

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

**SPECIAL EXCEPTION
4790**

DECISION

| | |
|-------------------|--------------------------------|
| Application: | Sand and Gravel Wet-Processing |
| Applicant: | Aggregate Industries |
| Opposition: | None |
| Hearing Date: | June 6, 2017 |
| Hearing Examiner: | Joyce B. Nichols |
| Disposition: | Approval with Conditions |

NATURE OF PROCEEDINGS

- (1) Special Exception 4790 is a request to use approximately 82.84 acres of land, in the R-A (Residential Agricultural) and R-E (Residential Estate) Zones, located on the south side of Accokeek Road approximately 660 feet west of the intersection of Accokeek Road and McKendree Road, Brandywine, Maryland, for Sand and Gravel Wet-Processing.
- (2) The subject property is located within a larger property of approximately 684.5 acres of land known as "Gaslight 1". SE 4402 and SE 4651 approved Surface Mining on Gaslight 1 and is now in the process of reclamation.
- (3) The Planning Board elected not to review this Application (Exhibit 17) and the Technical Staff Report recommends approval with conditions. (Exhibit 15)
- (4) At the conclusion of the evidentiary hearing the record was left open for the inclusion into the record of several documents. Upon receipt of the documents the record was closed August 15, 2017.

FINDINGS

Subject Property

- (1) Staff toured the site and operation with Tim Bevard, Land Advisor for Aggregate Industries, on Wednesday, February 15, 2017. The site entrance is well marked, well maintained, and free of dust and debris. The sign required per Section 27-625 of the Zoning Ordinance is present for Surface Mining, but not for Sand and Gravel Wet-Processing. The internal site road is paved for a length of approximately 3,650 linear feet from Accokeek Road into the wet-processing facility and is 24 feet wide. The internal road is maintained in very good condition with little to no debris or dust. Mr. Bevard indicated that the plant has remained operational through the mild winter and therefore

stockpiles of raw and finished material were large. The use is water intensive and water is withdrawn from settling pond 4 through the use of a pump on a barge. Well water is utilized during dry and drought times if surface water supplies are inadequate. The well is located along the edge of settling pond 4. Currently raw materials are being trucked through an internal haul road from the Robin Dale Surface Mine (SE 4669). Soon, materials will be available from Aggregate Industries Gaslight II site (SE 4647) across McKendree Road and will be transported by conveyor over McKendree Road to the 684-acre Gaslight I site (SE 4402 and SE 4651) where they will be trucked via the internal site road to the raw materials stockpile area.

The Sand and Gravel Wet-Processing plant operates from south to north and includes a control tower, multiple conveyors including a radial stacker conveyor, screening equipment, two rock crushers, a sand classifier and sand screw, two log washers, a fines recovery/sediment tank, and a filtration and piping system that returns water to the settling pond system for reuse. The first part of the process is the two, 8-foot by 20-foot screen decks, which separate the fine material (sand) from the coarse material (gravel). The fine material is directed to the back portion of the plant on the north side to the sand tank; the gravel is directed to the log washers for washing prior to additional screening before being conveyed to the respective gravel stockpiles. The sand screws dewater the sand prior to conveyance to the product stock piles. Wash fines are collected in the fines recovery/sediment tank and transported by mud trucks to drying beds on Gaslight I. The clean wash water recovered from the fines recovery system is delivered back into the closed loop system to settling pond 2. All other effluent water from the washing process is directed by dedicated piping and channels to settling pond 1 for proper sedimentation.

While on site, the processing plant was operational, trucks were observed going back and forth from the Wash Plant to the Robin Dale Surface Mine, the mud truck was active on site, and trucks were observed queuing for finished materials and driving over the scales. Truck traffic entering and exiting the site were observed maintaining the 15 miles per hour speed limit. (Exhibit 15)

Zoning History

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

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

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

Master Plan/Sectional Map Amendment

(5) The 2014 Plan Prince George's 2035 Approved General Plan (Plan Prince George's 2035) classifies the subject property in a Rural and Agricultural Area. Surface Mining and related activity is an interim use of land that is not specifically addressed by goals and policies of the General Plan.

(6) In the 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment, future land use for the subject property is Rural, which is described in the Plan as agricultural land, forest, and very low density residential. The County's intent is for these areas to remain rural and to conserve these areas' natural resources, primarily forest and forest resources, for future generations. New residential development is permitted at a maximum density of one dwelling unit per five acres.

(7) The Subregion 5 Sectional Map Amendment proposed the reclassification of Parcel 14 from the R-A Zone to the O-S (Open Space) Zone, and the reclassification of Parcel 41 from the R-E Zone to the O-S Zone. Those two rezonings are the subject of ongoing litigation; the County Zoning Map still indicates the R-A and R-E Zones.

(8) The October 2002 General Plan placed the site within the Rural Tier. The Growth Policy Map in Plan Prince George's 2035 placed the property in the Rural and Agricultural Areas category, and the Generalized Future Land Use Map designated it for Rural and Agricultural land use and noted it as being outside of the Growth Boundary. The subject property is within a Priority Preservation Area.

Neighborhood and Surrounding Uses

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

North - Accokeek Road

East - McKendree Road and Crain Highway (US 301)

South - Mattawoman Creek (Prince George's/Charles County Line)

West - Gardner Road

(10) The neighborhood is rural in character and comprised of undeveloped land, agricultural fields, wooded parcels, and low-to medium-density residential development. There are active Sand and Gravel Mining uses to the east (Gaslight II, SE 4647) and south (Robin Dale Surface Mining, SE 4669) of the subject property. The Gardner property's Surface Mining operation (SE 4218) to the south of the subject property is under reclamation. Also to the south of the subject property, the Application for Surface Mining on the Queens Property (SE 4700) was withdrawn by the Applicant in 2016.

