

Supplemental Report to the Board of Appeals
Request for a Special Exception
Surface Mining of More Than 10 Acres
S.E. #1163

SUMMARY OF REQUEST

Mine Site Area: Approximately 138 acres of 212 acre tract

Location of Site: Southwest of LaPlata, on south side of MD Route 6 in Welcome; in the Second Election District; Tax Map 53, Block 10, Parcels 18 and 36

Zoning: Agricultural Conservation (AC)

Proposed Activity: (Use #7.05.110) Surface mining of more than 10 acres

BACKGROUND

The following discussion provides additional information received in the interim of when the May, 2006 report was distributed to the Board, and recommends conditions additional to those in the original report.

SUPPLEMENTARY FINDINGS & ADDITIONAL RECOMMENDED CONDITIONS

The following supplementary findings of fact, and recommended additional conditions addressing individual findings, are offered for consideration by the Board of Appeals. Recommended additional conditions are in *italics*:

1. As State Highway Administration (SHA) noted in their original letter, additional comments would be forthcoming. The second letter was dated May 18, 2006, and includes the following: (1) In the future, SHA would appreciate a report be submitted with the text to explain the derivation of the information provided, and (2) The projected left turn volume at the site access is 22 vehicles during the morning and evening peak hours. It is anticipated that the majority of the traffic would be truck traffic. Therefore, the SHA will require that a left turn lane be constructed along MD6 at the site access. The length of the lane must take into account the required queue storage for a mining truck, not strictly passenger cars.

A left turn lane along MD 6, designed to SHA's requirements to be provided by the applicant.

2. The Maryland Department of the Environment (MDE) provided further information regarding well use or surface water use on the site to water down dust on haul roads. During peak summer months it can be expected that 2 or 3 truckloads carrying 3,000 gallons each would be necessary, or approximately 10,000 gallons per day. A maximum usage of 10,000 gallons per day for 6 days a week, for 9 months per year averages to a usage of 6,000 gallons per day, which MDE considers minimal.

The water used for dust control may be trucked in from off-site or withdrawn from a deep well or surface water (stream) on-site. If water from on-site is to be used, a MDE permit to withdraw from a surface stream or subsurface aquifer is required. Permits from MDE require replacement of any affected, neighboring wells by permittee.

The applicant to provide clarification on water supply to wet down haul roads, and whether a state permit will be necessary.

3. The hours of operation proposed by the applicant, for Saturday is 6:30 a.m. to 3:30 p.m., which is not consistent with the *Zoning Ordinance*, of between 7:00 a.m. and 3:00 p.m.

The hours of operation shall be consistent with the Zoning Ordinance and be between 7:00 a.m. and 3:00 p.m. on Saturday.

4. The proposed plan shows the overburden stockpiled for use in reclaiming the site. However, there is concern the overburden may be transported off-site for use in construction projects. Additionally, it is unclear whether the gravel will be mined from the site and whether the surface groundwater table will be impacted. Both concerns will affect the type of reclamation that occurs. For example, if the site is later subdivided into single family homes, lots with one foot topsoil over a gravelly yard where little vegetation would survive, and/or large ponds with safety issues, may be of concern.

The Maryland Department of the Environment requires mine sites to be reclaimed to meet positive drainage and stabilization, however does not require compaction tests or other measures to ensure the needs of future users, such as home buyers, are met. Future users are subject to "buyer beware" on property previously mined.

Further information, in the form of a cross section of the site, showing existing topography and proposed reclamation for future use of the site, would be useful to the Board to determine the long term impacts and benefits of the proposal to the surrounding community. Depending on the proposed future use, measures (such as pond design to incorporate safety benches, wetlands, and algae minimizing techniques, and substrate reclamation standards) could be taken to ensure the long term benefit of the property to the community.

5. Sediment-runoff is controlled by sediment and erosion control measures, as shown on the submitted site plan. The measures will be subject to detailed design, to be reviewed and approved by the Charles Soil Conservation District, under the authority of the Maryland Department of the Environment (MDE). The operational measures are subject to annual inspections by MDE, and the annual zoning inspection by the Charles County Planning Division.

