

Hearing Date: July 22, 2014

**Report to the Board of Appeals
Request for a Special Exception Renewal & Modification
Surface Mining of More Than 10 Acres
Docket #1005**

SUMMARY OF REQUEST

Applicant: Howlin Concrete, Inc.

Mine Site Area: Approximately 217.5 acres of a 303.5 acre tract

Location of Site: North of the intersection of Maryland Route 6 and New Market Road, near the Charles / St. Mary's County line. 8th Election District, Tax Map 58 Parcel 7

Zoning: Agricultural Conservation (AC)

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

Previous Approvals: Board of Appeals Decision and Order dated January 9, 2001.
Board of Appeals Decision and Order dated January 13, 2004.
Board of Appeals Decision and Order dated May 21, 2009.

SUMMARY

The Applicant, Howlin Concrete Inc., requests the Renewal of Special Exception #1005 for sand and gravel mining. A sand and gravel mining operation has existed on the project site since 2001, by an approved Special Exception. According to the submitted information, mining operations have been completed in Phase I, 54 acres of Phase I are reclaimed, and approximately half has been released by the Maryland Department of the Environment (MDE). The remaining half of Phase I is to be released upon removal of a top soil stockpile.

Currently, within Phase II, approximately 20 acres are open and 12 acres have been reclaimed and will be farmed. MDE has not yet released the 12 reclaimed acres in Phase II. No mining has commenced within Phase III. The following is a discussion of issues identified by the Planning Division as relevant for consideration by the Board of Appeals, based on information provided by the Applicant as of May 2014.

SPECIAL EXCEPTION REQUIREMENT

According to the current *Zoning Regulations*, the proposed activity requires a Special Exception in the Agricultural Conservation (AC) zone (see Figure IV-1 Table of Permissible Uses, Use #7.05.110). The Board of Appeals must find that the proposed use meets the requirements of a Special Exception, as

outlined in Article XXV of the *Zoning Regulations*. By granting the requested Special Exception Renewal, the Board would permit the Applicant to continue to surface mine an area of approximately 217.5 acres, subject to Conditions of Approval, per Article XXV, Section 297-415 of the *Zoning Regulations*.

MINIMUM ZONING REQUIREMENTS

The *Zoning Regulations* require the existing and proposed activities to comply with all minimum requirements affecting the Agricultural Conservation (AC) Zoning District (Section 297-87); standards set forth in Article XXV, Section 297-415 regarding Special Exceptions; the minimum standards set forth for the specific use in Article XIII, Section 297-212; as well as any Conditions of Approval imposed by the Board. The Applicant is in compliance with the previous Order and conditions required by the Board, as stated in the Applicant's submitted report.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

Chapter 12 of the 2006 *Charles County Comprehensive Plan* describes the County's goal and objectives concerning mineral extraction, and discusses the management of mineral extraction in terms of predetermined implementation strategies. The County's goal for mineral extraction is to "Support the extraction of mineral resources and relation operations including processing, while safeguarding the public by providing reduction of the negative impacts resulting from extraction and transportation to the maximum extent practicable."

The Comprehensive Plan states five specific objectives regarding mineral extraction: 1- require that appropriate post-excavation uses for this land be consistent with the County's land planning process, 2- protect existing neighborhoods from the impacts of adjacent extraction operations and associated transportation of mined materials, 3- protect the natural environment from all sources of pollution resulting from mineral extraction, 4- provide adequate regulation and monitoring to all mining operations, and 5- recognize and consider the property owners' right to extract mineral resources.

The existing mine site will be consistent with the *Comprehensive Plan* if the operation continues to comply with the *Zoning Regulations* and any conditions imposed by the Board, and applicable final site plan approvals and permits are obtained or already approved. According to the submitted information, upon completion of the mining and reclamation, the project site is proposed for uses consistent with the *Comprehensive Plan*. The reclamation plan would be bonded, to be released upon State inspection and approval. The design and location of mining activities have incorporated methods for protection of adjacent properties, including the required protection of natural resources. Historic and cultural resources will be protected through the buffer standards of the *Zoning Regulations*, or Conditions of the Board, consistent with any requirements of the Maryland Historical Trust.