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

- North -** Across Accokeek Road is undeveloped land and the historic McKendree Church cemetery in the R-A Zone.
- East -** Undeveloped land, agricultural fields, wooded parcels, scattered single-family detached homes, and an active Surface Mine (Millville Quarry, SE 4647) in the R-R (Rural Residential) Zone. Towards US 301 there are several residential subdivisions containing single family detached and attached units in the R-M (Residential Medium Development) Zone.
- South -** Undeveloped land, wooded parcels, scattered single-family detached homes, and an active Surface Mine (Robin Dale, SE 4669) in the R-A Zone.
- West -** Undeveloped land, single-family homes and agricultural uses in the R-A Zone.

Applicant's Request

(12) The proposed use for SE 4790 is the extension of the validity period of an existing Sand and Gravel Wet-Processing facility, previously approved under SE 4403, for additional twenty years. The existing facility processes raw excavated material from the contiguous Robin Dale Surface Mine, and, if approved, will continue to process the Robin Dale material until that site's exhaustion. The facility will also process raw material excavated from the Gaslight II site, located on the east side of McKendree Road. The Applicant also owns other contiguous land to the west for which an Application for approval of a Surface Mine could be submitted in the future.

Raw materials from the Robin Dale site are trucked to the existing Wash Plant over internal haul roads; material from Gaslight II will be transported to the existing Wash Plant by a conveyor system which is currently under construction. The internal haul roads and conveyors serving these adjacent facilities mean that raw material is not conveyed over public roads; only the delivery of the finished, washed sand and gravel generates truck trips at this facility.

LAW APPLICABLE

(1) A Special Exception for a Sand and Gravel Wet-Processing facility in the R-A and R-E Zones is permitted pursuant to §27-441(b)(7) in accordance with §§27-405, 27-445.02 and 27-625 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of §27-317.

(2) §27-317(a) states:

- (a) A Special Exception may be approved if:
- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood;
 - (6) The proposed site plan is in conformance with an approved Tree Conservation Plan;
- and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(3) §27-405 requires:

(1) The subject property shall contain at least fifty (50) contiguous acres. This minimum acreage requirement may be waived by the District Council, provided the property has direct vehicular access to an existing four (4) lane highway.

(2) Initially, the Special Exception shall be valid for twenty (20) years, unless the District Council grants some lesser time period. Extensions of specific periods may be granted if a new Special Exception Application is filed and no substantial adverse impact is found in the continuation of the use. When the subject property is in a Residential Zone, extensions of time may be granted only where the area surrounding the property is not substantially developed with incompatible uses;

(3) Fixed installations that involve washing, screening, classifying, and crushing facilities, and parking and storage areas for trucks and heavy equipment, shall be located at least four hundred (400) feet from all boundary lines of the subject property; fixed installations that involve automobile parking, and settling ponds shall be located at least two hundred (200) feet from all boundary lines of the subject property; and nonstructural installations that involve stockpiles of natural material shall be located at least three hundred (300) feet from all boundary lines of the subject property. The District Council may waive the three hundred (300) foot setback for stockpiles of natural material when it determines that adequate screening and buffering are being provided.

(4) The site plan and information accompanying the Application for Special Exception shall be reproducible, or twelve (12) copies shall be submitted. In addition to the requirements of Section 27-296(c), the site plan shall show:

- (A) The location of all washing, screening, classifying, and crushing facilities;
- (B) The location of all natural material stockpiles;
- (C) The internal traffic circulation system;
- (D) The parking and storage areas for all vehicles and equipment;
- (E) The settling ponds and water bodies;
- (F) The source of water to be used in the operation; and

(G) The identification of the trucks and heavy equipment to be used in the plant operation.

(5) All Applications for Special Exception shall be accompanied by the following:

- (A) A stormwater concept plan approved pursuant to Section 4-322 of this Code;
- (B) A preliminary noise assessment;
- (C) A horizontal profile illustrating all structures and stockpiles; and
- (D) A grading plan that illustrates existing and proposed topography.

(6) At least thirty (30) 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 with the original Application, and 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 other street (to be used) that has a minimum paved width of twenty-four (24) feet for the predominant length of the street.

(7) Driveways for ingress and egress shall be identified on the site plan, and shall be located so as to not endanger pedestrians or create traffic hazards. The Applicant shall identify the dust-control measures to be used on the driveways and the interior traffic circulation system. Any ingress or egress driveway shall have a minimum width of twenty-two (22) feet, 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.

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

(c) All information required as part of the Special Exception Application shall be referred to the Prince George's County Department of Public Works and Transportation, Prince George's County Soil Conservation District, Washington Suburban Sanitary Commission, Prince George's County Department of Permitting, Inspections, and Enforcement, Maryland State Highway Administration, and Maryland State Water Resources Administration for comment. These agencies shall be given forty-five (45) days to reply. A copy of the same information shall also be submitted to the Sand and Gravel Advisory Committee.

(d) Wash Plants, including ponds, spoil sites, and equipment, are prohibited within the Buffer, as defined in the Conservation Manual, in any of the Chesapeake Bay Critical Area Overlay Zones.

(e) In reviewing the Application for compliance with the required findings set forth in Sections 27-317(a)(4) and 27-317(a)(5), the District Council shall consider the inventory required in Section 27-405(a)(8).

(4) §27-445.02 additionally requires:

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

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

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

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

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

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

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

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

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

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

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

(4) An area containing highly erodible soils.

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

(a) **Area.**

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

(b) **Location.**

(1) All signs shall be conspicuous and legible.

