

Forks of the Patuxent
Improvement Association

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PLANNING & CODE ENFORCEMENT

Post Office Box 477, Odenton, Maryland 21113-0477

June 11, 1996

Jane Nishida
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

Dear Secretary Nishida:

On June 3, 1996, the Department's Minerals, Oil and Gas Division held an informational hearing on an application for a Surface Mining Permit submitted by Chesapeake Terrace, Inc. The members of the Forks of the Patuxent Improvement Association were deeply troubled by the paucity of information available before and during the hearing. We found it even more disturbing that the Department's representatives felt they had little authority to regulate activities which pose a severe potential threat to the environment and surrounding communities. Section 15-810 of the Annotated Code of Maryland clearly states that the Department has both the authority and the obligation to thoroughly examine and fully consider both issues prior to approving a Surface Mining Permit application.

Section 15-810 (b) sets forth eight grounds for denying an application for a Surface Mining Permit. Our interpretation is that this section delineates the factors the Department must consider when reviewing a permit application. From the conversations we have had with the employees assigned to this section, there seems to be little case law or other established policy on these eight grounds.

It appears that the Minerals, Oil and Gas Division has abdicated authority for most of the eight grounds to other units of the government. But no other units of the government have the Division's extensive experience with surface mining operations. In addition, no other unit of government has the Division's broad, over-arching mandate, as set forth in Section 15-810, to address all of the individual and cumulative impacts of surface mining operations.

This whole matter has lent an air of utmost urgency by statements implying that the Department may render a decision on the application on or shortly after the close of the comment period on June 13, 1996. This will make it virtually impossible for the Department to investigate and fully evaluate the many issues raised at the informational hearing in such a short period of time.

The members of our community association urge you to postpone any final decision on the application submitted by Chesapeake Terrace, Inc. until the Department has fully researched the following environmental issues. At that point, a second informational hearing should be held so the results of the Department's findings may be shared with all interested parties. The following is a summary of the issues requiring additional research and consideration:

1. The people who live in Wilsontown, at the western end on Conway Road, were not informed that the applicants proposed haul road was going to bisect their community. Originally the applicant had proposed a haul road off of Patuxent Road, which is marked as the "first proposed access road intersecting" in Figure 2. Three days prior to the June 3rd hearing, a representative of our community association happened to bump into a resident of Wilsontown and mentioned that the haul road had been relocated to their residential community. The Wilsontown resident expressed shock at not having learned of this sooner and informed her neighbors of this change in the project.

Conway Road is a winding, hilly-road only 18 feet in width. More than fifty children live in Wilsontown. They bike, skate and await school buses on Conway Road. The applicants proposal would add 300-600 truck trips per day to a road which currently receives extremely light truck use. The access road would intersect Conway Road near Saint John's AME Church, a historic building. Fredrick Douglas and notable African Americans operated an underground railroad in this area. The tremendous increase in truck traffic would be extremely disruptive to the activities which occur at the church and to the rich historic character of the area.

Sections 15-204 and 15-809 requires public notice of the mining proposal and contains a very reasonable process for ensuring that the area residents will learn of activities which may affect their interests. We find it extremely disturbing that the public notice made no mention that the haul road was proposed for the west end of Conway Road. At a minimum, the notice should have included a map showing the site of the proposed mine and how the haul road had been aligned to pass extremely close to the homes and church in Wilsontown.

The notice should have also clearly shown that the haul road would intersect Conway Road near the Saint John's AME Church. A sign should also have been posted at the location of the proposed haul road intersection. It is exceedingly unfair to the residents of Wilsontown that a chance encounter, rather than deliberate action by the Department, resulted in their hearing of the haul road.

2. Section 15-810 (b) (2) states that the Department may deny a surface mining permit application if "the operation will have an unduly adverse effect on wildlife or fresh water, estuarine or marine fisheries." As shown in Figure 1, the proposed site of the operation abuts forested wetlands and other important wildlife and fishery habitat areas. The operation also abuts two uniquely important areas: The Patuxent River Community Ponds Nontidal Wetland of Special State Concern and a stream system supporting the State endangered glassy darter (*Etheostoma vitreum*).

