

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

**SPECIAL EXCEPTION
4771**

DECISION

Application:	Rubble Fill
Applicant:	Ritchie Land Reclamation, L.P.
Opposition:	None
Hearing Dates:	February 3, 2016 and March 23, 2016
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4771 is a request to continue, and expand, an existing Rubble Fill on approximately 289.39 acres of land, in the O-S (Open Space) and R-A (Residential-Agricultural) Zones, located on the southwest side of Ritchie Marlboro Road, approximately 3,000 feet south of its intersection with White House Road, also identified as 2001 and 2002 Ritchie Marlboro Road, Upper Marlboro, Maryland.

(2) The Planning Board did not elect to hold a hearing on the instant Application and in lieu thereof adopted the Technical Staff Report as its recommendation. (Exhibit 21 (b)) The Technical Staff recommended denial of SE 4771. (Exhibit 20)

(3) The Little Washington Civic Association (Exhibit 49) and the Coalition of Central Prince George's Community Organizations (Exhibit 44) appeared in support of the Application.

(4) The record was closed on March 23, 2016 at the conclusion of the evidentiary hearing.

FINDINGS OF FACT

Subject Property

(1) The subject property is the site of an existing Rubble Fill and is largely cleared as a result of the Rubble Fill activity. There are, however, wide forested buffers (100-1,500 feet) around most of the periphery and along two streams that traverse the subject property.

(2) The neighborhood is defined by the following boundaries:

North and East- Ritchie Marlboro Road

South- Westphalia Road

West- D'Arcy Road and Sansbury Road

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

North- Undeveloped land and scattered single-family residences in the R-E (Residential Estate) Zone.

East- Undeveloped land partially used for agriculture in the R-E Zone.

South- Two Class III landfills and single-family residences (Westphalia Woods) in the R-A and R-E Zones, respectively.

West- The Arrowhead Elementary School in the O-S Zone and an undeveloped industrial park in the I-1 (Light Industrial) Zone.

(4) This neighborhood is largely rural and undeveloped in nature, although there have been several new residential subdivisions developing since the last Special Exception approval, most notably the Westphalia Row subdivision to the north of the site at the corner of Sansbury Road and Ritchie Marlboro Road and single-family residences along Valley Forest Drive to the south. There are also several Class III Landfills along the north side of Westphalia Road, the current operating status of which are unknown.

History

(5) SE 3515 was approved on February 25, 1985, for a Rubble Fill on the subject property for a period of five years. On September 16, 1991, the District Council approved SE 4012, extending the life of the Fill 15 years and adding a rock crusher, until the year 2006. On May 15, 2003, the District Council approved a third Special Exception (SE 4408) for the use, extending the life of the Fill until January 1, 2025, extending the elevation from 292 feet to 312 feet and adding a contiguous 30-acre property previously owned by the Board of Education. The District Council approved SE 4408 subject to 23 Conditions:

1. The operation shall be limited to approximately 20+ acres remaining in Phase I of the fill and 76± acres shown as Phase II as depicted on the Site Plan.
2. The operation shall be restricted to the placing in a controlled manner of fill consisting of construction or building demolition rubble, including both irreducible materials (e.g., concrete, rock, brick) and those subject to decay (e.g., lumber and root material, brush, tree limbs and stumps). Collection of recyclable materials is permitted as an accessory use as allowed by County and State refuse disposal permits and licenses, provided that the materials originate only at a construction site, and further provided that no single load shall include more than 50 percent by volume of paper and cardboard. This restriction is not intended to affect State permit restrictions on what materials can be placed in the fill. These recyclable materials shall be deposited, separated and stockpiled in the area designated on the Site Plan. The structure within this accessory use shall not exceed 12,000 square feet.

3. No wall board or plasterboard material may be placed in the Rubble Fill if the material, when exposed to water, produces odorous or toxic gas. No asbestos, fiberglass, or hazardous substance may be placed in the fill. For purposes of this condition, "asbestos" means friable asbestos (whose fibers may become airborne) and any other form of harmful asbestos capable of transport and organism invasion by air, water, or contact.
4. A six-foot-high chain-link security fence between and schoolyard and the subject premises, topped by approximately two feet of barbed wire strands slanted at a 45-degree angle, shall be maintained in good condition.
5. The white pine screen buffer between the Rubble Fills and Arrowheard Elementary School shall be widened from 70 feet to 150 feet.
6. The one and only entrance to the Rubble Fill shall be the existing road located on Ritchie Marlboro Road.
7. The Applicant shall continue to distribute an informational flyer, whose directions shall only bring traffic to the subject property via Central Avenue (MD 214) to Ritchie Road to Ritchie Marlboro Road, and after the opening of the Ritchie Marlboro interchange, from Ritchie Marlboro Road via I-95/495, to general contractors and construction-oriented companies in need of a Rubble Fill. The informational flyer shall also state clearly that under no circumstances should D-Arcy Road or Sainsbury Road be used to enter the Rubble Fill site.
8. The Special Exception shall terminate on January 1, 2025, unless previously terminated after public hearing for noncompliance with operational requirements and conditions of approval.
9. The Rubble Fill shall be limited to a height of 312 feet above sea level.
10. All trucks leaving the Rubble Fill site shall have their wheels and undercarriage washed free of debris.
11. The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday. The fill shall be closed on Saturdays, Sundays and County holidays. Outside the approved hours of operation, trucks shall not be operated on or near the subject property. During times when the operation is to be closed, trucks are not to arrive at, exit, or be operated on the property. The Applicant shall instruct all customers about this requirement.
12. The gate at the entrance to the subject property shall be maintained in a locked condition at all times that the Rubble Fill is not open for business.
13. The Applicant shall meet, at least quarterly, with the liaisons designated by the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association.

14. This Special Exception is subject to review by the District Council at its own election every four years. In the year 2016, the Applicant shall report to the District Council on the land areas filled and remaining to be filled and the District Council shall then review the Application. The District Council review may result in a modification of the conditions.
15. Copies of the biannual reports to the Maryland Department of Environment prepared for the Applicant regarding regulatory compliance on site shall be made available to the District Council member representing the area which includes the subject property and the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association. As other civic or homeowners' associations with member properties in the Largo, Little Washington, or Westphalia areas are formed, those associations shall be included in the meetings required in Condition 13 and the reports distribution required in this condition.
16. Prior to the issuance of any permits, a Type II Tree Conservation Plan (TCP) shall be approved by the Environmental Planning Section. The Type II TCP shall provide detailed information on the location of all off-site mitigation, if necessary, planting schedules, planting plans, reforestation management plans, phasing of the plan implementation, and other pertinent information, as determined necessary by the Environmental Planning Section. To the extent feasible, berms and reforestation shall be placed on the Westphalia Woods and Westphalia Estate side of the property.
17. All appropriate reforestation bonds shall be posted with the Department of Environmental Resources in accordance with the phasing of the activities for this Application.
18. Development of the site shall conform to the mitigation measures indicated in a report titled "Environmental Noise Assessment, Ritchie Rubble Fill Special Exception" prepared by Staiano Engineering, Inc., dated March 12, 2001, and/or any subsequent report approved by the Environmental Planning Section.
19. The construction of berms and all landscaping for screening of the site along Ritchie Marlboro Road as shown on the Applicant's landscape plan shall be included in the first Prince George's County permit.
20. In the event that any portion of the subject site is dedicated to public use following completion of fill activities, the following shall apply:
 - a. The main access road shall be clearly identified as 30 feet wide with a minimum grade of 5 percent.
 - b. If Area Basins 2, 3, 4, 5, 6, 7 and Lagoon 1 are to be maintained after the Rubble Fill closes, a minimum 12-foot-wide vehicular access road to each shall be provided. If they are to be discontinued after closure, this must be noted on the plan.