(c) **Quantity.**

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

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

(d) **Height.**

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

(e) **Contents.**

(1) Each sign shall contain the following information:

(A) Identification of the use as a surface mining or sand and gravel wet-processing operation;

(B) Size of the property (in acres);

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

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

- (E) Instructions for obtaining additional information about the operation.
- (f) **Applicability.**

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

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

Burden of Proof

(7) The burden of proof in any zoning case shall be the Applicants. (§27-142(a)). Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance of Prince George's County. (§27-107.01(a)(26))

Burden of Production and Persuasion

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

Standard of Proof

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

Credibility of Evidence

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

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

Adverse Effects

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

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

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

Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

General Requirements

(1) §27-317(a)(1) requires that the proposed Use and Site Plan be in harmony with the general purposes of the Zoning Ordinance, §27-102(a), and the specific purposes of the R-A Zone, §27-426(a), and the specific purposes of the R-E Zone, §27-427(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 extension of the validity of the existing Wash Plant at the subject site will promote the health and safety of the present and future inhabitants of the County by virtue of its location in the midst of a surrounding 684.5-acre site, which affords substantive buffers to surrounding properties and land uses. Other features of the Wash Plant and its operation, will cumulatively combine to provide substantive protections, including: the long paved length of its access driveway; the provision of accel-decel lanes and a left-turn bypass lane; institution of on-site speed limits and travel restrictions from all surrounding public roads except Accokeek Road towards Branch Avenue; the supply of the Wash Plant's raw materials via conveyor or internal haul roads; and conformance to and implementation of an approved Tree Conservation Plan, a Sediment and Erosion Control Plan, and a Stormwater Concept Plan.

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

The relevant Plans which apply to the subject property are the 2014 General Plan, the 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment, and a number of Functional Master Plans, including the Green Infrastructure Plan, the Priority Preservation Area Functional Master Plan, the County Master Plan of Transportation, the Public Safety Facilities Master Plan, the Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

General Plan

The General Plan classified the subject site in its Growth Policy Map¹ in the Rural and Agricultural Areas category, and the Generalized Future Land Use Map² designated it for Rural and

¹ M-NCP&PC, *Plan Prince George's 2035 – Approved General Plan* (May, 2014), p. 107.

² *General Plan*, p. 101.

Agricultural land use.

“Rural and Agricultural Areas” are described by the General Plan as “areas with significant natural and agricultural resources that are best suited for low-density residential development on well and septic, agricultural activity, and forest preservation,”³ and recommends that, “Rural Areas remain low-density residential or support park and open space land uses and focuses new investment on maintaining existing infrastructure and stabilizing small-scale neighborhood-orient commercial activities that support the areas’ rural lifestyle and character....”⁴

“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 It is noted that the Generalized Future Land Use Map generally replicates the recommendations of the Master Plan or Sector Plan in force at the time of the approval of the General Plan; the note under the Generalized Future Land Use Map directs the reader that, “by definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns. To identify the future land use designation for a specific property, please refer to the property’s relevant approved sector or master plan.”⁶

Policy 9 in the General Plan’s Land Use element is to, “evaluate the impacts of extractive industries, such as sand and gravel mining on resource lands, rural character, economic development, and post-reclamation requirements in the Rural and Agricultural Areas. Map remaining sand and gravel natural resources to locate potential future sand and gravel operations, update and revise development standards, and identify post-reclamation land uses, including residential development, agriculture and forestry. Propose comprehensive legislation to revise county codes and identify recommendations for the Zoning Ordinance update.”⁷ This policy is only tangentially related to this Special Exception, as the subject Application is for a use which supports extractive uses, but is not itself one. It is also noted that the extension of the existing facility is proposed principally to support the production of surface mines which have already been approved.

Master Plan

One of the three Goals of the “Land Use and Development Pattern” element of the Master Plan for the Rural Tier is to, “preserve access to mineral resources where sufficient and economically viable mining potential exists.”⁸ While the subject Application is not for a mine, it is for a use which is inextricably associated with mines; as such, commentary on mines is also at least generally applicable to necessary associated sand and gravel wet-processing.

³ Ibid., p. 106.

⁴ Ibid., p. 20.

⁵ Ibid., p. 100.

⁶ Ibid., p. 101.

⁷ Ibid., p. 117.

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

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

It also contains a specific discussion of Sand and Gravel Resources, noting that, “This resource provides an economic base for jobs, value-added services, and economic benefits.”¹⁰ The discussion continues to direct that, “Identifying the location of remaining sand and gravel deposits and planning for the land to transition from a temporary mining use to its ultimate land use should be part of a strategic plan for mineral resources. Regulatory tools, such as an overlay zoning district, would help preserve access to the resource and prevent the preemption of sand and gravel mining by other uses until the resource has been extracted.”¹¹

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

- Continue to review proposed mining projects for impacts on the integrity of the master plan, using the following guidelines:
 - Mining operations should minimize impacts on scenic, historic, cultural, or recreational assets.
 - Post-extraction uses should support the plan’s preservation goals with mined land reclaimed for agricultural and forest uses.
 - Additional considerations for post-extraction uses should be community uses such as parks and trails.
- Educate the community on the special exception review process for mining operations.
- Increase monitoring and enforcement of the special exception conditions of approval for ongoing mining operations.

⁹ Ibid., p. 58.

¹⁰ Ibid.

¹¹ Ibid.

- Evaluate the utilization of a mineral overlay zoning district that corresponds to the unexploited sand and gravel deposits, avoiding already developed lands, to protect mineral resources. The boundaries of the district could be limited to the PPA. Within the overlay district, require the following:
 - Surveys of mineral resources prior to development for other uses.
 - Offering access to mineral resources, if present, prior to development.
 - Mitigation requirements for development projects that proceed without exploiting the resource. Mitigation could consist of placing a protective easement on other land in need of protection, or payment of a fee-in-lieu to support the County's land preservation programs.
 - Increase setback and buffering requirements on potential mining sites adjacent to residential properties to minimize the potential effects of noise and dust from future mining.
 - Post-mining reclamation requirements that match preservation, community recreation, and environmental needs. Within the PPA, these should encourage reclamation for agriculture or woodland.¹²

Because of the subject site's isolation from surrounding properties, it actively minimizes impacts on scenic and historic assets, and has no impact on cultural or recreational assets.