IMPACT ON SURROUNDING USES AND ENVIRONMENT

The project property has road frontage on MD Route 6 via an existing private road, Beethoven Place. Beethoven place accesses existing agricultural and residential land uses, owned and operated by the property owner. Surrounding land uses vary between combinations of agricultural and surface mining uses, along with rural residential land use, and are not expected to be significantly impacted by the continuation of mining activity. The closest house is on an adjacent property approximately 380 feet

from the proposed limits of mining. The mine site is not easily visible from Maryland Route 6, because the site is located approximately 1,800 feet to the north, and is visually isolated by forest cover. The perimeter of the project property will continue to contain the 100-foot-wide buffer, as shown on the site plans provided.

Truck traffic from the project site is proposed to continue at the maximum volume of 200 loads per day, or no more than 400 trips per day, the maximum permissible by Section 297-212 of the Zoning Regulations. The haul road is not less than 20 feet wide and is hard-surfaced and maintained for a distance of 150 feet from the junction with MD Route 6. The entrance is approved by the State Highway Administration (SHA), originally to support a previously existing mine operation for 100 loads per day (Swarey, SE 995, expiration 11/04). According to the Division's records, that mine site is no longer active. The remaining unpaved sections of haul road are required to be treated for dust control as needed, as acknowledged by the applicant.

The mining operation has not been, nor is anticipated to be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the surrounding neighborhood, provided that erosion and sediment control devices are adequately designed and maintained, and provided that adequate buffers are maintained. The mine site is isolated within an area characterized by woodland and farm land, where most potential adverse effects of the mining operation on surrounding land uses are, or can be, effectively buffered. Surrounding uses that are dependent on the quality of surface-water, including the natural biological production and nutrient absorption within potentially affected streams and wetlands, would be protected by the proposed sediment and erosion control measures and by required buffers.

COMPLIANCE WITH COUNTY, STATE, AND FEDERAL REGULATIONS

Based on the submitted information, the project site complies with all applicable local, state and federal laws and regulations, and permitting requirements and conditions of the Board's Orders of January 9, 2001, January 13, 2004, and May 21, 2009. Information with respect to any noncompliance has not been provided to the Planning Division.

PLANNING DIVISION FINDINGS

The Petition for a Renewal and Modification to a Special Exception #1005, by Howlin Concrete, Inc., of Dunkirk, Maryland, was evaluated based on the standards set forth in Article XXV, §297- 415, and Article XIII, §297-212, Use #7.05.110. The Planning Division offers the following findings of fact, for consideration by the Board of Appeals:

1. The owners of the project property, consisting of Parcels 7 on Tax Map 58, is Beethoven Place, LLC of Dunkirk, Maryland. The applicant for the requested Special Exception & Modification is Howlin Concrete, Inc., of Dunkirk, Maryland. According to the submitted information, the project property is approximately 303.5 acres in area, and the area of the approved mine site subject to excavation, is approximately 217.5 acres.
2. The proposed use will not endanger the public health, safety and general welfare, provided the Applicant continues to comply with the conditions contained herein and performs in accordance with the testimony and exhibits presented.

3. The project property is zoned Agricultural Conservation (AC), and the proposed use is permissible in the AC Zone by Special Exception.
4. Evidence does not exist to indicate the continued use would result in detriment to the use, peaceful enjoyment, economic value or development of the surrounding properties and affected neighborhood. The existing use in the surrounding neighborhood consists predominately of agriculture and rural residences, and the natural biological production and nutrient absorption provided by a wetland and forested riparian buffer. Buffers as required by the *Zoning Regulations* function to mitigate any potential adverse effects to the neighborhood.
5. The following findings are in accordance with the standards and requirements set forth in Article XIII, §297- 212 for use 7.05.110, on Surface Mining of more than 10 acres:
 - A. The Applicant certifies that the existing mining operation complies with all local, State and Federal regulations, and permitted requirements. Zoning approval in the form of a Special Exception from the local jurisdiction is a requirement of the Maryland Department of Environment (MDE) for issuance of a surface mining permit.
 - B. A minimum 100 foot wide natural buffer, or setback, is preserved along the perimeter of the property. There are no homes on adjacent properties within 250 feet of the approved mining portion of the property. The current application is a renewal and the applicant is not proposing to change the previously approved Site Plan's setbacks.
 - C. According to the *Zoning Regulations*, the Board of Appeals shall establish the maximum height for man-made land forms, and the maximum allowable height for man-made structures is 40 feet. No such land form or structures are proposed for the project site.
 - D. No processing of sand and gravel is proposed on site according to the information provided by the Applicant, and sediment traps have been proposed in locations consistent with the site's existing topography.
 - E. The Applicant states that mining operations will be conducted in accordance with the Charles County *Zoning Regulations* and permits issued for the project.
 - F. There is no mining proposed along the public road frontage. The mining site is set back from MD Rt. 6 by approximately 1800 feet.
 - G. The submitted site plan shows the buffers surrounding environmental features consistent with the requirements of the Resource Protection Zone (RPZ), per Article VIII of the Charles County *Zoning Regulations*. No disturbance or grading is proposed to occur within the buffer areas.
 - H. The site is proposed to be thoroughly drained in accordance with the mining plans and permits.
 - I. There is an existing, paved, SHA approved entrance from MD Rt. 6 and it is maintained for a distance of 150 feet from MD Route 6. The unpaved section of the haul road will be treated to limit the suspension of dust as required.

