

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

**SPECIAL EXCEPTION
4517**

DECISION

Application:	Surface Mining
Applicant:	Rock Hill Sand and Gravel
Opposition:	N/A
Hearing Date:	May 23, 2018
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4517 is a request for permission to extend the validity period for previously approved SE 4352 to mine the remaining sand and gravel from a 564.69 acre site, zoned O-S (Open-Space), located on the east side of Gibbons Church Road, approximately 1,200 feet northeast of its intersection with Brandywine Road, also identified as 15620 Brandywine Road, Brandywine, Maryland for the purpose of Surface Mining. An additional 9.53 acres of O-S and I-2 (Heavy Industrial) zoned land will be used as haul routes to an associated Wash Plant adjacent to the site, bringing the total acreage of the Special Exception Application to approximately 570.4 acres. The subject property is primarily owned by Alfred and Harry Smith and leased by the Applicant pursuant to a royalty mining agreement.¹
- (2) The Technical Staff recommended approval with conditions. (Exhibit 57) The Planning Board chose not to review the Application. (Exhibit 60)
- (3) At the conclusion of the evidentiary hearing the hearing record was left open to include the ethics affidavits required by State Law, upon receipt of which, the record was closed on September 14, 2018.

¹ Notice is taken of the approval of SE 4352 and the record of SE 4352 is incorporated into the record of the instant Application.

FINDINGS OF FACT

Subject Property

(1) The subject property is situated within the eastern quadrant of the North Keys Road/Brandywine Road (MD 381) intersection but does not have direct frontage on either road. It is irregularly shaped and consists of 564.69 acres located in a rural and predominately undeveloped neighborhood. It is made up of all of Parcel 1 (approximately 448 acres of O-S zoned property) and all of Parcel 4 (approximately 112 acres of O-S zoned property). Portions of adjoining Parcels 11, 25, 45, 47, 60, 61 and 62 will be used as haul roads to provide access to the associated Wash Plant. This area is within the I-2 and O-S Zones. (SE 4352, Exhibits 7 and 34) In all, 231.7 acres will be mined and approximately 9.53 acres will serve as haul roads. To date all but approximately 11 acres have already been mined.

Neighborhood and Surrounding Property

(2) The subject property is surrounded by low-density rural areas and a privately owned recreational park known as “Wilmer’s Park” to the south, all in the O-S Zone. On the west is an associated Wash Plant owned by the Applicant and zoned I-2. (SE 4352, Exhibit 32(a)-(h)) Materials mined from the subject property will be transported to this Wash Plant for processing. The closest residence is approximately 585 feet away. (SE 4352, Exhibit 60, p. 38; T. 45-46)

(3) The neighborhood is bounded by North Keys Road on the north, Croom Road on the east, Baden-Westwood Road on the south and Brandywine Road on the west. The neighborhood consists primarily of agricultural uses, with some residential uses. There are active and dormant mining operations scattered throughout, as well as Wash Plants and other processing facilities.

Master Plan and Sectional Map Amendment

(4) The subject property lies within the 2013 Approved Subregion 6 Master Plan and Sectional Map Amendment. The Master Plan recommends the subject property for “Rural” land use and the Sectional Map Amendment retained the subject property in the O-S and I-2 Zones.

History and Previous Approvals

(5) The subject property was placed in the O-S and I-2 Zones by the 1993 Approved Master Plan and Sectional Map Amendment for Subregion VI Study Area (Planning Areas 79, 82A, 82B, 86A, 86B, 87A, 87B). The 2013 Approved Subregion 6 Master Plan and Sectional Map Amendment retained the subject property within the O-S and I-2 Zones.

On August 21, 2000, Special Exception SE 4352 was approved by the Prince George's County District Council for permission to use 231.7 acres of a 570.40 acre site for Surface Mining of natural materials or deposits. An additional 9.53 acres were to be used as haul routes to an associated Wash Plant adjacent to the site. Special Exception 4352 also approved Type II Tree Conservation Plans TCP II/82/99 and TCP II/119/99.

Current Status

(6) In 2005, Rock Hill Sand and Gravel filed a request to extend the validity period of SE 4352, pursuant to the provisions of Section 27-410(a)(4). The extension request was assigned a new Special Exception number, SE 4517. As set forth in the Statement of Justification for the extension, the Applicant stated that the mining operations remained in conformance with all conditions attached to the approval of the original Special Exception. The Application was accepted and logged into the County database on May 18, 2005; however, shortly after acceptance, the Applicant's company vice president retired, the Application sat dormant until an inquiry was made by the Office of the Zoning Hearing Examiner as to whether or not the Applicant intended to move forward with the request on April 29, 2013 (Webb to Diffendal) (SE 4517, Exhibit 17), and again on August 11, 2016 (Poteat to Lambert)(SE 4517, Exhibit 19) after the Applicant's attorney requested more time to deliberate on May 29, 2013 (Gibbs to Webb)(SE 4517, Exhibit 18). The Applicant decided to move forward per a letter of correspondence dated November 3, 2016 (Gibbs to Webb)(SE 4517, Exhibit 81). The Applicant is requesting approval to mine the remaining 11 acres of the site, completing the intent of the original Special Exception, SE 4352.

(7) The Applicant argues that the decision of the Court of Special Appeals in East Star, LLC v. County Commissioners of Queen Anne's County, 203 MD. App. 477, 38 A, 3d. 524 (2012) provides a controlling precedence in which local jurisdictions are not allowed to put a validity period upon a Surface Mining Application that is shorter than Maryland Department of the Environment (MDE) permit validity. Pursuant to Environment Article, Section 15-810, MDE is required to issue a permit to an Applicant who meets the requirements of the Subtitle. Environment Article, Section 15-814 provides that a Surface Mining permits "shall be granted for such period as requested and deemed reasonable, but not exceeding 25 years." The site has been issued a permit by MDE, as required, which is valid until July 31, 2020.