The "Economic Development" element of the Master Plan also contains an extended discussion of Sand and Gravel Mining, its importance to the region's economy, and the need to protect access to sand and gravel as follows:

Sand and gravel is an essential element of new construction in the Washington, D.C., region. Major sand and gravel deposits associated with the Brandywine geological formation are located in Subregion 5. There is significant potential for future sand and gravel mining due to the existence of large unmined reserves.

Goal:

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

¹² Ibid., p. 88.

As of August 2008, Subregion 5 supported seven active mines comprising approximately 1,580 acres, and there were approximately 2,130 acres of closed and reclaimed mines. There is a sand and gravel washing and processing plant¹³ on Accokeek Road in Brandywine. Additionally, the mining industry may support other independent businesses in the region, predominantly in the trucking industry, thus generating potential additional economic spin-offs in the local economy, though the specific amount of positive impact to the County has not been quantified in this plan.

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

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

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

Policies:

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

¹³ This sentence references the subject Sand and Gravel Wet-Processing facility.

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

Strategies:

- Explore the feasibility of developing a mineral overlay zone to protect mineral resources. Issues to be evaluated include:
 - Real estate notices
 - Dispute resolutions
- Expand easement language in programs such as those run by the Maryland Agricultural Land Preservation Foundation (MALPF) to integrate sand and gravel operations within easement contracts.
- Integrate the sand and gravel industry within traditional economic development programming such as tax credits and abatements, workforce assistance, and assistance with state and federal small business financing.
- Conduct community outreach to improve understanding of the sand and gravel industry and to improve industry integration within the rural communities.
- Ensure that sand and gravel mine Applications address all impacts on surrounding communities, including requiring Applicants to mitigate on and off-site transportation impacts from mining activities and potentially limiting the daily hours of mining activities and duration of sand and gravel approvals to mitigate the nuisance to nearby communities.¹⁴

The subject site is located in the Rural Tier, and as such is in keeping with the Goal of the Economic Development element related to Surface Mining. The extended buffers provided by the project's location substantively mitigate the impacts of noise and dust, and the use of the conveyor and the internal haul roads to provide raw materials, together with the trip and route restrictions already in place substantively mitigate traffic impacts. By virtue of these features, the subject Wash Plant is in harmony with the Master Plan.

Other Applicable Functional Master Plans

While the Special Exception area does contain Regulated Areas and Evaluation Areas of the County's Green Infrastructure Network, no disturbance to them is proposed by this requested extension to the existing Wash Plant's validity period. As such, the subject Application conforms to the Green Infrastructure Plan.

¹⁴Ibid., pp. 153-154.

The Priority Preservation Area Functional Master Plan is intended to establish policies and strategies which will help to implement the goal of the 2002 General Plan of preserving “large amounts of land for woodland, wildlife habitat, recreation and agriculture pursuits, and preservation of the rural character and vistas that now exist.”¹⁵ Presence of mineral resources is listed as a supporting criterion for determination of areas to be included as Priority Preservation Areas.¹⁶

The Priority Preservation Area Functional Master Plan also contains the following Policy: “Identify valuable mineral resources, seek methods to protect and manage access, and reclaim these areas where possible for future farm or forest enterprises, or agricultural support services.”¹⁷ That policy is supported by two strategies related to reclamation of mined land, and one recommending that surveys be conducted to determine where mineral resources exist in the Priority Preservation Area.

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

With regard to the Historic Sites and Districts Plan, a single historic resource, the McKendree Church cemetery, is located in the vicinity of the entrance to subject site; additionally, Accokeek Road is classified as a designated Historic Road. Because no modification to the existing entrance is proposed, however, the approval of the subject Application will have no adverse impact on Accokeek Road’s historic character, the cemetery, or the contents of this Functional Master Plan.

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

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

The Countywide Master Plan of Transportation classifies this segment of Accokeek Road as an arterial roadway, with an ultimate right-of-way of 120’ (“minimum”). The Plan’s intent is for the road to be from four to six lanes in a parkway configuration; per the County’s GIS site, the width of right-of-way across the existing entrance driveway is proposed to vary between 185’ to 220’ as the parkway transitions back to a conventional 120’-wide section. No structures are proposed in this ultimate right-of-way area, and as such, the subject Application is in conformance with this functional Master Plan.

¹⁵ M-NCP&PC, *Adopted and Approved Priority Preservation Area Functional Master Plan* (July, 2012), p. 1.

¹⁶ *Ibid.*, p. 16.

¹⁷ *Ibid.*, p. 4.

In conclusion, because the subject Sand and Gravel Wet-Processing facility is not in conflict with the General Plan, the Sector 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 proposes the extension of the validity period of an existing Wash Plant, the vehicle trips associated with the use are already on the roads. As such, approval of the subject Application will not adversely affect the adequacy of existing transportation facilities, and thus would be in harmony with this Purpose of promoting the conservation of a community which will be developed with adequate public facilities.

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

Approval of the subject Application would recognize the needs of the County's agriculture, industry and businesses by extending the validity of an existing Wash Plant which is compatible with its surrounding land uses, supports those neighboring uses that, upon their completion, will allow for agricultural preservation, and will in the interim continue to employ workers and supply necessary building materials for the development of the County. As such, approval of the subject Application would be in harmony with this Purpose of the Ordinance.

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

The approval of the subject extension of the validity of the existing Wash Plant will be in harmony with this Purpose as the site has been developed in conformance with the various regulations in the Zoning Ordinance and the Landscape Manual to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These principles include the provision of sufficient distance between the proposed use and neighboring uses, landscaped buffers, and conformance with height limitations in order to allow for access to light and air. It's location in the midst of a 684.5-acre tract means that substantive buffers exist between it and any abutting land use to provide abundant privacy and access to light and air.

