

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**CUAP # 20-131-0001**

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**SLOAN GRAVEL MINE, WASH PLANT**

**THIRD ELECTION DISTRICT**

**DATE HEARD: APRIL 8, 2021**

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**ORDERED BY:**

**Mr. Ichniowski, Mr. Brown, Mr. Ichniowski  
Mr. Miedzinski, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: May 13, 2021**

### **Pleadings**

Barry Vukmer, Chesapeake Trails Surveying, LLC (the “Applicant”) seeks the modification of conditional use approval, CUAP # 15-131-050, to install a wash plant at the existing Sloan Gravel Mine, pursuant to Comprehensive Zoning Ordinance (“CZO”), Extractive Industry, Use Type # 82, within the Rural Preservation District (“RPD”).

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County (“County”), on March 19, 2021 and March 26, 2021. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the St. Mary’s County Department of Land Use and Growth Management (“LUGM”). The agenda was also posted on the County’s website on March 31, 2021. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that the Applicant has complied with the notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on April 8, 2021 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicant.

### **The Property and the Site**

Multiflora, LLC owns a property of approximately 62.985 acres (the “Subject Property”) at 28625 Abell’s Way, Loveville, Maryland. The Subject Property is located in the RPD and is

identified on Tax Map 19, Grid 19, Parcel 133. On the Subject Property, the Applicant proposes to install a wash plant at the existing Sloan Gravel Mine.

### **The Conditional Use Requested**

The Applicant seeks a conditional use pursuant to CZO, Chapter 25, Schedule 50.4 Use # 82, Section 51.3.82 to install the wash plant.

### **The St. Mary's County Comprehensive Zoning Ordinance**

Pursuant to Schedule 50.4 of the CZO, Use Type 82, "Extractive Industry" is defined as:

Removal of natural materials from the surface or subsurface of the earth for sale or further processing. This classification includes sand and gravel mining and mineral extraction.

### **The Evidence Submitted at the Hearing by LUGM**

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The subject property (hereinafter the "Property") is an existing gravel mine, approved under Conditional Use Application (CUAP) 15-131-050. It consists of 62.985 acres according to the Maryland Department of Assessments and Taxation. The Property contains a single-family dwelling and several agricultural outbuildings according to the site plan submitted in support of this conditional use request.
- The Applicant is requesting a modification to this previously approved Conditional Use, Ex. 2, Att. 2., surface gravel mine, use type 82, Extractive Industry. The Applicant is proposing to add a wash plant. Extractive Industry is defined by the Comprehensive Zoning Ordinance (CZO) as the "Removal of natural materials from the surface or subsurface of the earth for sale or further processing. This

classification includes sand and gravel mining and mineral extraction.” A Wash Plant is further defined as “A facility where sand and gravel is washed during processing.”

- The Applicant has been approved by the State of Maryland’s Department of Environment (“MDE”), per Title 26, Subtitle 21, Chapter 01 of the Code of Maryland Regulations (COMAR), to have an approved Mining and Reclamation Plan, permit, and license to operate a surface mine. COMAR Title 26, Subtitle 21, Chapter 01 also regulates setback and haul road requirements. MDE’s Water and Science Administration has also approved a Water Appropriation and Use Permit. Ex. 2, Att. 3.
- The Department of Land Use and Growth Management reviewed the proposed project during the January 2021 TEC cycle. Comments are attached. The St. Mary’s County Department of Public Works & Transportation (“DPW&T”), the St. Mary’s County Metropolitan Commission (“MetCom”), and the St. Mary’s County Soil Conservation District have approved the site plan. Approvals are still pending for LUGM (Conditional Use approval required), the St. Mary’s County Health Department, and Maryland State Highways Authority. The Soil Conservation District has approved a Sediment and Erosion Control plan prior to the issuing of the existing Mining Permit and license which is issued by MDE for surface mine operations in the State of Maryland.
- Pursuant to CZO § 25.9, “Limitations on Conditional Use Approval,” “Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved,

a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period.”.

- The following Attachments to the Staff Report were introduced:
  - #1: Standards Letter;
  - #2: Conditional Use Order 15-131-050
  - #3: Water Appropriation and Use Permit
  - #4: Land Use Map;
  - #5: Location Map;
  - #6: Zoning Plan.
  - #7: Minor Site Plan
  - #8: TEC Comments

#### **Applicant’s Testimony and Exhibits**

The Applicant appeared over WebEx before the Board. The following evidence was presented:

- The Applicant has an approved Use # 82 from 2016 and an MDE Water Appropriations Permit from January 2021.
- The Applicant presented photos of the proposed wash plant and of the existing equipment on the site.
- The driveway is proposed to be paved.
- The existing wash plant will be closed upon approval.
- The hours of operation will remain the same.
- Several hundred thousand gallons of water will be used each day, and the Applicant

will use an existing pond on site that is supplied by groundwater, i.e., a shallow aquifer is filling the pond.

- The Applicant will maintain the existing conditions on the conditional use permit, though the fourth condition is inapplicable.
- The Applicant anticipates 40–50 additional trucks per day at least a year in the future.
- The State Geologist had the plan under review as part of the Water Appropriation and Use Permit review, and Mr. Sloan is on record that if any wells ran dry, he would replace a new well for that person. Notwithstanding, the Applicant testified that the State does not anticipate the wells running dry.
- The Applicant proffers that he would replace any shallow wells that run dry that are within a half mile (1/2 mile) from the onsite pond. Attorney for the applicant, Christopher Longmore of Dugan McKissick & Longmore, wished to preserve the record that any such conditions imposed by the Board concerning such a proffer would be preempted by the State.