(8) The Office of General Counsel for the Maryland-National Capital Park and Planning Commission has reviewed the legal analysis of East Star, and concurs with the Applicant's assertion that a time limit on a Special Exception approval, which is less than that which is granted under the State's permit, is preempted by implication and/or conflict. As a result, the five-year provision limiting approved Special Exceptions for Surface Mining in the Zoning Ordinance has been invalidated by the holding in East Star. Other zoning related regulations, however, remain in full force and effect, including limitations on the zones where this use is allowed.

Applicant's Proposal

(9) Applicant proposes to mine sand and gravel from approximately 11 remaining acres of the site. The mining operation will be “self-contained” in that internal haul routes to an adjoining Wash Plant will be used and not the public streets.² (SE 4352, Exhibits 7 and 34) Approximately 9.53 acres of land is dedicated to the haul roads. The haul routes vary in width from 40 feet to 100 feet. (SE 4352, Exhibits 80, 81; T. 41) The proposed haul routes will be from the subject property through the adjacent Wash Plant site with no access onto MD 381. Trucks will then transport the finished product from the Wash Plant via its existing 22-foot wide access road and exiting onto Gibbons Church Road. (SE 4352, Exhibits 31(g) and 45)

(10) Since there will be no use of public rights-of-way, the Applicant submitted a limited traffic study which concluded that there will be no impact upon the surrounding area road system. (SE 4352, Exhibits 11 and 39)

(11) There will be no processing of mined materials on the subject property. The Applicant operates a Wash Plant on an adjacent site that was opened in 1994. (SE 4352, T. 9) The mined materials will generally be shuttled to the Wash Plant on “euclids” or off-road vehicles used for hauling sand and gravel. (SE 4352, Exhibit 60, p.83) These vehicles are stored on-site. The use of these vehicles ensures that all material will be hauled to the Wash Plant, and that trucks leaving the Wash Plant via Gibbons Church Road are part of the Wash Plant operation and not the instant Special Exception Application.

(12) A Reclamation Plan was submitted which shows the existing and proposed ground elevation. The final reclamation grades shall have a slope of 3:1, with minimum grade of 1%. (SE 4517, Exhibit 50) The Applicant also submitted two (2) approved Type II Tree Conservation Plans - TCP II/82/99 and TCP II/119/99. (SE 4352, Exhibit 31 (p)-(u))

(13) The Applicant operated a nonconforming mine on an adjacent site (the “Ford-Rooney Pit”) which is essentially “mined out” and undergoing the process of reclamation. (SE 4352, Exhibit 60, p.107) Mitigating afforestation will occur on the Ford-Rooney Pit site. (TCP II/119/99)

(14) The Applicant stated that the State mining permit limits mining activity to 25 acres at one time. (SE 4352, T. 52) The Applicant believes that this phasing reduces any negative impact that the mining might have on neighboring properties. Applicant’s Land Planner further testified that the Application generally satisfies all applicable requirements of the Zoning Ordinance:

[B]asically this proposal represents really and truly an efficient, sequential extraction of material, [and] there’s substantial buffers along the periphery of the site. The property

² The original application included one (1) internal haul route. To avoid an impact to the stream valley, and at the request of the Army Corps of Engineers and the Maryland Department of the Environment, an additional haul route on the “Duley Pit” land was added. (SE 4352 Exhibit 34)

will be restored and reclaimed . . . I stated previously [that] the capacity of a Wash Plant will not be increased. There will be no blasting or quarry activities – this is strictly a surface mining operation. The nearest resident is about two football fields away from the operation. Most of them are 900 feet or greater. There’s adequate buffering, . . . and site maintenance proposed for this Application. . . . [T]he Master Plan text does emphasize utilization of natural resources prior to development. . . . Also, the Master Plan identifies that there’s a vital importance of gravel deposits in the area’s economy [t]hat should be taken care of in the future. Specifically [the] goals and objectives . . . [state] that the goal is to provide for the efficient and sequential extraction of significant mineral deposits and a reclamation and development of the extraction areas while minimizing impacts on the environment. This project, I feel very strongly, meets that goal. . . . [O]f the 232 acres of the site which is only about 40% of the site, 177 acres are going to be revegetated, 55 acres converted [to] agricultural use. The Special Exception life is five years. . . . In respect to traffic impacts, there will be no increase in traffic. . . . Driveways and access points – the access will be internal. It will go from the site to the Wash Plant – traffic will not be going onto public streets to access that Wash Plant. . . . [T]he [Landscape] Manual really doesn’t dictate certain buffers, but the buffers . . . far exceed those identified in the Zoning Code. Buffers range anywhere from 50 feet to 1,200 feet which is almost a quarter of a mile. So, in conclusion, this Application does meet . . . Section 27-102, [Section] 27-317 and [Section] 27-410, which are the applicable Sections to this Application.

(SE 4352, T. 59-61)

(15) No buildings will be constructed. Accordingly, no parking spaces are required. For the same reason, the proposal is exempt from the requirements of the Landscape Manual. Nonetheless, the site does retain woodland buffers a minimum of 50 feet in width along the periphery of the property. (SE 4352, Exhibits 31 and 80(a); T. 61)

(16) The Applicant proposes to extract sand and gravel from the remaining 11 acres (Phase 5) and has decided not to mine Phase 4. The site will likely be mined out by the end of 2018. The proposed hours of operation will be from 7:00 a.m. until 5:00 p.m. Monday through Saturday. There will be no mining on New Year’s Day, Memorial Day, the Fourth of July, Thanksgiving, Christmas and Labor Day.