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

The extension of validity of the subject Wash Plant would be in harmony with this Purpose as it has been constructed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the Tables of Uses for the various zones as laid out in the Ordinance, and in conformance with the provisions of the Landscape Manual which provide for perimeter landscaping.

More specifically to this site, its location in the midst of a 684.5-acre tract that includes substantial areas of preserved woodlands means that substantive buffers exist between it and any adjoining landowners which protect them from adverse impacts of noise and visual impact. Distance and the nature of the machinery protect adjoining landowners from the adverse impacts of dust. The long access drive protects adjoining landowners from adverse impacts of debris on the surrounding public roads. The existence of internal haul roads and the conveyor system protect adjoining landowners from adverse impacts of traffic associated with the supply of raw materials to the plant.

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

The subject Wash Plant is in harmony with this Purpose as it has been developed in conformance with regulations established in the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, Stormwater Management regulations, the Fire Prevention Code, the Building Code, and the Tables of 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 industrial in nature, this Purpose is not directly applicable to this Application, however, the location of the subject site in the midst of a large surrounding site affords substantive buffers to preserve the ability of the surrounding area to provide sound, sanitary housing in a healthy living environment.

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

The extension of validity of the subject Wash Plant would be in harmony with this Purpose because it would be able to continue its contribution to the tax base of the County directly, through the employment provided to its workers, and by enabling it to continue to supply necessary building materials for the physical creation of economic development activities throughout the County.

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

The subject Wash Plant is in harmony with this Purpose as it has been constructed in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, height limits, and setbacks. The subject property's location in the midst of a 684.5-acre tract that includes substantial areas of preserved woodlands means that substantive buffers exist between it and any adjoining landowners amply prevents the overcrowding of land.

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

The approval of the subject Wash Plant validity extension would be in harmony with this Purpose. The ingress-egress driveway is located in an area with ample sight distance along Accokeek Road. The entrance to this driveway has been improved with acceleration-deceleration lanes, and a left-turn by pass lane. The vehicle trips associated with the use are already on the roads. It will be developed in accordance with the regulations established in the Zoning Ordinance (and other County Ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking.

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose. The extension of subject Wash Plant would promote the economic and social stability of the County by continuing to contribute to the tax base, and by continuing to provide essential building materials to the surrounding community.

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

As the subject Wash Plant already exists, approval of the subject Application will have no additional impact to the natural features in the County. Because of the extensive buffers surrounding the Special Exception area, including those protecting stream valleys which run through the site, its noise impact is very slight, and the use will be in compliance with the County's Woodland Conservation policies by virtue of its conformance to an approved Tree Conservation Plan. No steep slopes or scenic vistas will be or have been affected. By conformance to these principles and regulations, the approval of this Application would be in harmony with this Purpose.

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

The subject Wash Plant supports surrounding interim extractive uses which, upon their completion and reclamation of the mined land, will provide open space through forest preservation, agricultural use or other uses which will protect the scenic beauty of the County. The conformance of the existing Wash Plant to its implemented Stormwater Concept Plan protects the natural features at the site through stormwater management, preservation of wooded stream buffers, and by conformance to an approved Tree Conservation Plan. As such, extension of the existing Wash

Plant's validity period would be in harmony with this Purpose of the Zoning Ordinance

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

Finally, the subject Wash Plant supports surrounding interim extractive uses which, upon their completion and reclamation of the mined land, will provide open space that can protect and conserve the agricultural industry. §27-317(a)(1)

(3) 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;*

While the subject Application proposes the renewal of a use which supports nearby interim, extractive uses, it is not in conflict with this Purpose. After the exhaustion of the raw sand and gravel deposits in the area, the land occupied by the subject Wash Plant will be available for potential large-lot residential development, for agriculture, or for other uses such as forestry, and other open space-preserving uses that complement large-lot single-family development and agriculture.

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

The subject Application is located within the limits of a larger site that was approved for Surface Mining. Tree Conservation Plans were approved for the Surface Mine and the existing Special Exception for this use that specified the preservation of a number of forested areas. After the exhaustion of the surrounding raw sand and gravel deposits in the area, the land occupied by the subject Wash Plant will also be available for uses such as agriculture, forestry, and other open space-preserving uses.

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

The approval of the existing Wash Plant includes requirements for conformance to an approved Sediment and Erosion Control Plan, and its stormwater approval contained requirements for 100-year stormwater management to prevent stream valley flooding. §27-317(a)(1)

(4) The instant Application is also in harmony with the specific Purposes of the R-E Zone, §27-427(a), as follows:

(A) *To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;*

(B) *To facilitate the planning of one-family residential developments with large lots and dwellings of various sizes and styles;*

While the subject Application proposes the renewal of a use which supports nearby interim, extractive uses, it is not in conflict with this Purpose. After the exhaustion of the raw sand and gravel deposits in the area, the land occupied by the subject Wash Plant will be available for potential residential development, or for other uses such as agriculture, forestry, and other open space-preserving uses that complement single-family development.

(C) To encourage the preservation of trees and open spaces in order to create an estate-like atmosphere; and

The subject Application is located within the limits of a larger site that was approved for Surface Mining. As a part of that approval, a Tree Conservation Plan was approved that specified the preservation of a number of forested areas. Furthermore, that Surface Mining operation is now complete, and the remainder of the site is now undergoing the last phases of its reclamation, which includes reforestation. After the exhaustion of the surrounding raw sand and gravel deposits in the area, the land occupied by the subject Wash Plant will also be available for potential residential development, or for other uses such as agriculture, forestry, and other open space-preserving uses that create an estate-like atmosphere.