- J. The Applicant has requested a renewal for a Special Exception five (5) years in duration.
- K. The Applicant has requested a continuance of the hours of operation from the previously approved Special Exception as between 7:00 a.m. to 4:00 p.m. on weekdays, and 7:00 a.m. to 3:00 p.m. on Saturdays. No blasting or use of explosives is proposed.
- L. The Applicant has requested a continuance of the transportation of mined materials of 200 truck-loads per day, via the approved haul road entrance onto Maryland Route 6 per the submitted Mine Site Plan. This is consistent with the amount approved for the Special Exception granted December 12, 2000 and subsequent renewals.
- M. The submitted mine site plan is complete as indicated below:
- (1) All setbacks are shown on the Site Plan, as well as sediment traps. No permanent ponds are proposed to be created at this time.
 - (2) The limits of mining are delineated on the site plan, and a total mining acreage of approximately 217.5 acres is identified in the General Notes.
 - (3) Existing structures are shown on the Site Plan and no new structures are proposed. Structures within the mining area are to be removed, and any barns with historical significance as determined by the Charles County Historic Preservation Planner will be offered for salvage to the community.
 - (4) The mine site plan shows the location of the haul road, Beethoven Place.
 - (5) Facilities for water supply and sewage disposal are neither proposed, nor required for the proposed use.
 - (6) The Site Plan shows the location of sediment traps for the control of sediment and erosion.
 - (7) Approximate locations of temporary stockpile areas are identified.
 - (8) Signs to control unauthorized entry to the mine site will be provided for the mine site indicating "Trespassers will be subject to prosecution".
 - (9) A traffic and road condition study was provided under the original Special Exception request and found to be acceptable. The haul route has been constructed to standards for high-volume, high-speed roadways designed to be used by a wide range of traffic, including vehicles used for mining material. The existing paving sections and road conditions have been determined to be adequate.
 - (10) Environmental features, including topography, steep slopes, forest, streams and wetlands, are identified on the Site Plan.

(11) An existing cemetery is on the site within Phase III, as shown on the Site Plan. The Applicant proposes to relocate the cemetery to another permanent location on the project tract, with accessibility to the public. A site visit was conducted, including Planning staff, prior to the 2004 renewal. Any State and County permits for relocation will be obtained. As discussed above, any barns determined by the Charles County Historic Preservation Planner to be of historical significance will be offered for salvage to the community.

(12) Additional information in the form of an environmental impact analysis does not appear to be necessary for the proposed project.

6. Based on the submitted information, the continued mine operation, with adequate buffers, will not cause significant adverse impacts to surrounding properties from traffic, noise, fumes, odors, dust, glare, or any type of physical activity. No blasting or processing of gravel is proposed on site.
7. Water, sewer, or onsite septic facilities are not proposed for the project. Access roads, storm drainage, and other necessary improvements are proposed to be designed and constructed in accordance with the latest applicable County Ordinances and State Regulations. The proposed project does not require an Adequate Public Facilities review by the Planning Commission.
8. The proposed ingress and egress to the project site is adequate in terms of design and intended use. The site accesses Charles Street (MD Rt. 6) via Beethoven Place, a 50' private R.O.W.
9. The requested Special Exception conforms to the objectives of the *Comprehensive Plan*, with respect to the significant objectives of both mineral extraction, and natural resource protection.
10. The requested Special Exception substantially complies with the requirements of the *Zoning Regulations* and the special requirements established for the use, as outlined in Article IX.
11. Condition #8 and Condition #15 of the January 13, 2004 Order were removed on the May 21, 2009 Order.
12. The applicant has requested a modification from the previously approved Condition #10 of the Decision and Order dated January 13, 2004:

10. The pre-operation channel size of Smoots Pond Run, at the north property line of the project property, shall be documented through evidence that may include video and photographic imaging, combined with the use of no less than one permanently monumented cross section. Channel stability, or changes in channel size shall be monitored through regular inspections of the monumented cross section, throughout the mine operation and reclamation activities. The results of stream channel monitoring shall be reported annually, during the month of July, to the Planning Division.

The project has been active for over 14 years and no noticeable change has occurred to the permanently monumented cross section. Documentation has been provided to the Planning Division through the years. The mine is operated in accordance with approved plans that provide treatment of storm water prior to release to adjacent waters. Since the mining of Phase

I has been completed, the Applicant is requesting the photo-documentation of the channel (Condition #10 of the 2004 approval) be removed from the SE Docket #1005 during this extension request.

Planning staff has received and reviewed the submitted reports on an annual basis since the mining operation began. The reports have provided an adequate baseline and demonstrated that the progressive mining of Phases I and II have had no effect on the channel stability or changes in channel size, therefore Planning staff concurs with the applicant's statements and finds no evidence that continued monitoring and evidence submittal is required.

PLANNING DIVISION RECOMMENDATIONS

The Planning Division recommends the following Conditions of Approval, for the purposes of adequately and completely addressing the requirements of the *Zoning Regulations* and providing consistency with the previous Conditions of Approval for Docket #1005:

1. The requested Special Exception Docket #1005 for surface mining is granted from the date of this Order, and shall be effective during and run concurrently with the Maryland Department of Environment's (MDE) permit. If the Applicant renews or seeks to modify their permit from MDE, the Applicant shall notify the Charles County Planning Division immediately. Changes to a mining permit from MDE may require the applicant to renew their special exception with the Board of Appeals for Charles County. Should the relevant portions of *East Star, LLC, v. County Commissioners of Queen Anne's County*, 203 Md. App. 477, be overturned or otherwise overruled at some future date, the special exception is valid for five years from the date of approval as specified in the Charles County Zoning Regulations, and the applicant may apply for a renewal as necessary.
2. The current and proposed mining operation shall maintain compliance with all previous Conditions of Approval in the Orders of January 13, 2004 and May 21, 2009, with exception of the previous Conditions of Approval #8, #10, and #15 of the 2004 Order.
3. Special Exception approval is limited to the mine site area affected by current and proposed mining activity, the total tract area of +/- 217.5 acres, as delineated on the Mine Site Plan signed and dated October 2003.
4. Mined and reclaimed land shall no longer be eligible for a mining Special Exception, once that land area is subject to final reclamation.
5. The transport of mined materials shall continue to be limited to 200 loads per day.
6. There shall be no blasting or use of explosives during any mining operation.
7. The capacity of, and removal of sediment from, sediment traps and basins, and other related maintenance activities, shall be adjusted to compensate for any conditions, induced by nature or the operator, that may increase the rate of sedimentation within such devices. Elements of storm-water management and sediment control, including but not limited to sediment traps and basins, may be subject to inspection by County Staff randomly. The inspections may

commence immediately, and be coordinated with the Maryland Department of the Environment. Any non-compliance with the conditions of the Special Exception, or County, State and Federal laws and regulations affecting water quality, shall be reported by the Applicant, to the Board of Appeals. The provisions of this condition do not apply inside the mining pit itself, where the mining operation shall comply with all applicable state and federal laws and regulations. The aforementioned provisions of this condition shall not apply inside the pit so long as the relevant aspects of *East Star, LLC, v. County Commissioners of Queen Anne's County, 203 Md. App. 477*, remain good law.

8. The continued operation of this Special Exception is contingent upon compliance with all applicable county, state, and federal regulations, including, but not limited to, the following local regulations: Charles County Zoning Regulations, Grading and Sediment Control Ordinance, Road Ordinance, Storm Water Management Ordinance, Forest Conservation Ordinance, and Floodplain Ordinance.
9. The operation and maintenance of this Special Exception shall be in compliance with any and all testimony which was on the record in this matter, including the previous Special Exception approval dated January 13, 2004, and renewal dated May 21, 2009.
10. The Board of Appeals for Charles County, Maryland, may, after proper notice and hearing, suspend and/or revoke this Special Exception, provided findings by the Board of Appeals that any of the above-stated conditions have not been subject to full compliance by the Applicant, its agents, assignees, or successors in interest.