Technical Staff Comment

(17) The Technical Staff reviewed SE 4352 for compliance with Sections 27-102, 27-317 and 27-410 of the Zoning Ordinance. It also prepared a Countywide inventory for all approved and pending Special Exceptions for Sand and Gravel Wet-Processing, Sanitary Landfills and Rubble Fills, and Surface Mining, as required by Section 27-410, as well as an Environmental Impact Report required by Article 28, Section 8-110 of the Maryland Annotated Code. The Staff thoroughly reviewed the impact that the Application would have on land, water, climatology and air quality, noise, biological resources, aesthetics and human resources, and transportation and provided the following comments:

Land

"The sediment yield during the entire active mining period would have a very high potential to be greater than the existing yield, if appropriate control measures are not used. The removal and stockpiling of overburden material would change the area's landscape during the mining operation. The change would be minimal if the reclamation of each phase is performed prior to the commencement of mining of the next phase. . . ."

Water

"The predicted impact on the water environment is summarized as follows: generally, surface runoff increases, a decrease in infiltration and groundwater recharge rates and volumes, and an increase in sediment loadings to the surface streams in the area. The runoff rates and volumes in the small watershed could have an impact in the immediate vicinity of the mining site mainly because of the increased impervious area and the relative small size of the watershed. The increased runoff rates and volumes will not have a significant effect on flood levels downstream during mining. The decrease in infiltration would result in a slight reduction in groundwater recharge rates and base flows in streams near the mining site. There are three wells in the vicinity of the mining site which are believed to be shallow wells. . . ."

Climatology and Air Quality

"[T]he mining of the site would have no significant effect on the surrounding community due to carbon monoxide emissions from mining and transport vehicles. The mining operation will cause dust to become reentrained into the atmosphere primarily due to truck traffic along the haul roads. Due to distance and wooded buffers, the impact of dust on habitable structures is expected to be minimal. Nuisance levels of dust should be avoided by effectively maintaining the haul roads. . . ."

Noise

"Locations 1 through 31 . . ., where noise levels were established, represent the principal points of interest, showing habitable structures in the immediate vicinity of the proposed mining operation. The slight increase in noise pollution in the area is a result of the ever-increasing vehicular activities along Brandywine Road and the ultimate effect of the mining activities in close proximity to habitable structures. . . . At Locations 19, 30 and 31, the resultant noise level exceeds the State acceptable standards for residential areas . . ."

Biological Resources

"The initial and long-term impact of the mining operation on this property will be the net loss of 166.29 acres of woodland. This will result in increased forest fragmentation due to the clearing associated with Areas 4 and 5 of the mining operation. The clearing will impact some priority woodland retention areas and reduce the area of contiguous forest interior habitat. The

initial impacts to the forest will generally be mitigated by the phasing of the mining operation. However, with the progression of the mining operation, the impacts will become increasingly more significant since no on-site reforestation is proposed . . . The principal impact to the loss of forest land will be partially mitigated by woodland preservation requirements for this site. . . . The Tree Conservation Plan (TCPII/82/99) has been reviewed and found to satisfy the requirements of the Prince George's Woodland Conservation Ordinance. . . . The total Woodland Conservation requirements for this property [is] 299.98 acres. This requirement will be satisfied by 245.08 of on-site woodland preservation in priority retention areas such as stream buffers, wetlands, steep slopes, severe slopes and adjacent riparian zones. The balance of the requirement is to be satisfied by afforestation at an off-site location identified as the Ford-Rooney Pit, (TCPII/119/99) which is located approximately one (1) mile southeast of this property. . . . TCPII/119/99 provides for the afforestation of 54.04 acres. . . . done in four (4) phases corresponding to Phases 3a, 3b, 4 and 5 of SE-4352 and after the completion of Phases 1 thru 2k. All afforestation will be done on previously mined areas. . . ."

Aesthetics and Human Interest

"The aesthetic impacts of the mining activities on the land will be significant. However, reclamation activities will eventually improve the aesthetics of the land, so that the long range impact would be minimal. . . ."

Transportation

"No significant adverse impacts to the existing and proposed area roadways are expected."

(SE 4352, Exhibit 60, pp. 97-101, 106-107)

(18) Applicant has submitted a Sediment and Erosion Control Plan. (SE 4352, Exhibit 80) This Plan provides for sediment control measures that must comply with the applicable regulations and has been approved by the Prince George's County Soil Conservation District. The Applicant has addressed all concerns raised by the Soil Conservation District. (SE 4352, Exhibits 47 and 86(c)) Sediment control on site will have to comply with the Plan approved by the Soil Conservation District.

LAW APPLICABLE

(1) Surface Mining of sand and gravel is allowed in the O-S and I-2 Zones upon approval of a Special Exception in accordance with Sections 27-317, 27-410 and 27-445.02.

(2) Section 27-317 provides as follows:

(a) A Special Exception may be approved if:

(1) The proposed use and site plans are in harmony with the purpose of this Subtitle;

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

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;

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

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

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

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

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

(a) The surface mining of natural materials or deposits (including sand, gravel, or clay pits; rock or stone quarries; and the removal of earth or topsoil) may be permitted, subject to the following:

(1) Heavy machinery may be used for the extraction of natural material or deposits from the site. Except in the I-2 Zone, heavy machinery may not be used for washing, refining, or other processing, unless a Special Exception is granted for sand and gravel wet-processing under the provisions of Section 27-405;

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

(3) The land areas exposed by the extraction and removal of natural materials or deposits shall be left suitable for development. A grading plan shall be submitted (along with the site plan) showing the existing and proposed ground elevations of the site, adjacent land, and all abutting streets. The exposed land area shall have a slope not greater than three-to-one (3:1), except where any portion of the site is developed for port or harbor facilities;

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

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

(B) In an I-2 Zone;

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

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

(7) Driveways or access points shall be identified on the site plan, and shall be located so as not to endanger pedestrians or create traffic hazards. The surface

material to be used on the driveways shall be identified on the site plan. Any access driveway shall be at least twenty-two (22) feet wide, and shall be paved for a distance of at least two hundred (200) feet from the boundary line of the Special Exception.

