhance, connect, restore, and preserve forest and tree canopy coverage.

General Strategies for Increasing Forest and Tree Canopy Coverage

7.1 Continue to maximize on-Site Woodland Conservation and limit the use of off-Site banking and the use of fee-in-lieu.

7.2 Protect, restore, and require the use of native Plants. Prioritize the use of species with higher ecological values and Plant species that are adaptable to climate change.

7.4 Ensure that trees that are preserved or Planted are provided appropriate soils and adequate canopy and root space to continue growth and reach maturity. Where appropriate, ensure that soil treatments and/ or amendments are used.

The proposed on-Site preservation and reforestation area will be placed in a Woodland and Wildlife Habitat Conservation Easement. As part of the Site's Reclamation Plan, the TCP2 shows the entire mining limits reforested. With the

addition of the woodland preservation, the development will meet their Woodland Conservation requirement entirely on-Site. The landscaping materials and specifications and the tree canopy requirement details will be addressed at the time of permit review.

Forest Canopy Strategies

7.12 Discourage the creation of new forest edges by requiring edge treatments such as the Planting of shade trees in areas where new forest edges are proposed to reduce the growth of invasive Plants.

The Application proposes woodland clearing for a subSurface Mining operation. The mining area will be fully restored with reforestation Plantings after the mining operations have ceased. No new forest edges will be created.

Natural Resource Inventory Plan/Existing Features

A Natural Resources Inventory NRI-133-2022 was approved on August 18, 2022, and provided with this Application. The Site contains 100-year floodplain, steep slopes, wetlands, streams, and their associated buffers, which comprise the PMA. There are 17 specimen trees scattered throughout the Property. The TCP2 and the SE show all required information correctly, in conformance with the NRI. No revisions are required for conformance with the NRI.

Preservation of Regulated Environmental Features (REF)/Primary Management Area (PMA)

Section 27-317(a)(7) of the prior Zoning Ordinance states that the Prince George's County Planning Board may approve a Special Exception if it finds that the REF have been preserved and/or restored in a natural state, to the fullest extent possible, in accordance with the requirement of Section 24-130(b)(5) of the prior Subdivision Regulations. The on-Site REF includes streams, 100-year floodplain, wetlands and associated buffers, and steep slopes.

Section 24-130(b)(5) of the prior Subdivision Regulations states: "Where a Property is located outside the Chesapeake Bay Critical Areas Overlay Zones the preliminary Plan and all Plans associated with the subject Application shall demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible consistent with the guidance provided by the Environmental Technical Manual established by Subtitle 25. Any lot with an impact shall demonstrate sufficient net lot area where a net lot area is required pursuant to Subtitle 27, for the reasonable development of the lot outside the regulated feature. All regulated environmental features shall be placed in a conservation easement and depicted on the final plat."

Impacts to REF should be limited to those that are necessary for the development of the Property. Necessary impacts are those that are directly attributable to infrastructure required for the reasonable use, orderly, and efficient development of the Subject Property, or are those that are required by County Code for reasons of health, safety, or welfare. Necessary impacts include, but are not limited to, adequate sanitary sewerage lines and water lines, road crossings for required street connections, and outfalls for SWM facilities.

Road crossings of streams and/or wetlands may be appropriate if placed at the location of an existing crossing or at the point of least impact to REF. SWM outfalls may also be considered necessary if the Site has been designed to place the outfall at the point of least impact. The types of impacts that should be avoided include those for Site grading, building placement, parking, SWM facilities (not including outfalls), and road crossings, where reasonable alternatives exist. The cumulative impacts for the development of a Property should be the fewest necessary and sufficient to reasonably develop the Site in conformance with the County Code.

In the instant Application, the proposed impact to PMA is for an elevated conveyor belt to transport mining product and for an access road to the mine. An SOJ was submitted with the Application, dated August 21, 2024, and was updated on January 7, 2025 (still dated August 21, 2024), for the proposed impacts to the PMA.

PMA Impact Area	PMA (SF)	Stream Buffer (SF)	100-year Floodplain (SF)	Stream Bed (LF)	Steep slopes, Wetland, And Wetland Buffer (SF)
Conveyor and access road crossing	34,802	28,595.44	31,172	185	0
Total	34,802	28,595.44	31,172	185	0
	(0.80 Acres)	(0.66 Acres)	(0.72 Acres)	185	0

DECISION

Special Exception SE-22007, a Variance from Section 25-122(b)(1)(G), and a Type 2 Tree Conservation Plan TCP2-033-2024, for Gas Light III Surface Mine, are APPROVED subject to the following Conditions:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided:
 - a. On Sheet 14, correct the Buffering Development from Special Roadways

Schedule to 4.6-2.

- b. Add a note to the coversheet stating that traffic to and from the Site will be limited to employees and visitors to the Site.
 - c. Provide shared lane markings and bicycle signage along the frontage of MD 373 (Accokeek Road) unless modified by the road operating agency with written correspondence in accordance with an applicable standard, code, or regulation.
 - d. On the coversheet, correct overlapping text (“PROP. PROTABLE CONVEYOR”) obscuring the label for Parcel 21.
2. Prior to signature approval of the Special Exception Plan the Type 2 Tree Conservation Plan shall be revised as follows:
- a. Add TCP2-033-2024 to the approval block, Woodland Conservation worksheet, and title block.
 - b. On Sheet 2 show the proposed woodland clearing width and distance of the proposed private entrance off MD 373 (Accokeek Road).
 - c. On all sheets label the proposed berms along MD 373 (Accokeek Road), and the proposed stormwater structures (riprap, inlet, and outfall structures).
 - d. Revise the Primary Management Area conveyor crossing impact to match the area approved with Maryland Department of the Environment Permit showing the access road in the same location.
 - e. On Sheet 11 of 17 add the missing word “conveyor” to the “exist. portable...” wording on Gaslight I Property.
 - f. On Sheet 16 of 17 add a note below the Planting schedule stating that reclamation Planting will occur after all mining extraction and fine grading of mining area has been completed.
 - g. Have the revised Plan signed and dated by the qualified professional preparing the Plan.
3. Prior to signature approval of the Special Exception Plan, a Conservation Easement shall be recorded in the Prince George’s County Land Records in accordance with Section 25-122(d)(1)(B) of the County Code. The Conservation Easement shall be described by bearings, distances, and an exhibit. The Conservation Easement shall contain the delineated Primary