- c. Upon completion of the placement of rubble at the site, the Department of Parks and Recreation (M-NCPCC) will be contacted in writing. At that time, and prior to the placement of the “cap,” a rough grading plan to accommodate the recreational uses shall be approved by the Planning Board or its designee.
- d. The plateau, access roads and maintenance roads shall be free of any obstructions above finished grade.
- e. All existing structures, temporary or otherwise, shall be removed from the site unless they are to be retained by mutual agreement.
- f. A uniform, thick stand of grass on topsoil shall be established over the site.
- g. All conditions regarding future development of the site are subject to modification due to state closure requirements.

21. The Site Plan shall be amended to show 11 off-street parking spaces, or a departure from Parking and Loading Standards obtained. In the event that the recycling shed is enlarged to 12,000 square feet, an additional Departure from Parking and Loading Standards obtained.

22. The maximum daily number of truck loads received at this facility shall be 280, resulting in a maximum of 560 daily truck trips.

23. Within 90 days of this approval, the Technical Staff shall forward to the Examiner, for placement in the administrative record, revised projections of usage of the different Phase I and Phase II areas on the subject property. Staff projections now in the record must be broken down into five-year increments, to show how and when the Phase I and Phase II areas will be filled in, over the useful life of the facility. (Zoning Ordinance No. 5, 2003). Filling has continued since that time.

Sector Plan and General Plan

(6) In February 2007, the County Council approved the Westphalia Sector Plan and Sectional Map Amendment (Sector Plan), modifying and updating the Westphalia portion of the 1994 Master Plan for Melwood-Westphalia. The Sector Plan recognizes the long standing Rubble Fill on the subject property and the Sector Plan makes specific recommendations regarding Rubble Fills, including the recommendation that this site ultimately be “Public/Private Open Space.” Environmental Infrastructure Policy 7, for all Fill Sites, directs the County to:

“Assess phasing and remediation issues associates with Rubble Fills and Class III fill sites to be converted to active park use.” (p. 56)

The Strategy aimed at fulfilling this Policy is:

“Develop a comprehensive phasing and remediation plan for each Rubble Fill or Class III fill site prior to conversion to active park uses that, at a minimum, address land infill and settling, filtration, and safety.” (p. 56)

During the Sector Plan preparation process, stakeholders raised concerns about the adequacy of buffering and mitigation measures relating to Rubble Fills. (p. 59) A visual analysis has been performed in this Application to assure adequate buffering. (Exhibits 29 and 40) Much of the Sector Plan text regarding Rubble Fills concerns itself with the ultimate reuse of the sites as parks. The subject property is labelled as “Public/Private Open Space” (p. 52). It is identified as “Sansbury Rubble Fill Park” with “incremental development as acquired” (p. 53).

The common theme in the Sector Plan text is that Rubble Fills should be converted to parkland open space for either passive or active recreation when they are completed. The existing Rubble Fill on the subject property is not yet complete; in fact, it is currently the only operating Rubble Fill in the County (See the County’s Comprehensive Ten-Year Solid Waste Management Plan, FY 2012-2022). The extension of time and increase in height will not prevent the ultimate conversion. Approval of the Special Exception to increase modestly the height of the fill area and to extend the time for operation will not substantially impair the integrity of the Sector Plan.

(7) In 2014, the County Council approved Plan Prince George’s 2035 (“Plan 2035”), the County’s new General Plan. Plan 2035 eliminates, for all practical purposes, the three tiers created in the 2002 General Plan. A growth Policy Map is included in Plan 2035, highlighting six policy areas. The six areas are:

- Regional Transit Districts
- Employment Areas
- Local Centers
- Established Communities
- Future Water and Sewer Service Areas
- Rural and Agricultural Areas

The first five are found generally within the growth boundary, with most future development recommended for the Regional Transit Districts and Local Centers. Rural and Agricultural Areas are found mostly outside the growth boundary.

The subject property is partly in the Established Communities and partly in a Future Water and Sewer Area. The Prince George’s County Sustainable Growth and Agricultural Preservation Act of 2012 Map shows the vast majority (Parcel 334; 268.43± acres) of the property in Tier 1 (Approved for sewer service), and a small portion (Parcel 70; 30.1 ± acres) of the property near Ritchie Marlboro Road in Tier 2 (Planned for public sewer service). (Map 3, p. 32) Parcel 334 is in Water and Sewer Category 3, and Parcel 70 is in Water and Sewer Category 5.

Established Communities are “existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers.”

(p. 20) Future Water and Sewer Service Areas are “holding zones in which near-term development is deferred until additional residential capacity is required.” (p. 20) The subject property will end up at some point in the future as either private open space or may be a public park with trails as envisioned by the 2007 Westphalia Sector Plan if acquired by M-NCPPC. The proposed Special Exception does not prevent either from happening.

(8) The Comprehensive Ten-Year Solid Waste Management Plan, FY2012-FY2022, was adopted in 2013. The Plan states (page 111-23):

“Subtitle 21-126 of the Prince George’s County Code and Section 9-210(b) and (3) of the Environment Article regulate the disposal of materials in a Rubble Fill. In Prince George’s County, there is currently one operating Rubble Fill, The Ritchie Land Reclamation Limited Partnership Facility. The Ritchie Land Reclamation Partnership Facility has two active refuse disposal permits issued (2010-WRF-0126 and 2010 –WRF-0590) by MDE to perform original landfill operations and the Phase II expansion, respectively, and County license (RF-0001-86) and is currently in operation. An additional 30 acres was purchased at the site and is approved for use as part of the existing Rubble Fill operation. The projected capacity will be achieved in the year 2035.”

Applicant’s Proposal

(9) The Applicant requests permission to once again extend the life of the Rubble Fill, this time by 20 years, until January 1, 2045 (SE 4408, Condition 8). The Applicant also proposes to raise the height of the fill from 312 feet to 372 feet above sea level (SE 4408, Condition 9). The site will continue to be accessed by an existing haul road directly from Ritchie Marlboro Road with the proposed increase of the height of the Fill. Phase I is requested to expand to 78+- acres, with the retention of Phase II at 76± acres. A liner and leachate system for leachate collection will be installed in this area of Phase I proposed for expansion (SE 4408, Condition 1). The Applicant proposes the same hours of operations: 7:00 a.m. to 5:00 p.m., Monday through Friday, closed on weekends and County holidays.

(10) Condition 14 of SE 4408 provides for review by the District Council at its own election every four years. The Application provides the required information on the land acres filled and remaining to be filled. If the extension of SE 4771 to January 1, 2045 is approved, the Applicant has suggested that a review by the District Council in 2030 would be appropriate resulting in an amendment to Condition 14 which would substitute “2016” with “2030”.

LAW APPLICABLE¹

(1) Rubble Fills are permitted by Special Exception in the O-S and R-A Zones as a temporary use in accordance with §27-406 which states as follows:

(a) A sanitary landfill or Rubble Fill may be permitted as a temporary Special Exception.

¹ Since the Technical Staff has required that the Application be filed as a new Application, SE 4771, and not as a request to amend existing conditions, the findings required by §27-324 are not applicable.