(8) The Technical Staff Report prepared in response to the Application shall include a current, Countywide inventory of the locations, dates of approval, and conditions of approval concerning haul routes and estimated loads per day for all approved and pending Special Exceptions for sand and gravel wet-processing, sanitary landfills and rubble fills, and surface mining, as indicated by the record in the case. The inventory shall also include the locations of all nonconforming sand and gravel wet-processing, sanitary landfills and rubble fills, and surface mining operations throughout the County that were certified after September 6, 1974.

* * * * *

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

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(f) In reviewing the Application for compliance with the required findings set forth in Sections 27-317(a)(4) and 27-317(a)(5), the District Council shall consider the inventory required in Section 27-410(a)(8).

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

(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.

Burden of Proof

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

Burden of Production and Persuasion

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

Standard of Proof

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

Credibility of Evidence

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

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

Adverse Effects

(9) “The Court . . . (of Appeals of Maryland) . . . has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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

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

Credibility of Evidence

(10) 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 (Common Law)

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

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

CONCLUSIONS

(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 O-S Zone, §27-425(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 continuance of the existing surface mining operation, if carried out in conformance with the provisions of the existing Special Exception Site Plan, the applicable State and County regulations, and the conditions of approval of SE-4352, 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. Neighbors will continue to be buffered from noise by distance. Impacts on the surrounding road network will continue to be *de minimis* because no traffic from mining operations will travel on the adjacent public roads.

Water quality in the surrounding watershed will continue to be protected by the interception and treatment of surface runoff in the network of sediment control devices prior to discharge into the receiving stream system of Rock Creek/Spice Creek. The watershed will

continue to receive additional protection by the phasing of mining operations which were a part of the original approval: Only 25 acres is permitted to be disturbed at any one time.

(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 6 Master Plan and Sectional Map Amendment, and a number of Functional Master Plans, including the Green Infrastructure Plan, the County Master Plan of Transportation, and the Water Resources Functional Master Plan. Many of these Plans are new or have been updated since the original SE-4352 approval.

General Plan

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

Rural and Agricultural land use is described by the General Plan as, “Low-density residential uses with areas of agricultural and forestry production. Agricultural land (cropland, pasture, farm fields), forest, and very low-density residential.”⁵

The Rural and Agricultural Areas growth policy area is described by the General Plan as, “home to low-density residential communities served by well and septic, significant natural resources, and important historic scenic roads and viewsheds...”⁶

The subject use will preserve the boundaries of the subject site in its existing legal configuration to allow for the low-density post-reclamation uses which are contemplated by the General Plan.

Policy 11 of the General Plan Land Use element is to, “Preserve and protect the Rural and Agricultural Areas to conserve agricultural and forest resources.”⁷ A specific strategy of the General Plan applicable to the subject Application is LU11.³

“Evaluate the impacts of extractive industries, such as sand and gravel mining, on resource lands, rural character, economic development, and post-reclamation requirements in the Rural and Agricultural Area. 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

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

⁴ General Plan, p. 101.

⁵ General Plan, p. 100.

⁶ General Plan, p. 20.

⁷ General Plan, p. 117.

development, agriculture, and forestry. Propose comprehensive legislation to revise county codes and identify recommendations for the Zoning Ordinance update.”⁸

While many of the directions of this strategy are directed at County government, the facts are that the subject Application affords ample protection to regulated environmental areas, and addresses post-reclamation uses.

As such, the subject Application is in conformance with the General Plan.

Master Plan

As noted above, the applicable Master Plan is the Approved Subregion 6 Master Plan and Sectional Map Amendment, approved on July 24, 2013. The Subregion 6 Master Plan designated the site for “Rural” land use.

The Master Plan repeatedly recognizes the importance of the mining industry in the Subregion. The Plan’s “Subregion Analysis” discusses the mining industry generally as follows:

“Mineral extraction is a historically important industry in the sub region and county based on the presence of large sand and gravel deposits affiliated with the Brandywine formation (see the Economic Development chapter). Regionally, this industry is undergoing significant change as small mine operations are transitioning out of the industry and being replaced with larger, more consolidated operations. Within the sub region, there are currently five mine operators, generating approximately 60 jobs, which represent approximately 14 percent of the total state output in the mining industry sector. Given the presence of large outside operators, whose income and employment may be reported in other jurisdictions, the job and wealth creation fostered by the mining industry may be larger than reported in currently available data.

“The mining industry also employs other independent businesses in the region, predominately in the trucking industry, generating significant spin-offs to the local economy. Output activities in the industry, such as washing and processing, generally occur outside of the subregion though some do exist here.”⁹

The Master Plan identifies preservation of access to sand and gravel resources as a “Key Planning Issue.” The Plan states, “Subregion 6 has extensive natural resource lands including farmland and forests, some of which are underlain with extensive mineral resources. Recent State legislation requires counties to consider Priority Preservation Areas to protect the agricultural and forest land base so that development does not convert or compromise these critical resources.”¹⁰

⁸ Ibid.

⁹ M-NCP&PC, Approved Subregion 6 Master Plan and Sectional Map Amendment (July, 2013), pp. 32-33.

¹⁰ Master Plan, p. 37.

The Development Pattern/Land Use element of the Master Plan also discusses mineral resources at some length. It notes that, “Under state law, a comprehensive plan must incorporate land use policies and recommendations to balance mineral resource extraction with other land uses and prevent the preemption of mineral resources extraction by other land uses.”¹¹ It then goes on to lay out two policies and five strategies addressing mineral resource extraction:

Policy 4 of the Development Pattern/Land Use element is to “preserve access to mineral resources where sufficient and economically viable mining potential exists.”¹² The Master Plan then proposes two strategies to help implement this Policy which involve the creation of an overlay district within the Primary Preservation Area. As the subject site is not located within the County’s Primary Preservation Area, the implementation of these strategies is not directly applicable; the gist of the Plan’s policy remains clear: that mining is important to the Subregion, and that access to mineral resources should be “guaranteed.”