Management Area, except for approved impacts, and shall be reviewed by the Environmental Planning Section of the Development Review Division of the Prince George's County Planning Department prior to approval of the Special Exception Plan. The following note shall be placed on the Woodland Conservation Easement exhibit:

“Conservation easements described on this exhibit 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. This development is subject to restrictions shown on the approved Type 2 Tree Conservation Plan (TCP2-033-2024), or as modified by a future Type 2 Tree Conservation Plan and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation/Tree Preservation Policy.”

4. Prior to the certification of the Type 2 Tree Conservation Plan(TCP2) for this Site, documents for the required Woodland Conservation easements shall be prepared and submitted to the Environmental Planning Section of the Development Review Division of the Prince George's County Planning Department for review by the Office of Law, and submission to the Prince George's County Land Records office for recordation, in accordance with Section 25-122(d)(1)(B). The following note shall be added to the standard Type 2 Tree Conservation Plan notes on the Plan as follows:

“Woodlands preserved, Planted, or regenerated in fulfillment of Woodland Conservation requirements on-Site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George's County Land Records at Liber_____Folio____. Revisions to this TCP2 may require a revision to the recorded easement.”
5. Prior to the construction of the entrance to the MD 373 access road Site Development Concept Plan (DPIE 55642-2024-SDC) shall be revised to include a detail for the material to be used on the restricted access road beyond the MD 373 (Accokeek Road) apron areas required in Section 27-5402(jjj)(1)(H) of the Prince George's County Zoning Ordinance.
6. The hydrologic impact evaluation does not anticipate impacts to wells in the area; however, if the operation of the subject sand and gravel mine does impact the waterlevel in any wells within 0.25 mile of the subject mining Site, as verified by Maryland Department of the Environment, 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.
7. Mitigation of particulate matter emissions shall be accomplished by implementation of the following, in accordance with COMAR26.11.06.03(D):

- a. The interior mining haul roads shall be maintained with a water truck or other approved dust control methods. No truck hauling is proposed on MD 373 (Accokeek Road).
 - b. Asphalt, oil, water, or suitable chemicals shall be applied on dirt roads, materials stockpiles, and other surfaces which can create airborne dust.
 - c. Open-bodied vehicles transporting materials off-Site shall be covered at all times when in motion and alternate means may be employed to achieve the same results as would covering the vehicles. Mining equipment internal to the Site shall be exempt from covering.
8. In accordance with the Air Quality Report provided with this Application, and in compliance with Environmental Protection Agency requirements, 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.
9. Equipment fueling on-Site shall be done in accordance with National Fire Protection Association NFPA 30 (NFPA 30), Flammable and Combustible Liquids Code, Chapter 2, and Chapter 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.
10. The following typical restrictions on mining operations, as provided in the Applicant's Statement of Justification and as applied to previous mining approvals, shall be employed to reduce non-point/traffic generated noise impacts in the surrounding area:
 - a. Mining operations on-Site are restricted to the hours allowed from 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 4:00 p.m. on Saturdays, excluding federal holidays. There are no operations on Sundays.
 - b. The noise mitigation berms shall be located as shown on the Plans submitted, to protect nearby residential buildings and properties. All berms shall be a minimum of 15 feet in height.
 - c. Trucks shall not use compression or "Jake" brakes both on-Site and on the haul road.

- d. Speeds on-Site shall be restricted to 15 mph for all heavy vehicles.
 - e. All machinery shall be kept in good working order, especially mufflers, to ensure quiet operation.
 - f. The volume of backup warning devices shall be minimized while still meeting Occupational Safety and Health Administration (OSHA) standards. OSHA standards require that the backup warning device must “be clearly audible in its operating environment.” This allows the warning device to be turned down as long as it can be clearly heard in its environment.
- 11. The Applicant shall notify The Maryland-National Capital Park and Planning Commission (M-NCPPC), Environmental Planning Section, and Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE), prior to the start of reforestation for this mining operation and schedule a meeting with M-NCPPC and DPIE to address reforestation and Woodland Conservation issues, as required in the Environmental Technical Manual, Section 7.5.1A.
 - 12. Prior to the start of work in any phase or portion thereof, the limits of disturbance for that phase or portion shall be staked on the ground or flagged on the existing trees. The Applicant or their representative shall walk the limits of disturbance with an of the M-NCPPC, Environmental Planning Section, in conjunction with the Maryland department of Environment Site inspection, prior to the installation of sediment/erosion control measures and tree protective devices.
 - 13. Prior to certification of the Special Exception, a copy of the approved Sediment and Erosion Control Plan shall be submitted.
 - 14. Prior to commencement of the mining operation, a Special Permit shall be obtained from Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE) A reforestation bond shall be posted with issuance of the Special Permit.
 - 15. The area to be mined shall be reclaimed in accordance with the Reclamation Plan by filling it with acceptable materials as in the Prince George’s County Building Code or as required by the Maryland Department of the Environment.

The APPROVED Site Plan is Exhibit 26.