- (b) The District Council shall determine the period of time for which the Special Exception is valid.
- (c) In the R-E Zone, the landfill is only allowed if the neighborhood is substantially undeveloped and the landfill is an extension of an existing sanitary landfill on abutting land for which the approved Special Exception has not expired. This is not an amendment to an approved Special Exception under Subdivision 10 of Division 1, above.
- (d) An application for a sanitary landfill or Rubble Fill that includes a "rock crusher" on the site must show the location of the proposed rock crusher on the site plan.
- (e) The applicant shall provide a traffic study that is prepared in accordance with Planning Board Guidelines for Analysis of Traffic Impact of Development Proposals.
- (f) The applicant shall provide a visual analysis of any proposed mounds and should include cross sections and results from balloon tests.
- (g) The applicant shall address how odors emanating from fill materials will be mitigated.
- (h) 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.
- (i) 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 27-406(e).
- (j) The Technical Staff Report prepared in response to an application for a Rubble Fill shall include an analysis of need based on the most current available projections of residential and employment growth in Prince George's County over a fifteen-year period. The District Council shall consider this analysis when determining compliance with the finding required in Subsection (h), below, and when determining the period of time for which the Special Exception is valid.
- (k) When approving a Special Exception for a Rubble Fill, the District Council shall find that the proposed use is necessary to serve the projected growth in Prince George's County, by applicant proof that without the proposed use the County's projected growth will be adversely affected. Proof of a future deficit in or absence of County-wide fill capacity does not by itself constitute proof that a proposed fill is necessary to serve the projected growth in the County.

(2) All Special Exceptions must be found to be in compliance with §27-317(a) which requires:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

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

(3) "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 facts 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, 275 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); 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 at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981); 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)." Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

CONCLUSIONS OF LAW

General Requirements

(1) §27-317(a) requires that the proposed Uses 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), and 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;*

As identified in the Ten Year Solid Waste Management Plan, solid waste disposal is a key component in protecting and promoting the health, safety, comfort, convenience and welfare of the present and future inhabitants of the County. In fact, the current Plan estimates countywide growth of 15.3% through 2040; growth that will include the creation of rubble and solid waste. The continuation of Ritchie Rubble Fill will serve this need. Therefore, continuation of Ritchie Rubble Fill will protect and promote the health, safety, comfort, convenience and welfare of the present and future inhabitants of the County. There will be no effect on morals.

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

The 2007 Westphalia Sector Plan recognizes the use of the subject property as a Rubble Fill. It recommends that the site, once filling is completed, be placed in Public/Private Open Space (Map 13; p. 52). The Sector Plan does not assume the park will be publicly owned, there being no mechanism for the public to acquire the land without purchasing it, and it could remain in private ownership. By virtue of the fact that a Rubble Fill is permitted in the R-A and O-S Zones, it is presumed compatible with the zone in which this property was placed by the 1994 SMA. The continuation of the Rubble Fill and the proposed increase in height do not prohibit the ultimate conversion to permanent open space once the Rubble Fill operation is complete.

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

Adequate solid waste disposal is a key component for communities to be conserved, created and expanded. Solid waste disposal is a major public facility and service that needs to be accommodated. The Rubble Fill Demand and Capacity Analysis prepared by M-NCPPC and analyzed by Mr. John Walker in SE 4408 demonstrated that there is a need for Ritchie Rubble Fill to continue to serve the employment and resident needs of Prince George's County into the future. The need extends to 2045 based upon the fill analysis performed by Ben Dyer Associates, Inc. Again, the Ritchie Rubble Fill is the only Rubble Fill in the County.

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

Providing adequate solid waste facilities, such as Ritchie Rubble Fill, allows for orderly growth and development of the County. Allowing the continuation of Ritchie Rubble Fill will promote the future growth and development of the County. The Ritchie Rubble Fill serves the needs of housing, industry, and businesses as evidenced by letters from builders, industries and businesses in Prince George's County which rely on Ritchie Rubble Fill. Agriculture is not affected by Ritchie Rubble Fill. Growth and development in Prince George's County bring with it a need for construction activities, which generates demolition and other construction-related materials. Rubble Fill capacity is needed to provide for the proper disposal of these materials and to accommodate growth and development in the county.

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

The use of Ritchie Rubble Fill is an outdoor activity. There are no structures to block light. Air quality will not be negatively impacted as evidenced by Dr. Rao's air quality analysis in SE 4408. Privacy is ensured and promoted by the extensive buffers and landscape berm that exist and will be supplemented as a part of the instant Application. When the Rubble Fill activities have been completed, the site will remain as permanent open space. Adequate light, air and privacy will be promoted and protected by this large open space area.

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

A beneficial relationship between the Ritchie Rubble Fill and the adjoining properties will be ensured by the extensive buffers and landscaping to be implemented on the site. The visual analysis demonstrates that views will be buffered to the Ritchie Rubble Fill at a height of 372 feet. Views of onsite activities are buffered now, and once operations are completed, the views will be of a wooded hill and parkland. Additionally, the noise, air quality, groundwater, and traffic findings from SE 4408 demonstrate that there will be no negative impacts on the surrounding area due to the continuation of Ritchie Rubble Fill. Further, the Maryland Department of the Environment (MDE), Prince George's County and the Applicant will continue to monitor the operations to ensure continued non-impact. Lastly, upon completion of the Rubble Fill activities, the site will remain as permanent open space. The ultimate open space use will then provide a beneficial relationship between the property and the adjoining properties.

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

The continuation of Ritchie Rubble Fill will have no fire, flood, panic or other dangers associated with it. The activity is highly regulated by Maryland Department of the Environment and by Prince George's County to ensure adequate stormwater control.

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

As no housing is proposed, this Purpose is not applicable.

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

The provision of convenient collection of construction waste is necessary to economic development that provides desirable employment and a broad protected tax base. This is evidenced by the letters of support that state that continuation of Ritchie Rubble Fill is necessary for the continued growth and operation of a variety of agencies and companies.

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

The use of the subject property will continue to prevent the overcrowding of land by remaining an outdoor, open space activity. Ultimately, the property will become permanent open space, providing a 288± acre park just off the Capital Beltway.

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

The evidence demonstrates that there will be no danger or congestion to the current and proposed transportation system. Truck trips and routes are set by prior approvals and the Applicant proposes no changes to these. All elements of the transportation system will continue to be useful with the continuation of Ritchie Rubble Fill.

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

As previously stated, Rubble Fills are a necessary land use to serve both residents and employers in the County, especially with the projected growth rates in the County. Therefore, the continuation of Ritchie Rubble Fill will promote the social and economic stability of all parts of Prince George's County.

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

Protections against undo noise, and air and water pollution are in place and proposed to be continued by the Applicant. Ritchie Rubble Fill will continue to be subject to review by State, Federal, and local agencies to insure continued protection. The stream on site will be protected; no disturbance is planned and it will be well buffered. There are no natural steep slopes, lands of natural beauty, dense forests, scenic vistas or other similar features on site that are in need of preservation. The Site Plan (Exhibits 12(a) and (b)) is in conformance with the previously approved Tree Conservation Plan.

§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:

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

The 2007 Sector Plan recognizes the current Rubble Fill use and further indicates the site as an ultimate open space recreational opportunity. Plan 2035, the County's General Plan, places the subject property partly in the Established Communities and partly in a Future Water and Sewer Area. Established Communities are "existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers" (p. 20). Future Water and Sewer Service Areas are "holding zones in which near-term development is deferred until additional residential capacity is required" (p. 20). The continuation of the Ritchie Rubble Fill will maintain the low development intensity and open space operation on the property.