Policy 5 of the Plan’s Development Pattern/Land Use element is to, “minimize the short- and long-term impacts of mining operations on adjacent properties and communities.”¹³ The three Strategies laid out to implement this policy include:

- “1. Increase setback requirements on developing residential properties to minimize potential effects of noise and dust from future mining on adjoining unexploited parcels;
2. Evaluate the necessity for additional post-mining reclamation requirements, above those already required by law, which would match preservation, community recreation, and environmental needs. Within the PPA these should include consideration of reclamation for agricultural preservation or the establishment of woodlands.
3. Evaluate the need for a mine reclamation study in the county to develop an inventory of reclaimed and abandoned sites, assess compliance with current reclamation requirements, determine the suitability of reclaimed properties for supporting high quality woodlands, and identify mechanisms for financing the reclamation of abandoned sites.”¹⁴

The Special Exception Site Plan addresses these strategies, either directly or indirectly.

With regard to the first Strategy, the Landscape Manual provides that surface mining is a High Impact use, and requires a 40-foot buffer between a surface mining activity and adjoining single-family residences. Areas of preserved woodlands to maintain several multiples of this buffer have been provided on the plan.

¹¹ Ibid., p. 52.

¹² Ibid., p. 53.

¹³ Master Plan, p. 54.

¹⁴ Ibid.

With regard to the second Strategy, the subject Application proposes post-reclamation agricultural/pastoral use for the property that will rise to the level of the policy proposed for the Primary Preservation Areas.

And with regard to the third Strategy, the subject Application will comply with all current requirements to ensure the reclamation of the site, including the posting of a bond to secure the site's restoration.

The Economic Development element of the Master Plan also addresses mining, and is worth quoting at some length:

“Subregion 6 continues to have development potential for sand and gravel due to its large undeveloped resource reserves and relatively low development pressure. As of August 2008, the subregion supported approximately 2,600 acres of active mines plus an active Application for an additional 27 acres of new activity. There were approximately 4,440 acres of closed and reclaimed mines.

“As a key input to construction, sand and gravel is an essential element of the development in the Washington region. Because of its high weight-to-size ratio, sand and gravel is most cost effective to extract, process and transport near its end use: that is, locally. Aggregate's contribution to the local economy is likely to increase as neighboring counties, particularly Anne Arundel County, reduce sand and gravel output due to mine closures. Furthermore, as transportation costs continue to rise, sand and gravel operations located within the Washington, D.C., metropolitan marketplace will have a competitive advantage over outlying sources of aggregates in Virginia and the Eastern Shore. The region's sand and gravel industry faces several issues and challenges:

- Access to new mining capacity is becoming limited as land is parcelized for development and broken up into uneconomical units of production.
- Mining places a traffic burden on a rural road system that is also increasingly used by commuters, creating traffic conflicts.
- Public opinion of the effectiveness of mine reclamation often puts the community at odds with the industry, although many of the mine reclamation issues cited by the public as poor practice are, in fact, related to mining activities that predated current regulations.
- As land resources become scarce, sand and gravel operators increasingly compete for land with other resource-based industries, such as agriculture and forestry. Of particular concern to the industry is the growing demand for permanent agricultural land conservation activity whereby easement language may restrict access to sand and gravel resources. Such restrictions are common in state land

conservation programs. Over time, costs associated with these issues could lead to disinvestment in the industry and its eventual relocation.”¹⁵

The Plan goes on to lay out two Policies to address the economic development aspects of the mining industry. Policy 11 of the Economic Development element is to, “Provide commercially viable access to sand and gravel resources and direct economic development support to associated operations.”¹⁶ Two Strategies are proposed to help implement this policy; one is to repeat the call for a mineral overlay zone to prevent the preemption of mineral resources extraction; the second is to improve incentives for mineral extraction, including streamlined permitting.

Policy 11 of the Economic Development element is to, “Improve community integration of the sand and gravel industry,”¹⁷ and the strategies proposed to implement the policy include community outreach and involving citizens in the development of guidelines for the review of projects.

These economic development strategies and policies are not directly applicable to the review of the subject Application, but their existence underlines the importance of the industry to the Plan’s vision for the Subregion, and for the County as a whole.

Clearly, if operations continue to be carried out in accordance with the protections provided to mitigate the impacts from noise, dust, and visual intrusion; with the protections preserved to the natural environmental features present on the site; and because of the lack of truck traffic on the public roads, the approval of the subject Application will be in conformance to the vision laid out in the new Master Plan.

Other Applicable Functional Master Plans

The Green Infrastructure Plan, also adopted subsequent to the original approval of SE-4352, addresses the significant environmental ecosystems of Prince George’s County. As a part of its recommendations, the Green Infrastructure Plan maps the County’s Green Infrastructure Network into three categories, all of which exist at the subject site.

The first category is Regulated Areas, which comprise streams and their adjacent buffers, including wetlands, floodplains and adjacent steep slopes. At the subject site, there are numerous areas of Regulated Areas; these Regulated Areas of the site will continue to be preserved, except for the haul road crossings which have already been installed.

The second category is Evaluation Areas, which comprise “environmentally-sensitive features such as interior forests, colonial waterbird nesting sites and unique habitats that are not

¹⁵ Master Plan, pp. 155-156.

¹⁶ Ibid., p. 156.

¹⁷ Ibid.

currently regulated (i.e. not protected) during the development review process”¹⁸ While much of the site’s area is mapped by the County’s GIS database as being Evaluation Areas, no colonial waterbird nesting sites or unique habitats have been mapped at the subject site.