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

The approval of the existing Wash Plant includes requirements for conformance to an approved Sediment and Erosion Control Plan, and its stormwater approval contained requirements for 100-year stormwater management to prevent stream valley flooding. §27-317(a)(1)

(5) With the recommended conditions of approval, the proposed use will be in conformance with all the applicable requirements and regulations of the Zoning Ordinance. The Applicant has submitted a Revised Site Plan dated June 2, 2017 as well as other documentation that addresses issues raised by the Urban Design Section, Transportation Planning Section, Environmental Section, Prince George's County Soil Conservation District, the Prince George's County Department of Permitting, Inspections and Enforcement, and the Prince George's County Health Department. §27-317(a)(2)

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

- The County balances the need for the extraction of sand and gravel resources, and related activities, with the potential negative impact and nuisance to nearby properties and the environment, including restricting sand and gravel mining to the Rural Tier.
- Continue to review proposed mining projects for impacts on the integrity of the Master Plan, using the following guidelines:
 - Mining operations should minimize impacts on scenic, historic, cultural, or

recreational assets.

- Post-extraction uses should support the plan's preservation goals with mined land reclaimed for agricultural and forest uses.
- Additional considerations for post-extraction uses should be community uses such as parks and trails.
- Ensure that sand and gravel mine Applications address all impacts on surrounding communities, including requiring Applicants to mitigate on and off-site transportation impacts from mining activities and potentially limiting the daily hours of mining activities and duration of sand and gravel approvals to mitigate the nuisance to nearby communities.

Community Planning Division staff, in a memorandum dated February 23, 2017 concur with the assessment of the Applicant that this proposed extension of validity period for the Sand and Gravel Wet-Processing use prior to permanent development conforms to goals, policies and strategies recommended in the 2013 Subregion 5 Approved Master Plan and Sectional Map Amendment Chapters on Land Use, Environment, and Economic Development. §27-317(a)(3)

(7) The conformance of the instant Application with the principles laid out in the Purposes of the Zoning Ordinance, its compliance with the provisions for environmental protection, and its long existence at the subject site represent a high level of protection against adverse effects to the public health, safety and welfare. The characteristics of the site which preserve and protect the use and development of the adjacent properties and the general neighborhood, provide substantive protection to the health, safety and welfare of neighboring residents and workers. §27-317(a)(4)

(8) The long existence of the existing Wash Plant indicates that its character has been and continues to be compatible with the surrounding uses. The recent and successful development of the suburban Timber Village development occurred after the construction of the Wash Plant, illustrating the success of its isolation from surrounding uses. Its location in the midst of a 684.5-acre site, more than 3,650 feet from the nearest public road, is ample protection for adjacent properties, particularly given that most of the surrounding properties are either owned by the Applicant, or consist of currently-operating or exhausted and reclaimed Surface Mines. Finally, the fact that the Wash Plant is wholly provided with its raw material (and will continue to be) via internal haul roads or a conveyor system and this does not generate truck trips by the supply of unprocessed material is an additional protection for adjacent properties or the general neighborhood. §27-317(a)(5)

(9) This site is subject to the provisions of the Woodland and Wildlife Habitat Conservation Ordinance because the site has an approved Tree Conservation Plan. The proposed Application will not impact the previously approved Type II Tree Conservation Plan (TCPII-009-01-01). The currently approved Plan is in conformance with the proposed Application. (Exhibit 12) §27-317(a)(6)

(10) No further impact to regulated environmental features is proposed beyond the original impacts proposed for the issuance of SE 4402 and SE 4403. §27-317(a)(7)

Specific Requirements

(11) The Special Exception area is 82.84 acres and it is located within a 684.5 acre site approved for Surface Mining. §27-405(a)(1)

(12) The subject Application is for an extension of twenty years. The surrounding area is overwhelmingly rural in character, and is principally occupied by undeveloped woods and present or former Surface Mines. Because of the extensive buffers provided by virtue of the Wash Plant's location, because the requested continuation of the use would keep the relevant conditions which protect the neighborhood, and because the subject Wash Plant will continue to receive its raw material by internal haul roads or a conveyor system which keeps additional truck trips off of the public road, no substantial adverse impact will be generated by the continuation of the subject use. §27-405(a)(2)

(13) The Special Exception Site Plan Sheet 4 illustrates the required setbacks for the washing, screening, classifying, and crushing facilities, parking and storage areas for trucks and heavy equipment, office and scale house operations, settling ponds, and stockpile areas. (Exhibit 24) §27-405(a)(3)

(14) The Special Exception Site Plan Sheet 4 shows the location of all washing, screening, classifying and crushing facilities. (Exhibit 24) §27-405(a)(4)(A)

(15) Sheet 4 of the Special Exception Plan shows the location of all raw and finished material stockpiles. While the exact location of these stockpiles may change, there is a note on Sheet 4 of the Plan indicating that stockpiles will be contained in envelopes shown on the Plan. (Exhibit 24) §27-405(a)(4)(B)

(16) Arrows are provided on Sheet 4 of the Special Exception Plan to indicate the internal circulation pattern. The identified parking areas meet the setback requirement of 200 feet from the Special Exception Boundary. (Exhibit 24) §27-405(a)(4)(C)

(17) Employee parking is provided on the south side of the office. Heavy equipment and additional employee parking is provided off-site on the larger 684.5-acre site owned by Aggregate Industries. That site is currently under reclamation. The location of the off-site parking improves site safety in that it separates employee vehicles and pedestrians from the dump truck loading and scales area, and the Applicant has provided a marked pedestrian path from the off-site parking to the office. The entrance to the pedestrian path from the off-site parking area is physically delineated by a small berm, which serves to route pedestrians on a single path. The result is that dump truck operators picking up product and heavy equipment operators know exactly where to expect pedestrians. This

improves site safety. (Exhibit 24) §27-405(a)(4)(D)

(18) Sheets 3 and 4 of the Special Exception Plan show the four settling ponds, which are all shown to meet the 200-foot setback from the Special Exception Boundary. A series of ponds are used to settle the sediment out of the wash water so water can be reused. A barge and pump are contained in settling pond 4 to pump clean surface water back to the Wash Plant. (Exhibit 24) §27-405(a)(4)(E)

(19) The Applicant has maintained a surface water appropriation permit (PG2002S014(01)) and a groundwater appropriation permit (PG2002G014(01)) from the Maryland Department of Environment. The current permits expired February 1, 2017, but the Applicant has submitted renewal permits to MDE for processing.