(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.*

Ultimately, the property will be an open space recreational area, which will preserve the County's ecological balance and heritage. In the meantime, the use of the property will be in conformance with the County's Woodland Conservation regulations and the stream on site will be preserved with a buffer to protect it.

(2) *The use of the O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, no intensive recreational uses, and similar uses.*

Ritchie Rubble Fill is a viable economic activity and its continuation will promote the economic use of the property. The ultimate use of the property as permanent open space will promote the conservation of both natural resources and recreational uses by providing 288± acres of open space close to the Capital Beltway. §27-317(a)(1)

(4) The instant Application is also in harmony with the specific Purposes of the R-A Zone, §27-426(a), as follows:

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

The Ritchie Rubble Fill use is allowed as a Special Exception use in the R-A Zone. No dwellings are provided on site; no agriculture exists on site. This Purpose is not applicable to the instant Application.

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

Ultimately, permanent open space will be the result of Ritchie Rubble Fill's operations with wooded areas in 288± acres of parkland.

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

Because there are virtually no impervious areas proposed and stormwater management controls are in place, no stream valley flooding will result. Also, since the site has an approved Soil Conservation District-Erosion and Sediment Control Plan, soil erosion will be prevented. §27-317(a)(1)

(5) Special Exception uses such as Rubble Fills are presumed compatible with other uses in the O-S and R-A Zones provided the established setbacks; lot coverage, landscaping, minimum acreage; traffic and parking improvement and all other regulations are met. (Exhibits 12(a) and (b)) As previously found by the District Council in SE 4408, with the 23 existing Conditions as modified by the instant Application, the Rubble Fill will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(6) The use of the subject property as a Rubble Fill has not and will not impair the integrity of the 2007 Westphalia Sector Plan. It is consistent with the Sector Plan's goals and objectives regarding the retention of permanent open space and parkland. Ultimately, the subject property will become open space, either in private or public ownership. The Sector Plan recommends the Sansbury Rubble Fill Park include trail system that "links to the community trail system, particularly the proposed Chesapeake Beach Trail," and to several roadways in the area (p.43). The instant Application does not preclude the ultimate conversion to open space or the provision of trails. Staff noted that the ultimate slopes of 20% do not lend themselves to trail use, but trails would not go straight up but would meander, creating a pleasant ride or walk. §27-317(a)(3)

(7) An active Rubble Fill has operated on the subject property without apparent deleterious effect on the surrounding neighborhood since 1986. The State of Maryland's regulation of Rubble Fills has become stricter through the years and the use has continued to operate pursuant to these more stringent regulations. Rubble Fills are currently subject to regulations including liners, leachate recovery systems, covering every three days, and capping upon completion. These regulations, in concert with previously approved conditions, both in place and as modified by this Application, ensure that the use will neither adversely impact residents or workers in the surrounding neighborhood nor be detrimental to the development of adjacent properties. Upon completion, the site will be permanent open space. The Technical Staff Report notes that the "site has been an unobtrusive neighbor to adjacent properties for 30 years". (Exhibit 20)

(8) There are observable facts that lead to favorable findings regarding the impact of this use on the neighborhood. The neighborhood is a relatively non-residential one; along with a smattering of residential uses and a school, it mainly consists of landfills, surface mines and completed Rubble Fills. Light industrial uses also occur in the southwestern portion of the neighborhood at the D'Arcy Road/Sansbury Road intersection. In this case, there have been no observable negative impacts on adjoining uses regarding noise, light, air, traffic, dust, noxious odors, for 30 years. The Applicant continues to operate the site in accordance with prior approvals

that mandate buffering and berthing to screen the activities on the site from adjoining uses. In fact, when seen from surrounding properties, the property resembles a large open space, a hill, but open space nonetheless. §27-317(a)(4) and (5)

(9) There will be no transportation impact as a result of this proposed Special Exception as there will be no increase in hauling activity. Condition 22 will remain which sets the maximum daily number of truck loads received at the facility to 280, resulting in a maximum of 560 daily truck trips. The one and only entrance shall remain at the entrance on Ritchie Marlboro Road as mandated by Condition 6. Hours of operation shall remain limited to 7:00 a.m. to 5:00 p.m., Monday through Friday as Condition 11 requires. Since the approval of SE 4408, the interchange at I-95/I-495/Ritchie Marlboro Road has opened to traffic. §27-317(a)(4) and (5)

(10) The instant Application is in conformance with the Type II Conservation Plan approved pursuant to SE 4408. (Exhibit 11) §27-317(a)(6)

(11) The subject property contains regulated environmental features that are required to be preserved and/or restored to the fullest extent possible under §27-317(a)(7) of the Zoning Ordinance. The on-site regulated environmental features include streams, wetlands and 100-year floodplain on the subject property. §27-296(c)(1)(L) of the Zoning Ordinance requires the submittal of: "A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible." No letter of justification was submitted because no new impacts to regulated environmental features have been proposed. Minor encroachments into the regulated environmental features were approved with previous Application for stormwater management and sediment control features.

The regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible based on the limits of grading shown on the Special Exception Site Plan. (Exhibits 12(a) and (b)) SE 4408 approved the Forest Stand Delineation. §27-317(a)(7)

Specific Requirements

(12) The Application requests the Special Exception to remain valid until January 1, 2045 based on the analysis performed by Ben Dyer Associates, Inc., as to the current fill capacity. (Exhibit 2) There is no reason to believe that the Applicant, if approved for the additional time, would deviate from the past exemplary operating practices. Nonetheless, the Condition from SE 4408 which allows for District Council review of the Special Exception at its own election, every four (4) years, is proposed to remain with a mandatory hearing in 2030 for a report to the Council on the land areas filled and remaining to be filled which may, result in a modification of the conditions of approval. The Technical Staff recommended extending this review time from 4 years to 5 years. (Exhibit 20, p.10) The terms "temporary" or "temporary use" are not defined in the Zoning Ordinance. However, §27-406(b) authorizes the District Council to determine the period of time the Special Exception is valid. In point of fact, a use that is scheduled to end at a particular time is, by dictionary definition, not permanent, and therefore, "temporary".

(13) An existing rock crusher, approved by SE 4012 and SE 4408 is shown on the Site Plan. (Exhibits 12(a) and (b)) §27-406(d)

(14) A current traffic study was not provided by the Applicant. However, according to the Statement of Justification (Exhibit 2(a)), the maximum number of daily truck trips allowed by Condition 22 of SE 4408 in May 2003 will not change. This was set at 560 daily-truck trips (280 truckloads). In addition, the hours of operation at the site will remain the same, from 7 a.m. to 5 p.m. on weekdays. No trucks are allowed on the site after these hours of operations. As a result, no increases in truck trips are expected at the site. It is expected that the number of AM and PM peak-hours trips cited in previous traffic study will not change. The count data and information provided by the Applicant indicate that the site generates 51 AM peak-hour trips and 45 PM peak-hour trips. No changes in the maximum or average truckloads are requested by the Applicant.