A State rare plant, clustered bluets (*Oldenlandia uniflora*), is located at the Patuxent River Community Ponds. The glassy darter was found in the tributary system marked as the Northwest Stream in Figure 1. It is not known just how extensive the glassy darter population is within the Northwest Stream system. Our belief is that the surface mining operation will have a potential to cause the following adverse effects upon these wildlife and fishery resources.

A. The limits of disturbance (LOD) shown on the mining plan intrude upon the 100-foot buffer of the Nontidal Wetlands of Special State Concern. Though Chesapeake Terrace, Inc. has been issued a Corps of Engineers permit for a rubble landfill proposed for this site, the permit makes no mention of the surface mining operation. The date on the application for a Surface Mining Permit submitted by the applicant is February 26, 1996. Therefore, this project should not be grandfathered from the requirement to protect the 100-foot buffer. Intrusion upon the 100-foot buffer threatens the integrity of the Nontidal Wetland of Special State Concern as well as the State rare plant it supports along with wildlife and fishery resources.

B. The proposed surface mining operation will remove a substantial portion of the ridge forming the western perimeter of the Nontidal Wetland of Special State Concern. According to a report prepared by the applicant (*Phase II Hydrology Report*) once the material proposed for mining is removed, a clay layer will be exposed. The permeability of the clay is extremely low when compared to the overlying sandy materials. Thus, a dramatic reduction in groundwater recharge will result from the proposed mining operation. The loss of recharge will reduce the amount of groundwater entering the ponds and other portions of the Nontidal Wetland of Special State Concern. A decrease in groundwater inflow would have a disastrous impact upon the ecology of the ponds and other portions of the wetland. Such an impact would threaten the quality of the area for the State rare plant and the quality of fishing in the ponds.

C. The ridge proposed for removal also drains into the Northwest Stream. Thus the loss or recharge would also reduce groundwater inflow to the system supporting the State endangered glassy darter.

D. The outfall for the proposed temporary sediment basin is directed into the Nontidal Wetland of Special State Concern. The erosion rate on the 46-acres is presently 3.8 tons per year. If all 46-acres were cleared, the erosion rate would increase to 1,882 tons a year - an increase of 500-fold. This action will direct the sediment laden runoff from a 46-acre area into the Nontidal Wetland of Special State Concern. At best, the basin would remove 75% of the sediment load. Thus, each year 470 tons of eroded soil will pass out of the basin and into the Nontidal Wetland of Special State Concern. This would result in damage to the recreational fishery resources of the ponds, deposition within other portions of the wetland, and alteration of habitat conditions in a way that might damage the State rare plant.

E. The applicant has proposed using calcium chloride to control dust on the site. A number of studies have shown that non-tidal wetland vegetation tends to be sensitive to increased salt inputs. Though most of these studies have focused on sodium chloride impacts, one

of these investigations indicate that calcium chloride may be even more harmful.¹

Sphagnum moss is known to be particularly sensitive to chloride. In the *Chesapeake Terrace Wetland Delineation Report*, the applicant's consultant noted that *sphagnum* moss was dominant species in wetlands located at the northern perimeter of the proposed mining operation. These wetlands are part of the stream system supporting the State endangered glassy darter. The applicant's report did not include a species list for dominant vegetation inhabiting the Nontidal Wetland of Special State Concern. Our concern is that *sphagnum* moss and other sensitive species may be present in the Nontidal Wetland of Special State Concern. If this is the case, chloride releases from the mining operation will damage these species. The loss of *sphagnum* moss could alter the basic ecology of all adjoining wetlands and, in turn, disrupt the suitability of the area for clustered bluets and the glassy darter.