### **Decision**

#### County Requirements for Granting Conditional Uses

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate standards that must be met for a conditional use to be granted:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or

- general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
  4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
  5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
  6. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets;
  7. The proposed conditional use is not contrary to the goals, objectives, and policies of the St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
  8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

#### Conclusions

Upon review of the facts and circumstances, the Board concludes that the Applicant has met the general standards for granting a conditional use under CZO § 25.6. Several factors support this decision.

First, the Subject Property is in the RPD. The regulations of that zoning district, per CZO § 31.1, are "intended to foster agricultural, forestry, *mineral resource extraction*, and aquacultural uses and protect the land base necessary to support these activities." (Emphasis added).

Furthermore, Use # 82, Extractive Industry, with a total affected area of more than 5 acres, can only be approved as a conditional use by the Board of Appeals, which was approved with CUAP 15-131-050. Ex. 2, Att. 2. Additionally, a wash plant is a common practice with sand and gravel pits.

Second, the gravel mine is subject to numerous County, State, and Federal regulations intended to assure the public's health, safety, and welfare. MDE, Water and Science Administration requires semi-annual water quantity reports from the mining operation and may suspend or revoke the Water Appropriation and Use Permit according to Title 5 of the Environmental Article, Annotated Code of Maryland. Moreover, the Applicant's mining activity will be monitored by MDE

Third, the current uses on adjoining properties are residential and agricultural. The existing gravel mine is buffered by existing forest and land in agricultural use on neighboring properties. However, it is proposed to be approximately 275 feet to the nearest adjacent residence. Thus, the Board does not conclude that amending the conditional use will be injurious to the use and enjoyment of other properties or substantially diminish or impair property values within that neighborhood.

Fourth, this is an existing gravel mine that has been operating in the current location for five years. Further, the fourth condition imposed by the Board will mitigate against adverse effects from the water use by the wash plant.

Fifth, the commercial site plan review process, administered by LUGM, will ensure that adequate utilities, road access and erosion controls will be provided. In addition, MDE administers the surface mining program within the state, through its licensing and permitting process, which makes it subject to MDE inspections.

Sixth, the existing point of ingress and egress is an existing gravel road with direct access onto Maryland Route 5 and will thus minimize traffic congestion in public streets.

Seventh, the proposed Site comports with the Comprehensive Plan, Section 4.4 of which seeks to “[a]llow supplemental income productive activities at a scale or intensity that will not unduly change the character of the area[,] establish performance standards that will prevent negative impacts on surrounding properties,” and “[p]romote use of best management practices in resource-based activities to minimize contamination of surface and groundwater and adverse effects on plants, fish and wildlife resources, and other environmentally sensitive areas.” Here, the conditions imposed by this Board will ensure that negative impacts on surrounding properties are eliminated. Moreover, the Board is confident that water resources will be properly managed with the fourth condition imposed by the Board—namely, that Sloan agrees to replace, any hand dug shallow wells that go dry within one half (1/2) mile radius of the onsite pond.

Finally, Chapter 51 standards for an Extractive Industry have been streamlined, by policy, to require a commercial site plan and require conditional use approval by the Board of Appeals. The MDE mining regulations allow limits of disturbance within 25 feet of property boundaries. The proposed Wash Plant is within the current approved limits of disturbance for the approved MDE mining permit.

### **ORDER**

**PURSUANT** to the application of Barry Vukmer, Chesapeake Trails Surveying, LLC, requesting conditional use approval pursuant to Chapter 25 of the St. Mary’s County Comprehensive Zoning Ordinance for Use Type 82, Extractive Industry, (CUAP #20-131-0001) to install a wash plant at the Sloan Gravel Mine; and

**PURSUANT** to the notice, posting of the property, and public hearing and in accordance

with the provisions of law, it is

**ORDERED**, by the St. Mary's County Board of Appeals, that the Applicant is granted a conditional use to install a wash plant at the Sloan Gravel Mine with the following four conditions:

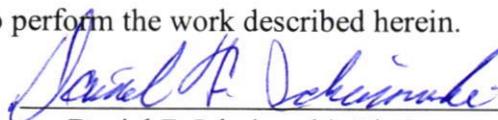
- Burning on site is limited to the designated area on Site Plan;
- Hours of operation from Monday to Friday, 7:00 a.m. to 5:00 p.m., and from 7:00 a.m. to 12:00 p.m. on Saturday for site maintenance only;
- Compliance with the State Highway Administration entrance permit;
- Sloan agrees to replace, any hand dug shallow wells that go dry within one half (1/2) mile radius of the onsite pond.

**ORDERED**, by the St. Mary's County Board of Appeals, that the Applicants' future intended Office Trailer and Scales buildings do not have to come back before the Board of Appeals.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicant shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: May 13, 2021

  
Daniel F. Ichniowski, Chairman

Those voting to grant the conditional use:

Mr. Ichniowski, Mr. Brown, Ms. Delahay,  
Mr. Miedzinski, and Mr. Richardson

Those voting to deny the conditional use:

Approved as to form and legal sufficiency

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Steve Scott, Board of Appeals Attorney

**NOTICE TO APPLICANTS**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.