Therefore, the proposed changes presented by the Applicant should not impact transportation facilities in the area since truck operations will remain the same as exists today. In addition, since May 2003 two roundabouts have been constructed at Ritchie Marlboro Road and I-95/I-495 improving traffic operations at that location. Condition 7 of SE 4408 set by the District Council in May 2003 states that trucks must use Ritchie Marlboro Road via the I-95/I-495 to access the site. Condition 7 will remain in effect. §27-406(e)

(15) Mr. Paul Woodburn testified at length (February 3, 2016, T.p. 99-149) regarding the mitigation of any adverse view shed including photos, cross sections and balloon tests. (Exhibits 37, 40 and 45) The Landscape Plan, Exhibit 37, was amended to include additional screening as requested by the Little Washington Civic Association. (Exhibit 41) The Little Washington Civic Association testified in favor of this Application. (Exhibit 44) §27-406(f)

(16) Both the Technical Staff and the Applicant agree that odors emanating from the subject site are rare, are rapidly addressed, and are primarily diesel fumes from the trucks and heavy equipment on site. Odor controls are strictly regulated by the MDE. §27-406(g)

(17) The Environmental Planning Section M-NCPPC prepared the inventory required by §27-406(b). (Exhibit 20) This inventory lists 79 active sites comprised of 69 Sand and Gravel Mines, 9 Work Plants, 1 Rubble Fill and 2 Sanitary Landfills (Brown Station Road and Pepco Fly Ash Fill). §27-406(h)

Table 1

**Comparison of Rubble Generation Forecast in Needs Analysis for SE-4408 to
Actual Reported Tons Accepted at Ritchie Land Reclamation Rubble Fill**

YEAR	PREDICTED IN-COUNTY (1)	ACTUAL TONS (2)	+ / - TONS (1-2)	PREDICTED OUT-COUNTY (3)	ACTUAL TONS (4)	+ / - TONS (3-4)	+ / - TOTAL
2014	339,523	135,345	-204,155	332,263	235,783	-96,417	-300,572
2013	336,418	110,542	-225,876	328,973	199,507	-129,466	-355,342
2012	333,313	107,819	-225,494	325,716	258,397	-67,319	-292,813

While this analysis does not take into account potential in-county rubble being taken to out-of-state facilities, the analysis done for SE 4408 recognized this fact as an unavoidable flaw in the methodology, since out-of-state facilities do not report load origins at county levels. Although there is also a possibility of in-county rubble being taken to other facilities in the State, it certainly would not be to the extent suggested by the data. Nor can it be explained by a precipitous decline in population and employment in Prince George's County over the last 15 years. This would seem to suggest that county population and employment are not reliable indicators of future in-county rubble generation.

The most recent information from MDE indicates that there are currently two actively permitted rubble landfill operations in the region. One of them is located in Prince George's County (the subject property) and the other, known as the Tolson & Associates Rubble Landfill, is located in Anne Arundel County. Of the two, only the subject site is fully active. The other fills identified in the previous analysis (Brandywine Crosstrails, Sandy Hill and PST Reclamation) have all closed, as expected. The Brown Station Road Landfill no longer accepts rubble. According to the Round 8.4 Cooperative Forecasting compiled by the Metropolitan Washington Council of Governments, the population and employment of Prince George's County is expected to increase as shown in **Table 2**:

Table 2

**Population and Employment Forecasts For
Prince George's County, Maryland
(Rounded to Nearest 100)**

YEAR	POPULATION (1)	EMPLOYMENT (2)	TOTAL (1 + 2)
2015	881,400	357,000	1,238,400
2020	899,900	377,900	1,277,800
2025	926,900	403,100	1,330,000
2030	950,000	427,500	1,337,500

Dividing the number of tons of rubble generated in Prince George's County for calendar year 2014 (135,345 tons) by the population and employment total in 2015 results in a yearly per capita rubble generation rate of 0.1092 tons per person. This is significantly lower than the previously calculated rate of 0.26432 and is below the minimum range suggested by the references in the previous needs analysis (0.12).

Multiplying the total population and employment numbers times the per capita rubble generation rate gives us the projected in-county rubble generation figures in **Table 3**. Adding out-of-county rubble at the historic 1:2 ratio:

Table 3

**Projected Rubble Generated In-County/Out-of-County Accepted
Prince George's County, Maryland
(Rounded to Nearest 100)**

YEAR	POPULATION PLUS EMPLOYMENT	RUBBLE GENERATION RATE	PROJECTED IN-COUNTY RUBBLE (TONS)	PROJECTED OUT-COUNTY RUBBLE (TONS)	TOTAL RUBBLE (TONS)
2015	1,238,400	0.1092	135,233	270,466	405,699
2020	1,277,800	0.1092	139,535	279,070	418,605
2025	1,330,000	0.1092	145,236	290,472	435,706
2030	1,337,500	0.1092	146,055	292,110	438,165

Note: These projections are for rubble **generated**, not rubble actually **filled**.

Staff does not believe that population and employment numbers in and of themselves are reliable indicators for the generation of rubble. Rubble generation rates are highly variable, and are influenced by a variety of factors including home construction, business development, employment, reuse and recycling, disposal costs, available disposal space, proximity of generation point to the disposal facility (not only rubble landfills but Class III fills, land clearing debris landfills, etc.) practices of illegal dumping, the importation of rubble waste generated outside the county for disposal, and exportation of rubble wastes generated within the county for disposal elsewhere. Changes to any of these factors will result in a change to the amount of rubble produced, accepted and filled, positively or negatively. Attempting to forecast rubble generation based on one or two of these factors, at the expense of ignoring the others results in unreliable conclusions. Several important changes have taken place over the intervening years which may help explain the reduction in the amount of rubble making its way into the Rubble Fill (Unless otherwise noted, all data is taken from the MDE 2014 Maryland Solid Waste Management and Diversion Report):

1. As of October 15, 2015, five counties in the State of Maryland had rubble landfills and two counties had land-clearing debris landfills. Baltimore County had two rubble landfills, while Prince George's, Anne Arundel, Queen Anne and Washington Counties each had one rubble landfill. The Washington County fill is not currently operational.
2. The Tolson & Associates Rubble Landfill in Anne Arundel County is a 72.38-acre fill site on a larger 184-acre property approximately five miles north of the Prince George's County line in Crofton, MD. This places it approximately 16 linear miles northeast of the Ritchie Land Reclamation Rubble Landfill. The Tolson & Associates Rubble Landfill was issued a Refuse Disposal Permit (No. 2003-WRF-0580) on November 24, 2014, with an expiration date of November 23, 2019. A fact sheet compiled by MDE suggests this fill has an estimated total volume of 5.7 million cubic yards. With an estimated acceptance rate of 306,000 cubic yards per year, the fill has an estimated lifespan of almost 19 years.
3. The Grant County Mulch, Inc., facility on Van Dusen Road in Prince George's County is by far the largest Natural Wood Waste (NWW) recycling facility in the State. NWW is considered solid waste until it is recycled and includes trees and other natural vegetative materials including:

tree stumps and limbs, brush, root mats, logs, leaves, grass clippings, and unadulterated wood wastes that are generated when land is cleared for construction purposes. Much of this material made its way into Rubble Fills in the past. In 2013, the facility accepted 113,648 tons of NWW material, more than 28% of the statewide total. This facility was not fully operational at the time of the last needs analysis.

4. During 2013, the State of Maryland accepted 754,117 tons of construction and demolition (C & D) materials. The Ritchie Rubble Fill accepted 310,049 tons in 2013, representing 41 percent of the total rubble materials in the State of Maryland. It should be noted that not all waste accepted is placed in the fill, due to recycling and reuse. For example, in 2014, Ritchie accepted 384,595.83 tons of material, but after recycling, sorting and onsite reuse, only 212,399 tons (55%) were placed in the fill.

5. According to a 1998 Maryland Environmental Service report, in 1995 Maryland imported about one million tons of rubble; in 2013, Maryland imported 185,711 tons of rubble.