F. The only document we found in the Department's files pertaining to an assessment of potential effects upon wildlife or fisheries was a memo from April 29, 1996, from Mr. Ray Dintaman, of the Department of Natural Resources (DNR) Environmental Review Unit, to Mr. Ed Larrimore, of the Minerals, Oil and Gas Division of the Department. We find it deeply troubling that the memo makes no mention of potential impacts upon the clustered bluets or the Nontidal Wetland of Special State Concern. Furthermore, the memo contains the following statement: *"From our review of the information provided with subject proposed surface mine application, we have determined that the proposed activity does not appear to conflict with any DNR (MD Department of Natural Resources) goals, objectives or programs."* Since a substantial body of DNR regulation and significant portion of DNR's budget is allocated to programs, goals and objectives designed to protect State rare plants and Nontidal Wetlands of Special State Concern, such as clustered bluets, this statement seems rather ludicrous.

3. Section 15-810 (b) (5) states that the Department may deny a surface mining permit application if "the operation will have a significantly adverse effect on the uses of a publicly owned park, forest or recreation are in existence at the time of the application for the permit." Patuxent Community Ponds is an Anne Arundel County public park. The preceding discussion clearly shows that the proposed mining operation poses a number of potential threats to its intended uses as a county owned public park. We found no indication in the Department's files that this issue had been considered.

4. Section 15-810 (b) (3) states that the Department may deny a surface mining permit application if "the applicant has failed to provide applicable permits or approvals covering the operation from all State and local regulatory agencies responsible for air and water pollution, sediment control and zoning." To date, all of these permits have not been obtained by the applicant.

A. To date, as shown in Figure 2, the applicant has now proposed three different access road locations. The Special Exception issued by Anne Arundel County was based

1. The effects of deicing salts on vegetation in Pinhook Bog, Indiana, Canadian Journal of Botany 64:865-874.

upon an access road intersecting Conway road 1.5 miles east of the proposed third location. In his April 11, 1996, letter to Mr. Edmon Larrimore, who is the Chief of the Department's Minerals, Oil and Gas Division of MDE, Mr. Thomas Andrews, who is the Anne Arundel County Land Use and Environment Officer, notified the Department that changes in the proposed access road location could result in the County rescinding the Special Exception approval granted to the operation. Since the County feels the Special Exception is not valid for a project with the third access road the applicant cannot provide the Department with "all applicable zoning permits."

B. As previously mentioned, the applicant holds a U.S. Army Corps of Engineers permit for a proposed rubble landfill. The permit makes no mention of a surface mining operation. The applicant's mining plan shows that the operation will disturb the 100-foot buffer of the Nontidal Wetland of Special Concern which is considered a prohibited action under the Maryland Nontidal Wetland regulations. Since the application for a Surface Mining Permit was submitted to the Department in February 1996, we believe the applicant should either be required to move the limits of disturbance to a point outside the 100-foot buffer or to apply for a State nontidal wetland permit.

C. The permit issued by the Corps of Engineers and the Water Quality Certification issued by the Department was based upon a project with an access road onto Patuxent Road. The applicant is now proposing an access road at a substantially different location with potential impacts that are dramatically different. This major change in the project should prompt the Department to rescind the Water Quality Certification.

5. Section 15-810 (b) (3) states that the Department may deny a surface mining permit application if "the operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of application for the permit." The plans for the third proposed access road failed to show most of the houses located in the immediate area. Therefore, it is unclear how the Department could have considered the potential for physical hazard to these dwellings. The Department's files did not contain any mention of the impact of the increased truck traffic on Conway Road. Though the Department may normally defer consideration of this issue to the county. The letter from Mr. Andrews make it clear that the County has not been afforded an opportunity to review the impact of the most recent access road proposal.

In closing, our community association respectfully requests that you and your staff complete the following actions prior to making a final decision:

1. Inform the applicant that further consideration of their request for a Surface Mining Permit will not be given until the applicant provides the Department with a valid Special Exception from Anne Arundel County that covers the access road proposed for western Conway.