The third category is Network Gaps, which are “areas that are critical to the connection of the regulated and evaluation areas and were included in the mapping to provide areas of possible connectivity. These areas should be evaluated for restoration opportunities to enhance the ecological functioning of the network. Limited amounts of Network Gap areas were mapped in the County’s GIS database along the perimeter of the mapped Evaluation Areas.

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

With respect to the Historic Sites and Districts Plan, it is noted that the southern edge of the property abuts the Wilmer’s Park site. The distance from the remaining area to be mined on the subject property to the edge of the woods on the Wilmer’s Park site is more than a mile. Even to the subject property’s boundary, no visual connection exists between the two sites because of the extensive area of intervening woods on the northern part of Wilmer’s Park site.

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 Brandywine Road and North Keys Road as collector roadways as well as scenic and historic roads, and Gibbons Church Road as a designated historic road¹⁹ but the subject site is not adjacent to any of these roadways.

In conclusion, because the proposed surface mining activity is not in conflict with the General Plan, the Master Plan or the applicable Functional Master Plans, approval of the subject Application will 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 continues an activity that will not contribute students to existing schools, will not use water or sewer treatment capacity, will not involve structures that need to be

¹⁸ M-NCP&PC, Approved Countywide Green Infrastructure Plan (June, 2005), p. 18.

¹⁹ MNCPPC, Approved Countywide Master Plan of Transportation (November, 2009), pp. 50-66.

protected by fire services, and will not contribute new traffic to the County's road network, its approval of would continue to promote the conservation of an existing community and would not contribute to further strain on the existing public facilities and services.

(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 be a part of the orderly development of the County by providing for an activity that will provide for the continuation of a use that is consonant with the General Plan and Master Plan, as well as an agricultural use after its completion and the site's reclamation. The continued operations at the subject property will recognize the needs of industry and business by providing for the continued local supply of an important natural resource, making the subject Application in harmony with this Purpose of the Ordinance.

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

The subject surface mining activity will continue be in harmony with this Purpose in part because of the extensive separations between active operations at the subject property and its neighbors.

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

The subject surface mining activity would continue to be in harmony with this Purpose because it has been and will continue to be carried out in accordance with various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between adjoining lands, including conformance with the tables of permitted uses for the various zones as laid out in the Ordinance, and conformance with the provisions of the Landscape Manual which provide for the buffering of incompatible adjoining uses.

In addition, the neighboring landowners will continue to be protected from adverse impacts generated at this site by the site's configuration which directs all traffic directly to the adjacent Wash Plant via a connection to an existing haul road rather than via Evergreen Road and the public roads.

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

The subject surface mining activity would continue to be in harmony with this Purpose as it will be carried out 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, including: the floodplain regulations, Stormwater Management regulations, the Water Resources Protection and Grading Code, the Fire Prevention Code, and the Tables of Permitted Uses for the various zones.

(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. Nevertheless, the healthy living environment of the surrounding housing and agricultural areas will be continue to be protected during the mining activity's duration by the provisions of the Special Exception Site Plan and the conditions of approval of SE-4352, including the restrictions on hours of operation, the provisions for noise control and dust suppression, and the sediment control measures; and, after the reclamation of the site by its restoration to agricultural use that is compatible with the rural character of the neighborhood.

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

The approval of the continuation of the subject surface mining activity would be in harmony with this Purpose because it would continue its contribution to the tax base of the County through the employment provided to its workers, and by the value of the economic activity made possible by the use of the mined resource.

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

The approval of the continuation of the subject surface mining activity would be in harmony with this Purpose because it will not involve any new development density, and thus will not contribute to any 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 continuation of the subject surface mining activity would be in harmony with this Purpose because it will allow for the establishment of a use that will not by itself generate any new trips on the surrounding road network other than the *de minimis* trips of the equipment operators working at the site.

In fact, the continuation of this use at this site will result in many fewer truck trips on the road network than a typical surface mine, 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 is prima facie evidence of the Application's harmony with this purpose. Additionally, however, the continuation of the subject surface mining activity would promote the economic and social stability of the County by contributing to the tax base, and by providing a useful and convenient product 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 continuation of the subject surface mining activity would be in harmony with this Purpose because it will be carried out with substantive improvements and practices as provided for in the existing Special Exception Site Plan and the conditions of approval of SE-4352 to protect against undue noise, and against air and water pollution; because the stream valleys, the adjacent steep slopes and the forested areas covering them will be preserved – and in the final, reclaimed state of the site, enhanced.

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

The subject surface mining activity will not consume the open space existing at the site, and in its final, reclaimed state will continue as open space to protect the adjacent stream valleys and their natural features, and as an agricultural area to maintain the scenic beauty and productiveness of the area. As such, the approval of the continuation of the subject surface mining activity will be in harmony with this Purpose.

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

By virtue of its post-reclamation use as agricultural land, the approval of the subject surface mining activity will help to protect and conserve the agricultural industry. By the preservation of the stream valley areas, the subject surface mining activity will protect and conserve the County's natural resources. As such, the approval of the subject surface mining activity will be in harmony with this Purpose. §27-317(a)(1)

(3) The instant Application is also in harmony with the specific purposes of the O-S Zone, §27-425(a) as follows:

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

The continuation of the surface mining activity will not involve the creation of new development; as such, its approval will be in harmony with this Purpose.

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

The continuation of the surface mining activity will provide for the appropriate use of one of the County's natural resources (sand and gravel), while simultaneously protecting and preserving other natural resources (the adjacent stream valleys). As such, the approval of the subject Application would be in harmony with this Purpose.