6. During 2013, in the State of Maryland, the construction and demolition (C & D) component represented 26 percent of the tonnages of total solid waste received at landfills and incinerators in the state; in Prince George's County, this component (C & D) represents 50 percent of the tonnages of total solid waste handled by the county. These percentages are almost identical to those found in the last analysis, which was based on 1999 data.

7. The most recent data available shows that approximately 63.5 percent of the C & D accepted at Ritchie comes from out-of-county sources (see Table 4). The County's only Municipal Solid Waste Landfill, the Brown Station Road Sanitary Landfill, no longer accepts commercial C & D debris and allows limited residentially-generated loads.

Conclusions:

1. Section 27-406(j) requires staff to provide an analysis of need based on the most current available projections of residential and employment growth in Prince George's County over a fifteen-year period. According to the Washington Metropolitan Council of Governments Round 8.4 Cooperative Forecasts, the total population of the County will increase from 881,400 to 950,000 by 2030, a 7.8% percentage change. For that same time period, total employment is forecast to increase from 357,000 to 427,500, a 19.8% percentage change. This increase will result in additional rubble being generated, but even with a corresponding increase in out-of-county rubble at the historic 1:2 ratio and continuing the same recycling/reuse percentages, the available remaining capacity at an elevation of 312 feet would be sufficient to meet the rubble needs over the next 15 years.
2. The Applicant, in a letter (Woodburn to Ensor) dated July 2, 2015, provides an analysis of the current fill capacity remaining at Ritchie based on current fill projections under the current Special Exception Conditions (i.e., at an elevation of 312 feet). They estimate remaining capacity at the site (7.648 million cubic yards) will provide an additional 15.1 years of fill (or until 2030) at a fill rate of 390,000

cubic yards per year. This equals the time period called for in 27-406(j) and corresponds favorably to the conclusion of the last needs analysis, which estimated the remaining capacity of the expanded fill would be reached in 2033. However, the fill rate of 390,000 cubic yards per year far exceeds the current rate of fill, which was 212,399 cubic yards in 2014. Over the nine year period from 2006 to 2014, the fill rate has ranged from 183,444 cubic yards to 291,958 cubic yards, with an average of 245,104 cubic yards. 390,000 cubic yards of fill per year would, in fact, exceed the amount of material **accepted** in 2014, much less the amount actually placed in the fill. Given the 280-truckload per day cap placed on the use, staff cannot conceive of 390,000 cubic yards being placed in the fill on a yearly basis, unless the applicant were to stop recycling and reusing and were to start filling all accepted material indiscriminately. Regardless, even at this remarkable fill rate, the Applicant projects that the remaining capacity will be sufficient for the next 15 year period. In their latest report to MDE, the Applicant estimates that based on existing fill rates the remaining capacity at the site (which they calculate to be 5.827 million cubic yards) will be reached in 2042 (Table 5).

3. Using population and employment figures to forecast future rubble generation has been shown to be less than reliable. The last such exercise resulted in forecasts that were more than twice the actual figure for in-county generated rubble. Staff has replicated the process for this update, resulting in a much lower per capita generation factor and considers the resulting data to be similarly suspect.

Table 4
YEARLY TONS OF C&D MATERIALS ACCEPTED AT RITCHIE LAND
RECLAMATION RUBBLE FILL
(Gate Tons of C&D Material for CY 2012-2014, by Place of Generation)

2012			2013			2014		
IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)	IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)	IN PRINCE GEORGE'S COUNTY (Percentage)	OUT-OF COUNTY (Percentage)	TOTAL (Percentage)
107,819.67 (29.4%)	258,397.03 (70.6%)	366,216.7 (100%)	110,542.08 (35.7%)	199,507.25 (64.3%)	310,049.33 (100%)	135,345.03 (36.5%)	235,783.11 (63.5%)	371,128.14 (100%)

Source: Solid Waste Tonnage Reports 2012-2014 to MDE for Permits 2010-WRF-0126 and 2010-WRF-0590, Ritchie Land Reclamation, LLC

Table 5
**PROJECTED REMAINING CAPACITY AND LIFESPAN OF RITCHIE LAND
RECLAMATION RUBBLE FILL**

(As Currently Permitted at 312 Feet Maximum Elevation ASL)

2014		
SOLID WASTE FILLED IN 2014 (Cubic Yards)	REMAINING LANDFILL CAPACITY (Cubic Yards)	YEAR CAPACITY WILL BE REACHED
212,399	5,827,802	2042

(19) The analysis performed by Ben Dyer Associates, Inc. demonstrates the ongoing need and impacts of the subject Rubble Fill to meet that need. (Exhibits 2(a) and (b), 21, 27, 46, 47 and 48) The Applicant also testified as to the necessity for continued Rubble Fill operations and as to the capacity/fill rates since 2000. (February 3, 2016, T.p. 66-98)

(20) Plan 2035 projects 63,000 new dwelling units and 114,000 new jobs in Prince George's County over the next 25 years (Table 17, p. 110). This is a significant amount of growth through 2040. Several developments have been recently approved in the Westphalia Sector to jump start this projected growth. Westphalia Town Center, Smith Home Farm, Westphalia Row, Marlboro Ridge and Marlboro Riding are under construction. Westphalia Town Center and the Smith Home Farm are approved for 8,000 combined dwelling units; Westphalia also includes 5.9 million square feet of commercial approval. Other proposed developments in the area include Cabin Branch Village, Cambridge Place at Westphalia and the Moore property. The existence of the Rubble Fill has clearly not deterred local development Applications and the Rubble Fill will be available to serve the needs of the development activity in the area.

Staff opines that this projected growth is not a good predictor of need for the Rubble Fill, but the development that will occur with this growth produces precisely the type of materials the Rubble Fill accepts. Given the downturn in the market experienced from approximately 2007 to just recently, and the current upswing, it is only logical to conclude that demand for the Rubble Fill will also increase. Current Prince George's County policy encourages redevelopment and concentrated mixed use development at Regional Transit Districts, most of which are inside the Beltway, at the Beltway, and at Metro Stations (See Plan 2035, Growth Policy Map, Page 18). Much of the new development will require demolition and new building creating the need for rubble and construction and demolition processing. §27-406(j) and (k)

Parking Regulations

(21) The Applicant is required to provide one parking space for each 500 square feet of building area on the site. The Site Plan shows two buildings, the existing scale house (a 256-square-foot trailer), and the existing 4,800-square-foot recycling shed. (Exhibits 12(a) and (b)) This use does not lend itself well to an organized, permanent parking lot since the workers are constantly shifting to different locations on the 289-acre site as they are needed. The trucks coming to and from the

site simply off-load and leave without parking. Visitors are few; they park at the scale house where concrete or timber wheel stops define a de facto parking area. Twice previously, the use has been approved without permanent parking facilities shown, with the realization that adequate parking can be provided on-site for the relatively few workers. However, the Zoning Ordinance clearly requires that parking be shown on the Site Plan or a Departure from Parking and Loading Standards obtained. The Site Plan shows that 35 parking spaces are required and 35 spaces are provided. (Exhibits 12(a) and (b))

Landscape Manual

(22) The 2010 Prince George's County Landscape Manual (Landscape Manual) classifies a Rubble Fill as a low-intensity use. The proposal must comply with the requirements of Sections 4.2 (Commercial and Industrial Landscape Strip Requirements) and 4.7 (Buffering Incompatible Uses) of the Landscape Manual. These requirements are met by the wide undisturbed forest buffers along the periphery and the proposed 200-foot-wide reforested berm along Ritchie Marlboro Road. (Exhibit 37)

Zone Standards

(23) The Application is in conformance with the requirements and regulations of the O-S and R-A Zones and no departures or variances are requested.

