- BEFORE THE
- \* ANNE ARUNDEL COUNTY
- \* BOARD OF APPEALS
- \* Case No.: BA 12-13V and 13-13V

#### RESPONDENTS' POST HEARING MEMORANDUM

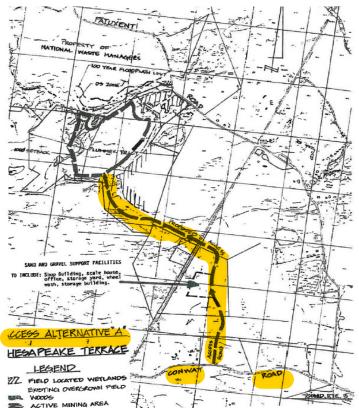
Respondents Forks of the Patuxent Improvement Association, Inc. (hereinafter "Forks"), et al, respectfully submit this Post-Hearing Memorandum to the Anne Arundel County Board of Appeals (hereinafter "Board"), opposing request of the Applicant (National Waste Managers, Inc., Chesapeake Terrace, and/or Halle Companies are hereinafter "National"), and in support thereof state the following:

The Board now considers National's application for fourth temporal variances to implement the rubble landfill and sand and gravel mining uses. The "focus is a narrow and forward looking one" and the Board should "ensure that a variance for an extension of time should be granted only if the previously approved special exception use continues to be compatible with the surrounding area." *Nat'l Waste Managers v. Forks of the Patuxent Improvement Ass'n*, 453 Md. 423 (2017) at n. 6, citing *Forks of the Patuxent Improvement Ass'n*, et al v. Nat'l Waste Managers/Chesapeake Terrace, 230 Md.App. 349 (2016). Due to National's failure to obtain the property rights required for the mandated Conway Road access, and its failure to diligently pursue the required permits, time extensions would negatively impact the public welfare, and, for that reason, must be denied.

### The Board Of Appeals Mandated The Conway Road Access To Protect Public Welfare

In its presentation to the Board in 1993, National presented site plans with two possible entrances to their operation: one off Patuxent Road, and another off Conway Road. Access Alternative A, off Conway Road, is depicted on the plans submitted in the 1993 hearing and as

Protestant's Exhibit 3 in the instant case, shown below and attached hereto at Exhibit A:

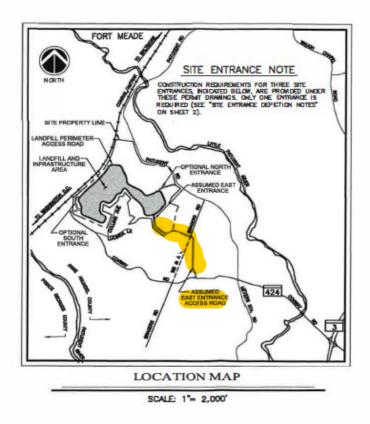


The 1993 Board considered the traffic impacts, plans submitted, and subsequently

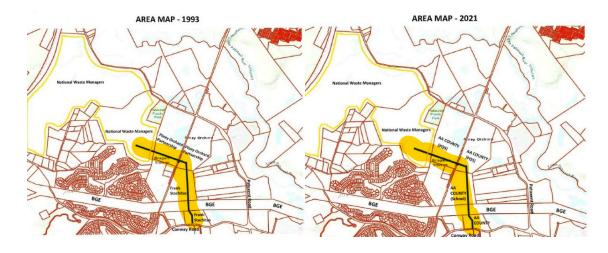
approved the special exceptions and setback variances with conditions (emphasis added):

- 1. Patuxent Road shall not be used as an entrance to the operation.
- 2. **Conway Road is to be used as <u>the</u> entrance** to the operations, with the following conditions:
  - a. A right turn lane shall be constructed on eastbound Conway Road at Maryland Route 3 to a minimum length of 500 feet.
  - b. From the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12 foot travel lanes and 8 foot shoulders improved to county standards where the county right-of-way exists. Additionally, the Petitioners shall pursue a diligent course to obtain the right-of-way from private property owners where possible.
  - c. The road improvements on Conway Road from Route 3 to Patuxent Road shall be constructed before any rubble landfill or sand and gravel operation begins; road improvements from the intersection of Conway Road and Patuxent Road to the entrance of the site are to be completed within one year of the start of operations.
  - d. The access obtained to the site from Conway Road shall be through a fee-simple right of way, not through an easement.
  - e. The hours of operation for both the rubble landfill and sand and gravel operations shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday (no weekend hours).