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

Similarly, the continuation of the surface mining activity will provide for the appropriate economic use of one natural resource, while simultaneously conserving other natural resources (the adjacent stream valleys). Ultimately, the post reclamation use of the subject site will promote the conservation of agriculture as well. As such, the approval of the subject Application would be in harmony with this Purpose. §27-317(a)(1)

(4) Special Exception uses such as Surface Mining are presumed compatible with other uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic and parking improvements and all other regulations are met. No departures, waivers, or variances are requested. With the Site Plan, Exhibit 50, and the recommended conditions of approval, the proposed Surface Mining will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(5) The instant Application is in harmony with the purposes of the Zoning Ordinance 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 the continuation of the Surface Mining will not impair the integrity of the Master Plan or the County's General Plan. §27-317(a)(3)

(6) At a basic level, the conformance of the subject Application with the principles laid out in the purposes of the Zoning Ordinance, its compliance with the provisions of the Zoning Ordinance, its compliance with the provisions of other State and County regulations for environmental protection, and if carried out in accordance with the conditions of approval of SE-4352, was found in that approval not to adversely affect the public health, safety and welfare. §27-317(a)(4)

(7) Similarly to the findings above, the approval of SE-4352 found that mining operations at the subject property would not be detrimental to the use or development of adjacent properties or the general neighborhood. No new conditions have arisen to alter those previous findings; in fact, a number of conditions at the subject property and in the general neighborhood combine to further mitigate the impact of operations at the subject property:

First, the area which remains to be mined is small: more than 95% of the mining (by surface area) has already been completed, as has most of the reclamation activity.

Second, the impact to the general neighborhood from surface mining generally is much less than it was at the time of the original approval of SE-4352. At that time, active mining operations were ongoing on at Chaney's Brandywine Mine (now "Lake Chaney") and the Reeder Pit, both adjacent to the intersection of Brandywine Road and Gibbons Church Road; today, mining operations have been completed at both sites (though reclamation appears to still be ongoing at Reeder). Further, operations at the Glatfelter Pit on the north side of North Keys Road are much less extensive now than they were in 2000. §27-317(a)(5)

(8) With the exception of the details of the bonding of the offsite reforestation, the site has been operated in conformance with Tree Conservation Plan TCP2-082-99, which was prepared in conjunction with the Special Exception 4352. §27-317(a)(6)

(9) The impacts which were associated with the approval of SE 4352, namely the four stream crossings to allow for the construction of the haul roads, and the installation of temporary soil stabilization measures to protect steep slopes from concentrated flows from sediment trap outfalls, are now all physically in place pursuant to that original approval. No new impacts to regulated environmental features are proposed by this request for continuation. §27-317(a)(7)

(10) No washing, refining or processing is proposed at the subject site; as such, this provision is not applicable to the subject Application. §27-410(a)(1)

(11) The original approval was conditioned with provisions to limit dust generation, including prescribing: the use of water trucks or other dust control methods along the haul roads; vegetative stabilization of stockpiles; and establishment of speed limits on site. §27-410(a)(2)

(12) A Reclamation Plan which includes a grading plan is a part of the subject Special Exception Site Plan (Exhibit 50) to provide for the restoration of the site to approximate pre-existing natural grades. None of the grades provided for on the reclamation plan exceed a three-to-one slope. §27-410(a)(3)

(13) The Application is in compliance with §27-410(a)(4).

(14) The estimate of the time required for removal of material is shown in the sequence of construction on the Sediment and Erosion Control Plan. §27-410(a)(5)

(15) Because this Application is for the continuation of an existing approval without modification, the evidence and findings of SE-4352 should continue in force. §27-410(a)(6)

(16) No driveway or access point to a public road is a part of the requested continuation. §27-410(a)(7)

(17) Because this request is for the continuation of an existing approval without modification, the evidence and findings of SE-4352 should continue in force. §27-410(a)(8)

(18) In the original approval of SE-4352, the approval was conditioned with provisions to address noise generation, including limiting of the hours of operation, limiting the number of on-site vehicle trips, providing for maximum vehicle speeds, and requiring the use of mufflers with a minimum 30bBA noise reduction on all equipment. §27-410(d)

(19) Because this request is for the continuation of an existing approval without modification, the evidence and findings of SE-4352 should continue in force. §27-410(f)

(20) The requirements of §27-445.02(a)-(c)(1) are noted, and evidence has been presented into the record of the history of compliance for the past activity at the subject property under the existing approval.

(21) As discussed in connection with the requirement of §27-410(d), Special Exception 4352 was conditioned with provisions for maximum vehicle speeds. Additionally, because of the direct off-street haul road connection to the adjacent Wash Plant, the continuation of the mining represented by the subject Application will not involve any truck trips on the neighboring streets. §27-445.02(c)(2)

(22) The continuation of the mining activity at the subject property will not involve any truck trips on existing public streets. §27-445.02(c)(3)

(23) The owner of the subject property shall 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. §27-445.02(c)(4)

DISPOSITION

Special Exception 4517 is APPROVED, subject to the following Conditions:

1. Topsoil shall be stockpiled within the area for use during the reclamation period.
2. Stockpiled overburden material shall be seeded with quick-growing grasses to minimize the wash-off of silt into streams within the site.
3. Reclamation and stabilization efforts shall be staged as diligently as possible and the direction of mining shall be closely followed. Reclamation shall be initiated in each mined phase before the mining of a new phase shall commence.
4. The disturbed area shall not exceed 25 acres at any one time.
5. Application of sludge during reclamation, when used under this Special Exception (SE 4517) shall be performed in accordance with criteria and standards of the Maryland Department of Environment (MDE) and other best management

practices and in compliance with the Prince George's County Code, Subtitle 21, Section 21-108.