Signage

(24) The existing sign along Ritchie Marlboro Road is in accordance with the Sign Ordinance and is shown on the Site Plan. (Exhibits 12(a) and (b))

Environmental Impacts

(25) The Rubble Fill is grandfathered with respect to the environmental regulations contained in Subtitles 24, 25, and 27, that came into effect on September 1, 2010 and February 1, 2012 because the Rubble Fill has a previous approved Special Exception (SE 4408) and a Type II Tree Conservation Plan (TCPII-098-04) that has been implemented. The current Application is in general conformance with TCPII-098-04.

Site Description

The 288.40-acre site is located on the west side Ritchie Marlboro Road, approximately 3,000 feet south of its intersection with White House Road. The site is split zoned with 30.11 acres in the O-S Zone (Parcel 70), and 268.43 acres in the R-A Zone (Parcel 334). A review of the information available indicates that there are streams, wetlands and 100-year floodplain on the subject property. The on-site stream is Turkey Branch, a tributary of the Patuxent River, which is mapped as a Tier II waterway and is located within a Stronghold watershed. The predominant soils found to occur according to the US Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey (WSS) include the Udorthents refuse substratum, Udorthents reclaimed gravel pits, Marr-Dodon complex, Croom-Marr complex, Collington-Wist complex, Adelphia-Holmdel complex, and Widewater and Issue soils. Marlboro and Christiana

clays are not mapped on this property. Based on information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened or endangered species found to occur on this site. Forest Interior Dwelling Species (FIDS) is mapped on-site. The site has frontage on Ritchie Marlboro Road, a master plan designated Arterial roadway, and a small portion of frontage on Sansbury Road, a master plan designated Collector roadway. Ritchie Marlboro Road is a master plan designated Historic road. The site is located within the Established Communities of the Growth Policy Map and Environmental Strategy Area 2 (formerly the Developing Tier) of the Regulated Environmental Protection Areas Map as designated by Plan Prince George's 2035 Approved General Plan. According to the 2005 Approved Countywide Green Infrastructure Plan, the site is located within the designated network of the Green Infrastructure Plan and includes all three designations; Regulated, Evaluation, and Network Gap areas.

Master Plan Conformance

The current Master Plan for this area is the 2007 Approved Westphalia Sector Plan and Sectional Map Amendment (SMA). In the Approved 2007 Sector Plan and Sectional Map Amendment, the Environmental Infrastructure Section contains goals, policies, and strategies. The following guidelines have been determined to be applicable to the current project.

Policy 1 Protect, preserve, and enhance the identified green infrastructure network within the Westphalia sector planning area.

Strategies:

1. Use the sector plan designated green infrastructure network to identify opportunities for environmental preservation and restoration during the review of land development proposals.

According to the 2005 Approved Countywide Green Infrastructure Plan, the site contains Regulated, Evaluation, and Network Gap areas. Minor encroachments into the Network Gap Areas and Evaluation Areas were previously approved for stormwater management and sediment control features. No additional impacts to the network are proposed with the current application.

2. Preserve 480 or more acres of primary management area (PMA) as open space within the developing areas.

No new impacts to regulated environmental features have been proposed with the subject application.

3. Place preserved sensitive environmental features within the park and open space networks to the fullest extent possible.

No park dedication is required with the current application and no new impacts to regulated environmental features have been proposed with the subject application.

4. **Protect primary corridors (Cabin Branch) during the review of land development proposals to ensure the highest level of preservation and restoration possible. Protect secondary corridors (Back Branch, Turkey Branch, and the PEPCO right-of-way) to restore and enhance environmental features, habitat, and important connections.**

The site contains Tier II waters within the Turkey Branch watershed, which is a mapped secondary corridor. No new impacts to regulated environmental features have been proposed with the subject application.

5. **Limit overall impacts to the primary management area to those necessary for infrastructure improvements, such as road crossings and utility installations.**

No new impacts to regulated environmental features have been proposed with the subject application.

6. **Evaluate and coordinate development within the vicinity of primary and secondary corridors to reduce the number and location of primary management area impacts.**

No new impacts to regulated environmental features have been proposed with the subject application.

7. **Develop flexible design techniques to maximize preservation of environmentally sensitive areas.**

No new impacts to regulated environmental features have been proposed with the subject application.

Policy 2 **Restore and enhance water quality of receiving streams that have been degraded and preserve water quality in areas not degraded.**

Strategies:

1. **Remove agricultural uses along streams and establish wooded stream buffers where they do not currently exist.**

The site does not contain agricultural uses.

2. **Require stream corridor assessments using Maryland Department of Natural Resources protocols and include them with the submission of a**

natural resource inventory as development is proposed for each site. Add stream corridor assessment data to the countywide catalog of mitigation sites.

Because no new impacts to regulated environmental features have been proposed with the subject application, no stream corridor assessment has been required.

- 3. Coordinate the road network between parcels to limit the need for stream crossings and other environmental impacts. Utilize existing farm crossings where possible.**

No stream crossings are proposed with the subject application.

- 4. Encourage shared public/private stormwater facilities as site amenities.**

Stormwater management is discussed in detail in the Environmental Review section of this memorandum.

- 5. Ensure the use of low-impact development (LID) techniques to the fullest extent possible during the development review process with a focus on the core areas for use with bioretention and underground facilities.**

Stormwater management is discussed in detail in the Environmental Review section of this memorandum.

Policy 3 Reduce overall energy consumption and implement more environmentally sensitive building techniques.

Strategies:

- 1. Encourage the use of green building techniques that reduce energy consumption. New building designs should strive to incorporate the latest environmental technologies in project buildings and site design. As redevelopment occurs, the existing buildings should be reused and redesigned to incorporate energy and building material efficiencies.**

No building is proposed with the subject application.

- 2. Encourage the use of alternative energy sources such as solar, wind and hydrogen power. Provide public examples of uses of alternative energy sources.**

The use of alternative energy sources should be encouraged.

Policy 4 **Plan land uses appropriately to minimize the effects of noise from Andrews Air Force Base and existing and proposed roads of arterial classification and higher.**

Strategies:

- 1. Limit the impacts of aircraft noise on future residential uses through the judicious placement of residential uses.**
- 2. Restrict uses within the noise impact zones of Andrews Air Force Base to industrial and office use.**
- 3. Evaluate development proposals using Phase I noise studies and noise models.**
- 4. Provide for adequate setbacks and/or noise mitigation measures for projects located adjacent to existing and proposed noise generators and roadways of arterial classification or greater.**
- 5. Provide for the use of appropriate attenuation measures when noise issues are identified.**

Strategies 1 and 2 are specific to noise associated with Andrews Air Force Base. The subject property is located within the outer horizontal surface – right runway (height zone F) and the conical surface (20:1) – right runway (height One E) of the Air Installation Compatible Use Zone (AICUZ) of the 2007 Joint Land Use Study (JLUS); however, it is not located within any of the mapped noise contours.

Strategies 3 through 5 apply to traffic generated noise. The site fronts on Ritchie Marlboro Road, a master planned Arterial roadway; however, given the nonresidential nature of the application traffic generated noise is not an issue for the project.

The site itself is a noise generator. The previous Special Exception SE-4408 was evaluated for noise, specifically with respect to the rock crusher on-site, but also for the noise generally produced by the fill operation. This is discussed under the previous conditions of approval.