In the ongoing litigation and all MDE permit applications, National has repeatedly submitted plans that comport with the 1993 Access Alternative A as the assumed entrance (from National's MDE permit application, Protestant's Exhibit 9, attached hereto as Exhibit B):



At the most recent hearings on this matter, Protestants Exhibit 7 (attached hereto reduced at Exhibit C) presented diagrams of the area and surrounding property owners in 1993 and 2021:



Despite National's assertions, the 1993 Board decision and order did not allow access "anywhere" on Conway Road; the Board held that the entrance should be off of Conway Road at the location depicted on the plans submitted in 1993. Access Alternative A was the only access off Conway Road presented in testimony before the Board in 1993. <sup>1</sup>

There can be no question that the entrance approved in 1993 is the required access point, and that other options were considered and rejected by the Board. This condition, and the precise mandated location, has been examined and validated by the highest court in Maryland. *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 138 (1995) (affirming the Board's "imposing the Conway Road access as a condition of its special exception and variance approvals") is attached hereto at Exhibit D. The Court of Appeals held that "Halle must obtain a fee simple estate rather than an easement in **the Conway Road access** land before the landfill operations may proceed. That was explicitly made a condition of the Board's grant of the exception and variance... The Board here imposed a true condition, not an illusory one. Contrary to the circuit court's conclusion, the condition imposed does in fact restrict Halle's use of the property. We shall uphold that condition, as it is justifiable in terms relating to the public health, safety and welfare." *Id.* at 148-149 (internal citations omitted and emphasis added).

In reaching this holding, the Court of Appeals considered the "issue appealed to the Board was whether the sand and gravel and rubble landfill operations would be in the best interest of the public health, safety, and welfare" and upheld "the findings by the Board that **the Conway Road** access would alleviate the wetland and traffic problems associated with the landfill and mitigate the effect upon neighboring property and the community at large." *Id.* at 145, 147 (internal citations

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<sup>&</sup>lt;sup>1</sup> If, contrary to the testimony before this Board in the instant hearings, National has any proof from the 1993 transcripts that any access off Conway Road was presented to the Board by the Applicant, we have no objection to them providing the transcript excerpts that would evidence this purported fact.

omitted and emphasis added). Importantly, the Court of Appeals specifically reviewed and upheld the factual interpretation and legal significance of the single approved Conway Road access that was incorporated as a condition in the Board's decision and order: "Halle suggested an alternate access to the site from Conway Road at the first of the Board's sixteen hearings. Conway Road access would alleviate both the wetlands and traffic problems raised by the County and the protestants. It was also a shorter access route, would affect fewer people overall, and would direct the traffic further from the Patuxent River. The County Department of Public Works evaluated the proposed Conway Road access and concluded that such access was preferable because it addressed the traffic and environmental concerns." *Id.* at 136. Reference is made to **the Conway Road access** throughout the *Halle* decision (Alternative Access A), as well as in the Board's 1993 decision and orders, to make it explicitly clear that only a single designated location was considered and approved as a condition that, if met, would satisfy the public welfare requirement.

Counsel for National has astonishingly taken the position in the instant hearings, that because their property has frontage further up Conway Road from the Conway/Patuxent Road intersection, that *any* access on Conway Road is acceptable. National owns frontage on Conway Road miles away from the mandated Conway Road access, which would require trucks to travel much longer and through the large new development of homes known as the Two Rivers Community. This is the precise type of traffic that harms the public welfare that the 1993 Board sought to avoid. Conway Road narrows significantly along that route, and the land owned by National at that point is directly adjacent to a historically significant church: Saint John African Methodist Episcopal Zion Church (organized in 1887 and erected in 1908). To accept National's new and unfounded interpretation of an entrance on Conway Road would defy the foundational elements, namely traffic and environmental concerns, that formed the basis for the 1993 special exceptions and variances and their ability to satisfy the public welfare requirement of law.