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

Erica Hahn
Planner I



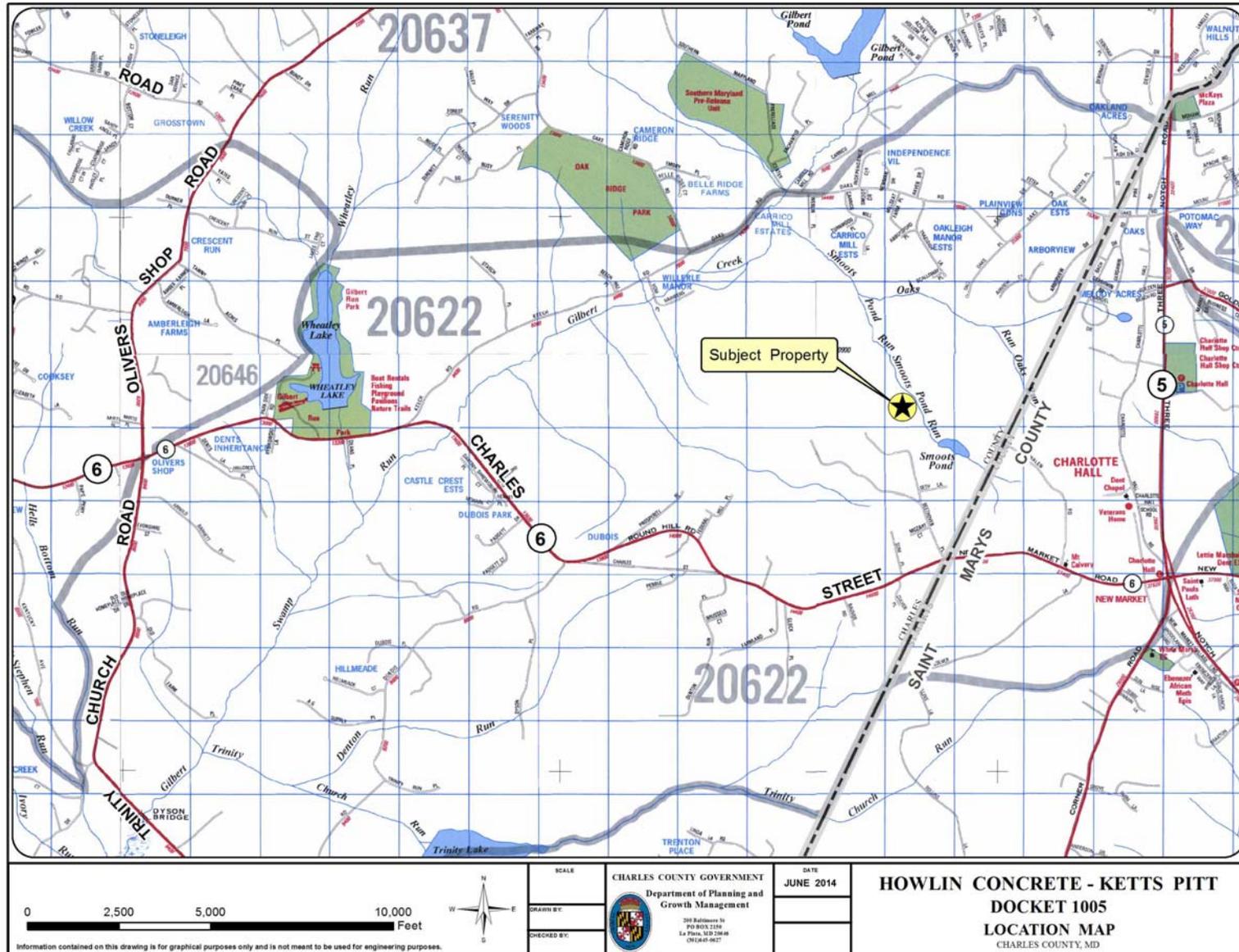
Charles Rice
Environmental Programs Manager



Date

7/10/14

Appendix A: Location Map



Appendix C: Aerial Map