2. When the new Special Exception is submitted, the Department should review the record to ensure that noise, vibration, and truck traffic impacts were fully evaluated and that

these effects will not cause a substantial physical hazard to the church and homes adjoining the site nor to Conway Road.

3. Ask the Environmental Review Unit, of the Maryland Department of Natural Resources, to reconsider their comments in light of the information presented in this letter.

4. Ask the Heritage and Biodiversity Conservation Program, of the Maryland Department of Natural Resources, to review the potential effects of the proposed operation upon the State rare plant clustered bluets and the State endangered glassy darter. Our consultant, Richard Klein, of the Community and Environmental Defense Services, has forwarded a package to Program Director Michael Slattery concerning project impacts. Copies of his letter were forwarded to the Environmental Review Unit and your office.

5. Once comments are received from the two DNR units, the Minerals, Oil and Gas Division should thoroughly review the application to determine if it will have an unduly adverse impact upon wildlife and fisheries.

6. The Department should request input from the Anne Arundel Department of Recreation and Parks concerning potential impacts upon the public park at the Patuxent River Community Ponds.

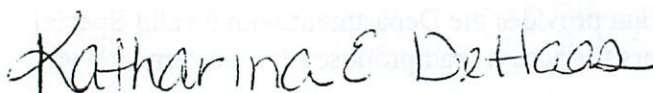
7. The Department should direct the applicant to either pull the limits of disturbance out of the 100-foot buffer of the Nontidal Wetland of Special State Concern or direct them to apply for a permit.

8. The Department should review the major changes made in the project to determine if the Water Quality Certification remains valid. If it becomes invalid, we would presume Chesapeake Terrace, Inc. would be required to apply for a State Nontidal Wetland Permit for the rubble landfill.

9. Once all the preceding actions have been completed, the Department should issue a second, far more complete public notice and then hold a second informational hearing.

If you have any questions regarding the enclosed information and request, please contact the undersigned at (301) 261-3424.

Sincerely,



Katharina E. DeHaas
President

cc:

Glenn Akers, President of Greater Odenton Improvement Association
Thomas Andrews, AA County Land and Use Officer
Robert C. Baldwin, State Delegate
Glen Besa, Potomac Chapter - Sierra Club
John A. Cade, State Senator
M. Joseph Cannon, AA County Department of Recreation and Parks
Steve Cover, Director of AA County Planning and Code Enforcement
Andi Cunabaugh, MDE
Thomas A. Deming, Attorney
Kevin Dooley, AA County Planning and Code Enforcement
Edward Dosek, President of Crofton Civic Association
David Duree, State Coalition on Non- Coal Surface Mining
John Gary, AA County Executive
Paris N. Glendening, Governor
Thomas Grasso, Chesapeake By Foundation
Janet Greenip, State Delegate
John Griffin, MD Department of Natural Resources
Lillian Griffith, District Manager of AA County Conservation District
Steve Harman, Army Corps of Engineers
Harrison N. Johnson, National Association for the Advancement of Colored People
Tanya Jones, Reporter for Sun Paper
Richard Klein, Community and Environmental Defense Services
C. Edmon Larrimore, Chief of Minerals, Oil and Gas Division of MDE
Stephen Legendre, AA County Law Office
J. Rodney Little, Director of Management, Planning and Educational Outreach Administration
Kweisi Mfume, National Association for the Advancement of Colored People
Marsha G. Perry, State Delegate
Dru Schmidt-Perkins, Clean Water Action
Bert Rice, AA County Councilman
Robert Scott, President of Greater Crofton Council
Brendan Sobie, Reporter for the Maryland Gazette
Donna Ware, AA County Historic Site Planner
Samuel Whittaker, Reverend of St. John's AME Church