In fact, each and every witness before the Board confirmed that the blue line was the mandated access set forth in 1993 (Alternative Access A), to the exclusion of any other location. Andy Chisholm appeared as National's representative in 1993 and again in 2022. In 2022, he confirmed that the 1993 Alternative Access A is also the blue line depicted at the hearing:

- 6 Q Okay. And the road, Alternative A, again
- 7 came up Stachitas, came over to Piney Orchard, and then
- 8 took a turn up into the National Waste. It's National
- 9 Waste all up here, correct?
- 10 A Yes.

See excerpts from the 1/26/22 hearing transcript, testimony of Andy Chisholm at p. 24:6-10, attached hereto at Exhibit E. Jon Arason, National's expert witness land planner also testified:

- 4 And so this Exhibit 3, which testimony is
- 5 indicated it was presented to the Board in 1992, that
- 6 this is what -- it points back to this here in the
- 7 blue, right?
- 8 A Right.
- 9 Q You've heard that testimony. You've been
- 10 here every night, right?
- 11 A Yes.
- 12 Q Okay. You heard and you saw the plans from
- 13 Mr. Stratman that his plans show this access, right?
- 14 A I believe that's what he said, yeah.
- O Okay. So this is the access that Halle has
- been, or National Waste has been processing all these
- 17 years, correct?
- 18 A Well, there have been alternatives. I mean,
- 19 there are --
- 20 Q Where does the Board provide them in the
- 21 alternatives?
- A Not on here. Okay?
- Q Where in the 1993 decision does the Board
- provide them any alternatives?
- 25 A I would have to say probably nowhere.
- 1 Q Probably nowhere or nowhere?
- A I don't know for a fact, but I'll say nowhere
- 3 just to --
- 4 Q Well, it's either a one or it's two.
- 5 A Well, that was their proposed access.
- 6 Q Okay. Thank you. This one right here.

*Id.*, testimony of Arason at p. 92:4-93:6. Additionally, he confirmed the blue line was the access:

- 4 That's okay. We can pull them out if we need
- 5 to, but I don't think we do. And again, that gets back
- 6 into the east entrance, which is the assumed entrance,
- 7 which is the one that's shown in blue on there,
- 8 correct?
- 9 A Correct.

#### Id. at p. 127:4-9. National's engineer, Paul Stratman agreed:

- Q Now, another thing I would like to do, is I
- would like to show you what we'll mark exhibit 3. And I
- 1 would ask if you recognize this document as I (audio
- 2 interference) the access road from Conway Road to what
- 3 you have called on your plans as the east entrance?
- 4 A Yes, it is.
- 5 Q Okay. So this, in concert with drawing one
- of exhibit 2, the map with regard to the proposed
- 7 access road on east entrance, which is the access road
- 8 from Conway Road?
- 9 A Yes.
- 10 Q Okay. And are you -- would you agree with me
- that that is the access road that was required by the
- Board of Appeals in a special session hearing?
- 13 A Yes.

. .

- 25 Q Now, the other -- the last thing I'd like to
- do, Mr. Stratman is that we have confirmed that your
- 2 September 21 drawing that -- or at least it's certainly
- 3 the one on page, on drawing one, and the Board
- 4 identified Conway Road access are basically the same.
- 5 I ask you to -- I will ask you to take a look here at
- 6 this Board here. And would you tell me, based on
- 7 taking a look at your drawing one and the exhibit 3
- 8 that shows the Board mandated access, whether this blue
- 9 line is substantially shows the same thing?
- 10 A Yes, it does.

. . .

- Q So access Conway, your drawing one, and this
- Board all show the access Conway basically the same
- 24 position, correct?
- 25 A Yes, they do.

. . .