The main source of water used in the Wash Plant is recycled surface water. The Applicant maintains a series of settling ponds on the site to recycle the Wash Plant water back to the plant. The surface water appropriation permit allows for a daily average use of 2,900,000 gallons on a yearly basis with a maximum daily withdrawal of 3,700,000 gallons. The Applicant maintains a barge with a pump in settling pond 4 for the surface appropriation. The Applicant has identified the general barge and pump location on the Special Exception Plan.

The well location is shown on Sheet 4 of the Special Exception Plan. The groundwater appropriations permit allows for water withdrawal from the Upper Patapsco aquifer with a daily average withdrawal of 58,000 gallons and a daily average of 130,000 gallons for the amount of maximum use. According to the Applicant, the groundwater source is used as “make-up” water during dry or drought conditions when the surface water source may be inadequate. (Exhibit 24) §27-405(a)(4)(F)

(20) The Special Exception Plan, Sheet 4, provides for a list of equipment used on the subject property. (Exhibit 24) §27-405(a)(4)(G)

(21) Stormwater Concept Plan #8330637-2000 was submitted with the original Application for SE 4403. While that Plan has itself since expired, the contents of that Plan were implemented in a timely manner by construction pursuant to the approved technical plans connected with that approval. (Exhibit 5) Since the instant Application is only a renewal of the validity period of the existing Wash Plant and does not propose any physical extension or alteration, no new Stormwater Concept Plan (now known as a “Site Development Concept Plan”) is required per DPIE (email from DPIE dated February 3, 2017) ((Exhibit 9) and updated (Exhibit 35)). §27-405(a)(5)(A)

(22) A preliminary noise assessment was prepared by Staiano Engineering. The primary element of the Special Exception Application that allows the proposal to achieve State and County noise abatement standards involves the use of a combination of vegetated buffer yards and the construction of sound abating berms. As such, the noise assessments state that the sound levels at the receptor locations are expected to be 39-47 dBA and that these noise exposures are well below both the COMAR 65-dBA daytime limit and the 55dBA nighttime limit. Total site sounds levels are

expected to be within all applicable Maryland State noise limits as well as within widely accepted criteria for land use compatibility with noise exposure. §27-405(a)(5)(B)

(23) Horizontal profiles showing all structures and stockpiles have been provided on the Special Exception Site Plan, Sheets 5-7. (Exhibit 24) §27-405(a)(5)(C)

(24) The Special Exception Site Plan illustrates the now-existing topography, which reflects the accomplishment of the grading proposed under SE 4403; no modifications are proposed to the topography now existing. (Exhibit 24) §27-405(a)(5)(D)

(25) The Traffic Study (Exhibit 10) was submitted in September, 2016 and reviewed by the Transportation Planning Section. Pages 18-22 of the Technical Staff Report (Exhibit 15) detailed the Transportation Section's Analysis and concluded that the instant Application meets the transportation requirements of the Zoning Ordinance. (Exhibit 24) §27-405(a)(6)

(26) The existing site access from Accokeek Road is located approximately 660 feet west of Mckendree Road. The sight distance at the entrance point is over 1,000 feet to the east and the west, and is in accordance with established highway safety guidelines. The entrance has both an acceleration and deceleration lane, which was a requirement of SE 4402 and SE 4403. The entrance from Accokeek Road has been paved to a width of 24 feet, and it has a paved length of approximately 3,650 feet. The Applicant uses sweeper trucks on an as needed basis to keep the entrance on Accokeek Road free of dust and debris. A water truck is also maintained on site to keep the asphalt access road clean and to control dust at the plant site. §27-405(a)(7)

(27) The Environmental Planning Section in the Countywide Planning Division has provided a matrix of the necessary information related to Surface Mining, Sand and Gravel Wet-Processing facilities, Sanitary Landfills, and Rubble Fills. The matrix is located at Bates Stamp pages 198-203 of the Technical Staff Report. (Exhibit 15) §27-405(a)(8) This inventory includes only three active Wash Plants operating in the County, including the existing Wash Plant on the subject property. §27-405(e)

Additional Use Requirements

(28) The current operation of the Wash Plant meets all applicable safety, Stormwater Management, and Sediment and Erosion Control regulations of the County, State, and Federal governments. The use has not introduced hazardous or noxious materials, impounded water above existing elevation, or included structures that represent a special hazard for fire and flood or would pose a catastrophic threat to adjacent properties or inhabitants of the County. Correspondence between the Technical Staff and agencies of the State and County indicate that the site is in compliance with its active permits. (Exhibit 15) §27-445.02(c)(1)

(29) The internal paved site road has a posted speed limit of 15 miles per hour. The unpaved access drive driveway within the main body of the Wash Plant has signage limiting speed to 5 miles per

hour. Trucks are prohibited from turning left on MD 373 out of the site and they are prohibited from using McKendree Road. The Technical Staff recommended adding a condition requiring the installation of signs on the internal site road within 100 to 200 feet of the site exit that indicates left-turns from the site are prohibited for vehicles over three-quarter tons, vehicles over three-quarter tons are prohibited from using McKendree Road, and posting the speed limit on Accokeek Road. §27-445.02(c)(2)

(30) The long paved length of the access road (approximately 3,650 feet) prevents sand and gravel which may lodge in truck wheels from being dragged out onto public streets. Only the southernmost approximate 300 feet shows any tracking of sand, gravel or fines onto the access road. The northern 3,350 feet of the access road and the entrance area at Accokeek Road are free of any visible deposits of sand, gravel or soil. §27-445.02(c)(3)

(31) The Applicant has a sign at the front of the site on Accokeek Road that meets the requirements of Section 27-625 of the Zoning Ordinance for Surface Mining. The Technical Staff Report recommended that a condition be added to require that the Applicant install a sign for the Sand and Gravel Wet-Processing that meets the requirements of Section 27-625. §27-445.02(c)(4)

(32) The subject property is not located within the Chesapeake Bay Critical Area. §27-445.02(d)

Parking

(33) The Applicant is required to provide two parking spaces for every 1,000 gross square feet of industrial plant use. Based on 2,799 square feet of gross floor area, a total of six parking spaces are required. The Applicant has provided 11 regular parking spaces and 1 van handicapped space for a total of 12 parking spaces on-site, which exceeds the minimum parking required. Additional parking space is provided outside the Special Exception Boundary on the 684.5-acre Gaslight I property.