2 enclosures attached

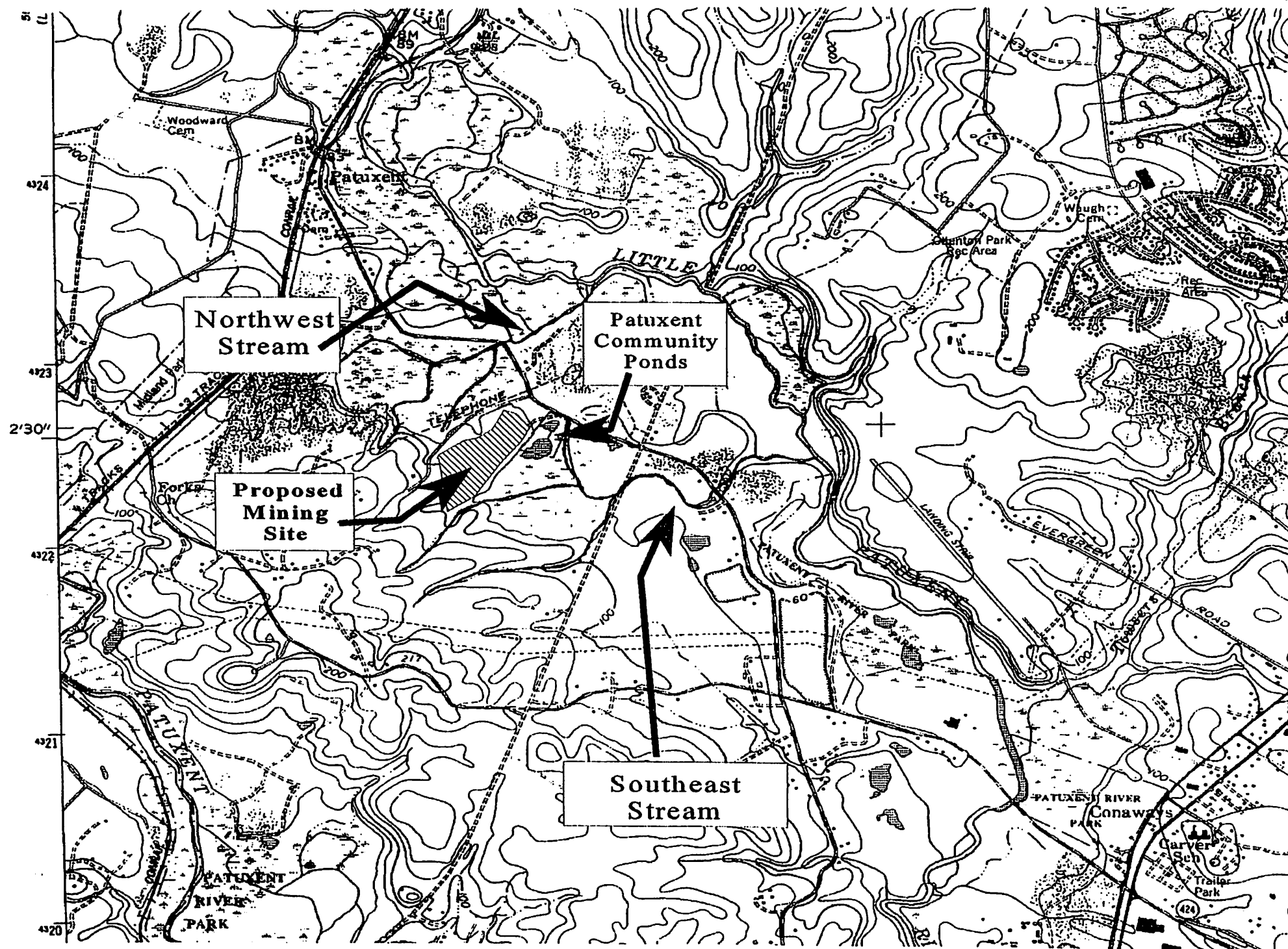


Figure 1: Location map

Figure 2
Copied from 21st Edition ADC Book
Map for Anne Arundel County
Scale: 1 inch = 2,000 feet