- 15 Q Would you note that what we've got here is,
- let's see, what's that, east. Assume east entrance
- access road is just above location, location, and that

- goes up and into the entrance of the landfill. And
- that's the one that's showing blue, right?
- 20 A Correct.
- 21 Q That is called assuming. Why is it called
- 22 assuming?
- 23 A Because that is -- my understanding is the
- 24 preferring entrance into the facility and what I picked
- 25 up in designing a project, it has already been sort of
- ...
- 1 slated as the primary entrance.
- 2 Q Okay. I guess are you familiar that, again,
- 3 that the Board of Appeals mandated Conway Road access
- 4 for the facility?
- 5 A Yes.

See excerpts from the 10/27/21 hearing transcript, testimony of Paul Stratman at p. 85:24-90:5, attached hereto at Exhibit F. National has submitted its plans, with the entrance depicted as the blue line, or Alternative Access A, to the Maryland Department of the Environment in pursuit of its permit. Maryland Department of the Environment's representative, Edward M. Dexter, confirmed their understand was consistent with all others regarding the specific Conway Road access point, as opposed to anywhere on Conway Road:

- 17 You mentioned that the access is part of the
- 18 operational review
- 19 A Uh-huh.
- 20 Q-- you guys did, right, the entrance access
- and the Applicant here has shown you that their access,
- their preferred access, is coming off of Conway up to
- the landfill, correct?
- A That's what they indicated on the plan.

See excerpts from the 1/25/22 hearing transcript, testimony of Edward M. Dexter at p. 81:17-24, attached hereto at Exhibit G. Additionally, the land planner presented by the Protestants, Shep Tullier, confirmed his understanding that the 1993 access point at Conway Road depicted by the blue line and on the pending MDE plans, was the required condition. Finally, Robert Konowal, from the Anne Arundel County Office of Planning and Zoning, confirmed that the blue line access on Conway Road was the mandated access and Alternative Access A:

- Over the past 25 plus years, the applicant has
- repeatedly presented to the Maryland Department of
- 25 Environment plans showing access points that were not
- 1 approved by the Board of Appeals decision. But, in
- 2 fact, were expressly prohibited.
- The current submission to the MOE again shows a
- 4 total of three access points, two of which were not
- 5 included in the original Board of Appeals decision.
- 6 One such access point is off Patuxent Road which
- 7 use of was specifically denied by the 1993 decision.
- 8 This, along with the failure to secure lands over
- 9 the past 30 years for the fee simple access, indicates
- that the applicant has no intention in pursuing the
- approved fee simple access. But, rather, one or both
- of these alternate access points, that have not been
- approved, and which, if implemented, will alter the
- essential character of the neighborhood, negatively
- impact the appropriate use and development of adjacent
- properties and the public welfare.

See excerpts from the 3/1/22 hearing transcript, testimony of Robert Konowal at p. 10:23-11:16, attached hereto at Exhibit H.

Thus, it cannot reasonably be argued that any other access off Conway Road is permitted; the entrance is mandated to be as depicted by the blue line in Protestant Exhibit 7 (Exhibit C here) and documented on National's plan first submitted to this Board in 1993 (Protestant Exhibit 3, Exhibit A here) and most recently to MDE in 2021 (Protestant Exhibit 9, Exhibit B here). The Board designated the access point at its location on Conway Road with the specific intention to limit future traffic on the public roads. Therefore, protecting the public welfare from the otherwise admittedly noxious uses depends on the mandated Conway Road access location.

#### A Fourth Time Extension Will Not Permit National to Execute Their Special Exceptions

The 1993 special exceptions granted to National required that the Conway Road access be obtained through fee simple right of way, not through an easement. At the time, the land was privately owned by Frank Stachitas and the Piney Orchard Partnership. National has not obtained fee simple ownership to the land, and now is unable to do so. *See* transcript of National's

representative Andy Chisholm at p. 32-39, attached hereto at Exhibit E, confirming that National has made no efforts to obtain the required land in the past thirty years, besides sending an email to the Anne Arundel County Attorney Greg Swain in February 2021, at which point National was informed that the required land was sold to the County and would not be sold to National. The properties are now owned by Anne Arundel County and are currently serving the local community's public welfare for recreational purposes and educational needs, each of which preclude National from acquiring any part of it to convert it to the landfill and mining special exception uses.