Landscape Manual

(34) Condition B(10) for approval of SE 4402 and SE 4403 required the Applicant to maintain a 58-foot buffer of existing woodland and a 15-foot-high earthen berm behind the woodland along the site frontage on McKendree Road. Per the February 15, 2017 site visit by the Technical Staff the berm and wooded buffer exist along McKendree Road except where the Gaslight II conveyor bridge crosses McKendree Road into the 684.5-acre Gaslight I site.

Zone Standards

(35) Per the Residential Table of Uses contained in Section 27-441(b) of the Zoning Ordinance, a Sand and Gravel Wet-Processing facility requires a Special Exception and must be in accordance with Section 27-445.02 of the Code. Specific Special Exception Requirements are contained in Section 27-405 and additional Sign requirements are contained in Section 27-625 of the Code. Based on the analysis of information provided by the Applicant and information gathered during the

site visit, and contained in the Technical Staff Report, the Applicant's existing Sand and Gravel Wet-Processing facility is operating in accordance with the requirements of Section 27-445.02 and 27-405 of the Zoning Ordinance. In reference to compliance with Section 27-625 of the Zoning Ordinance, the Applicant has a sign at the front of the site on Accokeek Road that meets the requirements of Section 27-625 of the Zoning Ordinance for Surface Mining, but not for the Sand and Gravel Wet-Processing facility. The Technical Staff recommended a condition be added to require Applicant install a sign for the Sand and Gravel Wet-Processing facility that meets Section 27-625.

Sign Regulations

(36) No new signage is proposed. Any new signage must meet all area, height, and setback requirements. The Applicant has a sign at the front of the site on Accokeek Road that meets the requirements of Section 27-625 of the Zoning Ordinance for Surface Mining. Any new signage will meet the requirements of the Sign Ordinance.

DISPOSITION

SE 4790 is Approved subject to the following Conditions:

1. The hours of operation for the hauling of finished materials from the site shall be 6:00 AM to 5:00 PM Monday through Friday and 7:30 AM to 3:00 PM on Saturday, not to exceed a maximum of 26 Saturdays per calendar year. The hours of operation for the wet processing facility shall be 6:00 AM to 10:00 PM Monday through Friday and 7:00 AM to 3:00 PM on Saturday. Trucks are not permitted to arrive at the site or wait in the vicinity prior to 6:00 Am. In the event of necessity resulting from an Action of God or other catastrophic situation, the Applicant may exceed the above-stated hours, days of operation, and load restriction. All uses shall cease on Sundays and Federal Holidays.
2. The Applicant and the Applicant's heirs, successors and assignees, shall limit the level of mining and/or wet processing activities on the site to a maximum of 560 truck trips per day (280 truckloads).
3. Right turns from MD 373 eastbound into the site or left turns from the site to MD 373 westbound are prohibited for all vehicles over three-quarter tons. Applicant shall install a sign on the interior site road within 100 to 200 feet of the site exist that indicates left turns from the site are prohibited for vehicles over three-quarter tons, indicates vehicles over three-quarter tons are prohibited from using McKendree Road, and posts the speed limit on Accokeek Road.
4. Trucks associated with the use are prohibited from using any part of the McKendree Road.
5. The Special Exception Site Plan shall continue to reflect the location of the existing well and septic system that serve the site.

6. The Applicant shall maintain and comply with active Groundwater and Surface Water Appropriation Permits issued by the Maryland Department of Environment.
7. The water source of the deep well is limited to the Upper Patapsco Formation. In no event shall the source of the Applicant's deep well be the Lower Patapsco, which is the aquifer utilized by residences in the Moyaone/Accoceek Area.
8. If any well (deep or shallow) within a two-mile radius of the subject property becomes contaminated or dries out, and if the owner of the well can prove to the satisfaction of the Maryland Department of the Environment that the contamination or drying out was the direct result of the operation of the subject Sand and Gravel Wet-Processing facility, then the Applicant shall replace the well at its sole expense within one month after the Applicant has been notified of the MDE determination. This Condition shall continue for a period of five years following the closing of the wet processing facility.
9. The Applicant shall maintain the berming and/or screening along the frontage of its property on Accoceek Road.
10. Truck speed on interior haul roads shall be controlled to 15 miles per hour or less.
11. All equipment used on the site, including trucks, shall be fitted with working mufflers at all times.
12. The Applicant shall install signage for the Sand and Gravel Wet-Processing plant meeting the requirements of Section 27-625 of the Zoning Ordinance along the frontage of the property.
13. Documentation of operations and maintenance activities shall be conducted and retained by the Applicant for the life of the sediment basins and wash pond facilities, and are subject to periodic inspection by various regulatory entities with authority over same.
14. All installed practices for erosion and sediment control shall be maintained by the Applicant in accordance with the approved documents of record for the duration of the project.
15. All sediment and erosion control approvals for the Wet Processing facility shall be maintained by the Applicant for the duration of the project in accordance with applicable federal, state, and local regulation.
16. The land shall not be used as a Sanitary Landfill or Rubble Fill as those terms are defined in the Section 27-107.01(205) of the Zoning Ordinance.

The Approved Site Plan is Exhibit 24(a)-(g).