Because standard sediment and erosion control inspections are limited, and the proposed mine site is located in an environmentally sensitive area, adjacent to a large tributary of Nanjemoy Creek and tidal waters, the Board may consider imposing more regular (such as biweekly or monthly) inspection requirements for sediment and erosion control devices to ensure minimal impacts of sediment when heavy storm events occur. More regular inspections will be feasible with MDE's recent delegation of responsibility for the County's Sediment and Erosion Control inspection program to the Charles County Department of Planning and Growth Management.

6. The May, 2006 staff report to the Board includes recommendation #8, for the applicant to demonstrate compliance with acoustic levels at the property line on six month intervals. However in discussions with the Maryland Department of Environment, it was determined that this method does not take into account that certain pieces of equipment may not be operating at the time of testing. Therefore, the following is suggested:

The acoustic level for each piece of equipment to be used on the site, should be tested at the property lines adjacent to parcels 34, 46, 166, 56, 32 and 158, during the first month of operation, and on a six month basis or annually thereafter. Each piece of equipment (make, model and year), location of acoustic test, location of phase where equipment is located during the test, and the associated decibel level to be included in the reports submitted to the Charles County Clerk to the Board of Appeals.

7. The applicant has not provided information regarding proposed site hydrology, therefore it cannot be determined if the habitat for the State rare Primrose Willow will be altered.

Information regarding proposed site hydrology would benefit the Board in determining whether habitat for a rare species, the Primrose Willow, will be altered.

8. The Maryland Department of Natural Resources stated their concern regarding the loss of potential Forest Interior Dwelling Species (FIDS) bird habit with the proposed forest clearing. Additionally, the County's 2006 *Comprehensive Plan* has the objective to "conserve large tracts of contiguous forest land and forest interior dwelling bird habitat determined by the County to be of local significance...", however the May, 2006 report to the Board did not address this concern.

DNR has a list of guidelines to limit adverse impacts on the FIDS habitat. Most of the guidelines are specific to residential development, and therefore application of the guidelines to the proposed mine site is limited. However, two of the guidelines may feasibly be applied to the proposed mine site. The following conditions are recommended, closely implementing the guidelines:

The forest habitat of unopened mine phases, specific to areas of forest, shall not be removed or disturbed during the months of May through August, the breeding season for most FIDS. This seasonal restriction shall be expanded to February through August if early nesting FIDS such as the Barred Owl are present. The applicant shall provide a field evaluation to the Planning Division, determining any presence of FIDS, performed by a qualified professional during the months of February through April, before any forest disturbance occurs during February through April. No more than sixty (60) acres of forest may be cleared at one time per calendar year, and clearing must be limited to phases immediately in advance of a phase being reclaimed.

Reforestation or afforestation efforts to reclaim the mine site shall target (1) riparian or streamside areas lacking woody vegetation, (2) forested riparian areas less than 300 feet in width, and (3) gaps or peninsulas of nonforested habitat within or adjacent to existing FIDS habitat. Any and all plant establishment shall be with species native to Southern Maryland.

9. Mining activities are exempt from the *County Forest Conservation Ordinance*. However, the 2000 Edition of the *Maryland Atlas of Greenways, Water Trails, and Green Infrastructure* identifies the forest on the proposed mine site as part of a forest hub (greater than 100 acres in size) “which represent the most important large ecological areas remaining in Maryland.” This does not imply regulatory protection, however maintaining hubs as open space and being careful about what sort of development happens around them are vital to retaining the state’s biological diversity. Forested areas as small as twenty-five acres can provide important migratory stopover sites for a variety of birds. (*Information from p. 3-5, Habitat Management Guidelines for the benefit of land birds in Maryland, 1997*)

Because the Charles County Forest Conservation Ordinance does not apply to mining proposals, the Board of Appeals may consider whether reclamation of the property shall include re-establishing native forest cover to maintain the ecological function of the forest “hub” (collective forest greater than 100 acres) identified by the Maryland Department of Natural Resources.

CONCLUSION

In conclusion, the Planning Division respectfully recommends the Board consider the above information and conditions.

Prepared by the Planning Division, Department of Planning and Growth Management.

Reviewing Planner: Karen Wiggen
Karen Wiggen

Zoning Manager: Reed Faasen
Reed Faasen

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Date