County Wide Green Infrastructure Plan Conformance

(26) The southern portion of the site is located within the designated network of the 2005 Approved Countywide Green Infrastructure Plan and includes all three designations; Regulated, Evaluation, and Network Gap areas. Minor encroachments into the Network Gap Areas and Evaluation Areas were previously approved for stormwater management and sediment control features. No additional impacts to the network are proposed with the current Application. The Regulated and Evaluation Areas are the focus of preservation and afforestation efforts with this

and previous Applications as appropriate to be in conformance with the Countywide Green Infrastructure Plan.

- (27) The approved Stormwater Management Plan is Exhibit 42.
- (28) The Irrevocable Letter of Credit for Reclamation is Exhibit 43.
- (29) The existing Rubble Fill is operating pursuant to, and in accordance with a valid Grading, Erosion and Sediment Control Plan (SC#169-86)

RECOMMENDATIONS

Special Exception 4771 is Approved subject to the following Conditions:

- 1. The operation shall be limited to approximately 78+ acres in Phase I of the fill and 76+ acres shown as Phase II as depicted on the Site Plan, Exhibit 12(a) and (b). A liner and leachate system for leachate collection will be installed in the expanded area of Phase I.
- 2. The operation shall be restricted to the placing in a controlled manner of fill consisting of construction or building demolition rubble, including both irreducible materials (e.g., concrete, rock, brick) and those subject to decay (e.g., lumber and root material, brush, tree limbs and stumps). Collection of recyclable materials is permitted as an accessory use as allowed by County and State refuse disposal permits and licenses, provided that the materials originate only at a construction site, and further provided that no single load shall include more than 50 percent by volume of paper and cardboard. This restriction is not intended to affect State permit restrictions on what materials can be placed in the fill. These recyclable materials shall be deposited, separated and stockpiled in the area designated on the site plan. The structure within this accessory use shall not exceed 12,000 square feet.
- 3. No wall board or plasterboard material may be placed in the Rubble Fill if the material, when exposed to water, produces odorous or toxic gas. No asbestos, fiberglass, or hazardous substance may be placed in the fill. For purposes of this condition, "asbestos" means friable asbestos (whose fibers may become airborne) and any other form of harmful asbestos capable of transport and organism invasion by air, water, or contact.
- 4. A six-foot-high chain-link security fence between and schoolyard and the subject premises, topped by approximately two feet of barbed wire strands slanted at a 45-degree angle, shall be maintained in good condition.
- 5. The white pine screen buffer between the Rubble Fills and Arrowheard Elementary School shall be widened from 70 feet to 150 feet.
- 6. The one and only entrance to the Rubble Fill shall be the existing road located on Ritchie Marlboro Road.

7. The Applicant shall continue to distribute an informational flyer, whose directions shall only bring traffic to the subject property via Central Avenue (MD 214) to Ritchie Road to Ritchie Marlboro Road, and after the opening of the Ritchie Marlboro interchange, from Ritchie Marlboro Road via I-95/495, to general contractors and construction-oriented companies in need of a Rubble Fill. The informational flyer shall also state clearly that under no circumstances should D-Arcy Road or Sansbury Road be used to enter the Rubble Fill site.
8. The Special Exception shall terminate on January 1, 2045, unless previously terminated after public hearing for noncompliance with operational requirements and conditions of approval.
9. The Rubble Fill shall be limited to a height of 372 feet above sea level.
10. All trucks leaving the Rubble Fill site shall have their wheels and undercarriage washed free of debris.
11. The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday. The fill shall be closed on Saturdays, Sundays and County holidays. Outside the approved hours of operation, trucks shall not be operated on or near the subject property. During times when the operation is to be closed, trucks are not to arrive at, exit, or be operated on the property. The Applicant shall instruct all customers about this requirement.
12. The gate at the entrance to the subject property shall be maintained in a locked condition at all times that the Rubble Fill is not open for business.
13. The Applicant shall meet, at least quarterly, with the liaisons designated by the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association.
14. This Special Exception is subject to review by the District Council at its own election every five years. In the year 2030, the Applicant shall report to the District Council on the land areas filled and remaining to be filled and the District Council shall then review the Application. The District Council review may result in a modification of the conditions.
15. Copies of the biannual reports to the Maryland Department of Environment prepared for the Applicant regarding regulatory compliance on site shall be made available to the District Council member representing the area which includes the subject property and the Largo Civic Association, Arrowhead PTA, Little Washington Civic Association, and Westphalia Civic Association. As other civic or homeowners' associations with member properties in the Largo, Little Washington, or Westphalia areas are formed, those associations shall be included in the meetings required in Condition 13 and the reports distribution required in this condition.
16. Prior to the issuance of any permits, a Type II Tree Conservation Plan (TCP) shall be approved by the Environmental Planning Section. The Type II TCP shall provide detailed information on the location of all off-site mitigation, if necessary, planting schedules, planting plans, reforestation management plans, phasing of the plan implementation, and

other pertinent information, as determined necessary by the Environmental Planning Section. To the extent feasible, berms and reforestation shall be placed on the Westphalia Woods and Westphalia Estate side of the property.

17. All appropriate reforestation bonds shall be posted with the Department of Environmental Resources in accordance with the phasing of the activities for this Application.
18. Development of the site shall conform to the mitigation measures indicated in a report titled "Environmental Noise Assessment, Ritchie Rubble Fill Special Exception" prepared by Staiano Engineering, Inc., dated march 12, 2001, and/or any subsequent report approved by the Environmental Planning Section.
19. The construction of berms and all landscaping for screening of the site along Ritchie Marlboro Road as shown on the Applicant's landscape plan shall be included in the first Prince George's County permit.
20. In the event that any portion of the subject site is dedicated to public use following completion of fill activities, the following shall apply:
 - a. The main access road shall be clearly identified as 30 feet wide with a minimum grade of 5 percent.
 - b. If Area Basins 2, 3, 4, 5, 6, 7 and Lagoon 1 are to be maintained after the Rubble Fill closes, a minimum 12-foot-wide vehicular access road to each shall be provided. If they are to be discontinued after closure, this must be noted on the plan.
 - c. Upon completion of the placement of rubble at the site, the Department of Parks and Recreation (M-NCPPC) will be contacted in writing. At that time, and prior to the placement of the "cap," a rough grading plan to accommodate the recreational uses shall be approved by the Planning Board or its designee.
 - d. The plateau, access roads and maintenance roads shall be free of any obstructions above finished grade.
 - e. All existing structures, temporary or otherwise, shall be removed from the site unless they are to be retained by mutual agreement.
 - f. A uniform, thick stand of grass on topsoil shall be established over the site.
 - h. All conditions regarding future development of the site are subject to modification due to state closure requirements.
21. In the event that the recycling shed is enlarged to 12,000 square feet, an additional Departure from Parking and Loading Standards shall be obtained.

22. The maximum daily number of truck loads received at this facility shall be 280, resulting in a maximum of 560 daily truck trips.
23. Within 90 days of this approval, the Technical Staff shall forward to the Examiner, for placement in the administrative record, revised projections of usage of the different Phase I and Phase II areas on the subject property. Staff projections now in the record must be broken down into five-year increments, to show how and when the Phase I and Phase II areas will be filled in, over the useful life of the facility. (Zoning Ordinance No. 5, 2003). Filling has continued since that time.
24. Reforestation of the area labeled “proposed screening above the school” with the reforestation being performed concurrent with completion of the berm and the landscaping screening plantings. Seed the above reforestation area with crown vetch.

The Approved Site Plan is Exhibit 12(a) and (b) and the Landscape Plan is Exhibit 37.