If constructed, the access road would cut across the land that was previously owned by Piney Orchard Partnership, but is now owned by the County as part of Program Open Space ("POS"), which is a federally funded program that provides for outdoor recreation and public open space areas. Protestant's Exhibit 13, attached hereto at Exhibit I, is the 2004 deed conveying the land to Anne Arundel County that memorializes that "land acquired or developed under a State grant from POS may not be converted ... from outdoor public recreation or open space use to any other use" unless a number of statutorily required events sounding in the public welfare occur, including approvals from the involved federal agencies and a replacement of equivalent land. Any acquisition of the POS parcel by National would necessarily require a conversion; the use of the POS parcel as an access road undoubtedly precludes a public recreation or open space area. To date, National has not submitted a conversion application and presented no evidence (as none exists) of any attempt to secure the required land rights.

The Conway access road required under the special exception approvals would also cut directly through the land previously owned by Frank Stachitas and which is now the proposed site of a school. That parcel was acquired by Anne Arundel County in March of 2020 (27 years after the 1993 order requiring fee simple access from Conway Road) and conveyed to the Board of

Education in 2021 for the development of a new elementary school to serve the local community. *See* Exhibit J, deeds submitted as Protestant's Exhibits 17 and 18. The County is unwilling to sell the school land to National and intends to break ground on the elementary school this spring. Obviously, an elementary school site cannot be separated by a road to a rubble landfill and sand and mining operations.

#### National Has Not Acted With Diligence Regarding the Sand and Gravel Operations

Finally, National has demonstrated **no diligence** in executing the special exceptions as it relates to the proposed sand and gravel operations on the site as they have failed to present any evidence that they have made any progress in obtaining the required MDE permit for a sand and gravel operation on their property. In 2021, National was issued a Surface Mining License by MDE, but not a permit. See Applicant's Exhibit 33 attached hereto at Exhibit K. A license is a generic authorization that merely allows the license holder to perform mining at a permitted surface mine; a license is not related to the specific property where the permit is required. "A licensee may not engage in surface mining within the State except on affected land that is covered by a valid surface mining permit." Md. Code Env. § 15-808 (a). As confirmed by letter dated October 4, 2021, National Waste has no Surface Mining Permit for the subject property, has no current application for a surface mining permit pending with MDE, and has not had an active surface mining permit application since August 11, 1999. See Protestant Forks' Exhibit 19 attached hereto at Exhibit L. In fact, due to the failure of National to complete the permit process or even respond, the permit application was closed over twenty two (22) years ago and no action has been undertaken since. National would have to reapply for a new permit, which has not been done to date. There is no evidence of any due diligence concerning the sand and gravel special exception, thus a temporal variance must be denied.

While the impossibility of fulfilling the access road condition in and of itself justifies denial

of all temporal variances, independent of that, the temporal variances for sand and gravel operations must be denied because National has done nothing since 1999. In order to receive a temporal variance, National must demonstrate that they have acted diligently and require additional time to fulfill the conditions and requirements. National is not entitled to a temporal variance as it (1) has not presented evidence that it has diligently pursued the required permits, and (2) because no amount of additional time will permit National to fulfill the conditions. Rather, the evidence set forth at the hearings has demonstrated that the conditions mandated to protect public welfare, i.e., access from Conway Road, are no longer possible and that National has failed to act diligently to obtain any rights to obtain the required land from Conway Road to the landfill. Accordingly, the temporal variances should be denied.

Respectfully submitted,

COUNCIL, BARADEL KOSMERL & NOLAN, P.A.