6. All sediment/erosion control traps and basins shall be enclosed with a minimum forty-two (42)-inch-high safety fence. Safety signs, described in the Official Surface Mining Workbook (April, 1990) of the State Safety Committee, and safety benches and protective berming shall be used in order to increase the level of safety at the site.
7. Mining, general earth disturbance restriction lines and vegetative buffers shown on all the submitted and approved plans shall be maintained.
8. Close monitoring of the sediment control measures shall be done by the Maryland Department of Natural Resources to assure that they continue to perform satisfactorily and as designed.
9. The sediment control measures shall be approved by the Soil Conservation District.
10. If mining-related impacts upon water level in any of the shallow wells near the site are observed, corrective actions shall be immediately taken by the applicant. These can include drilling of deep water wells to replace the adversely affected shallow wells.
11. Truck speed on interior haul roads shall be controlled to 15 MPH or less.
12. Interior roads shall be watered or otherwise treated as necessary to minimize dust.
13. Only the equipment listed on the approved plan and/or in Exhibit 60 shall be used on the site and it shall be equipped with a Donaldson TCU05 muffler or one that provides at least 30 dBA in sound reduction. Similar heavy equipment may be substituted, as replacements are required.
14. All equipment used on the site, including trucks, shall be fitted with working mufflers at all times.
15. Eighteen-wheel trucks are not permitted to haul mined material from site.
16. The tree preservation lines shall be staked on the ground and reviewed by M-NCPPC, Environmental Planning Section, prior to the installation of sediment/erosion control measures and tree protective devices.
17. Prior to the issuance of a use and occupancy permit, the following revisions to TCPII/82/99 are required to be submitted to the Division of Natural Resources of

M-NCPPC for its review and recommendation and submission to the Zoning Hearing Examiner's office for approval:

- a. Correct the worksheet to reflect areas to the nearest 1/100th of an acre.
 - b. Correct the replacement requirement calculations on the worksheet.
 - c. In the General Notes replace all references to the Department of Environmental Resources with M-NCPPC Environmental Planning Section and remove all references to individuals' names.
 - d. Note 4, which references bonds, should be replaced with Condition 18.
 - e. Note 8 shall be expanded to reflect Condition 18.²⁰
18. The Applicant shall provide to the Environmental Planning Section evidence that the appropriate reforestation bond has been posted for each phase (Phases 3A, 3B, 4 and 5) prior to any woodland clearing for that particular phase. A reforestation bond need not be posted for any phase until work is to be initiated for that phase. If reforestation associated with a phase noted above was completed at least two (2) years prior to the start of work for that phase and a survival check, prepared by the applicant and verified by the Environmental Planning Section, indicates a survival rate of no less than 75 percent, the reforestation bond may be waived by the Environmental Planning Section. All reforestation and/or afforestation shall be accomplished prior to or during the first planting season after work has begun in the phases initiating the reforestation requirement.
 19. The Applicant shall notify the M-NCPPC Environmental Planning Section prior to the initiation of work on each phase of this mining operation to schedule a meeting to address reforestation and Woodland Conservation issues including: timing for reforestation activities associated with that phase, changes in the species to be planted, decreases in the quantity of trees planted in the event that some natural regeneration has occurred, the need for additional or less site preparation and other pertinent woodland conservation or reforestation issues.
 20. The Applicant shall provide the Environmental Planning Section with copies of all reports submitted to the Maryland Department of the Environment.
 21. Operations on the site are restricted to the hours of 7:00 a.m. to 5:00 p.m., Monday through Saturday. There shall be no operations on holidays (i.e., New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas) and Sundays. Trucks are not permitted to arrive at the site prior to 7:00 a.m.
 22. The applicant, its heirs, successors or assigns shall limit the level of mining activity at the site to 250 truck trips per day.

²⁰TCP II/82/99 and TCP II/119/99 have been approved.

23. All hauling equipment shall be kept on site or the adjoining Wash Plant.
24. Dump trucks may be used to haul material to the Wash Plant only when one or more of the four proposed special off-road vehicles are out of service, and all such dump trucks are stored on site overnight. These dump trucks shall not travel along any of the area's public roads to transport any of the mined raw materials from the proposed site.
25. Upon receipt of the first substantiated valid complaint that any material is being hauled directly from the site using any of the nearby publicly maintained roadways, the applicant, its heirs, successors or assigns shall stop the operation and shall not commence the mining operation at the site until a revised and acceptable transportation impact study has been submitted and reviewed by the M-NCPPC Countywide Planning Division, Transportation Section.
26. Prior to issuance of Use and Occupancy Permits, the Applicant shall obtain all the permits and licenses that are required by the Federal, State and local governments. Such permits shall include but are not limited to permits for disturbance of wetlands and wetland buffers and stream crossings.
27. The area to be mined will be reclaimed to approximate contours shown on the MDE Reclamation Plan. Upon completion of this restoration process, the area will be suitable for agricultural purposes.
28. The Applicant shall include information about the existence and location of the Early Family Cemetery in the *General Notes*.
29. Prior to the issuance of a Use and Occupancy permit, the Applicant shall conduct a detailed survey of the features of the Early Family cemetery, indicating the size of the Cemetery and the number of existing gravestones; they shall record all legible inscriptions on the gravestones, and shall make a written inventory of all cemetery features (i.e., plant material, fencing, markers, etc.). The applicants shall then transmit this information to M-NCPPC Historic Preservation Section.
30. Prior to the issuance of a Use and Occupancy permit, the Applicant shall install a highly visible snow-fence at least 50 feet **outside** the boundaries of the cemetery in order to protect the cemetery from potential damage caused by the grading operations.
31. At the time of subdivision, the property owners, their heirs, successors or assigns, shall comply with the appropriate subdivision regulations relating to the protection and/or relocation of the Early Family Cemetery.

32. The property owners, their heirs, successors or assigns, shall designate a 14-foot-wide equestrian easement within the buffer afforded for Rock Creek at the time of subdivision.
33. All conditions shall be listed on the Special Exception Site Plan.

The Approved Site Plan and Reclamation Plan are Exhibit 50.

The Approved Woodland Conservation Plans (TCP II/82/99 and TCP II/119/99) are Exhibit 41.