By:

Saly Bull

Joseph F. Devlin Sally V. Baldwin

125 West Street, 4th Floor

Annapolis, MD 21401

Phone: (410) 268-6600

Facsimile: (410) 269-8409 Devlin@CouncilBaradel.com

Baldwin@CouncilBaradel.com

Attorneys for Respondents Forks of the Patuxent Improvement Association, et al

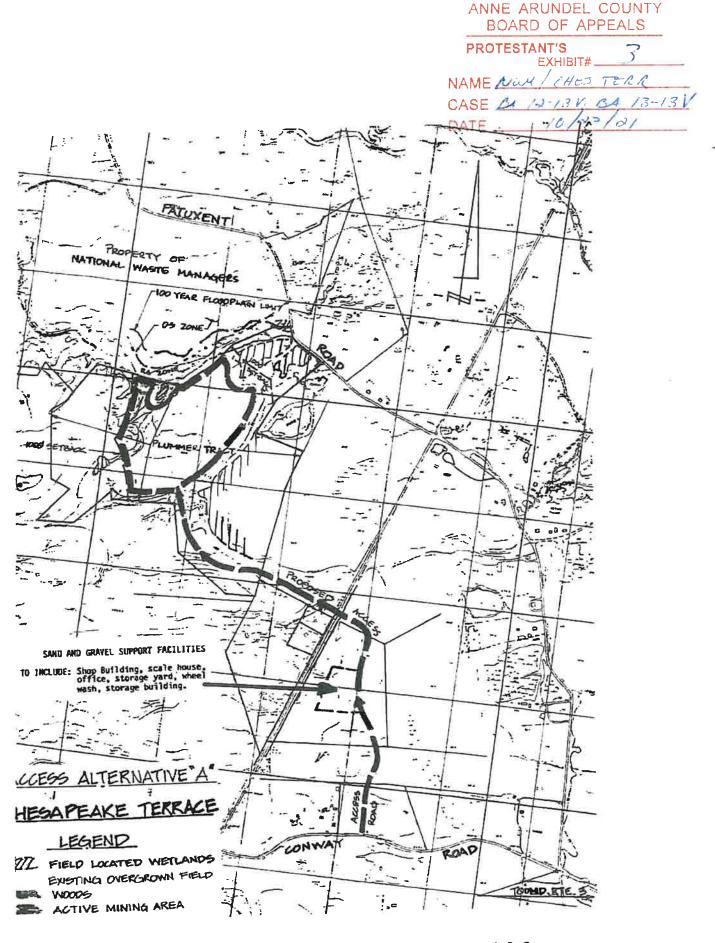
#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 13<sup>th</sup> day of May, 2022 a copy of the foregoing Respondent's Post-Hearing Memorandum was e-mailed and/or mailed first class, postage prepaid, upon:

Susanne K. Henley, Esq. Law Offices of Susanne K. Henley 47 West Street Annapolis, MD 21401 skh@henleylaw.com

Kelly P. Kenney, Esq. Anne Arundel County Office of Law 2660 Riva Road Annapolis, MD 21401 kkenney@aacounty.org

JFD with permission SVB
Joseph F. Devlin



# PHASE III REPORT PERMIT DRAWINGS FOR CHESAPEAKE TERRACE RUBBLE LANDFILL ANNE ARUNDEL COUNTY, MARYLAND REVISED

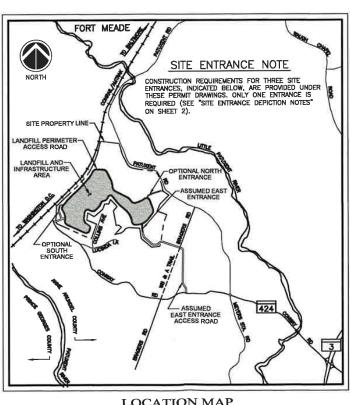
NOVEMBER 9, 2021

NU.	
1	SEDIMENT AND EROSION CONTROL PLAN - NOTES AND INFORMATION*
2	EXISTING CONDITIONS*
3	PROPOSED CONDITIONS*
4	EAST ENTRANCE - ACCESS ROAD PLAN*
5	EAST ENTRANCE - SCALEHOUSE AND INFRASTRUCTURE*
6	BOTTOM OF SUBBASE GRADING PLAN — WEST (CELL 1-10)*
7	BOTTOM OF SUBBASE GRADING PLAN - EAST (CELL 11-16)*
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24	LEACHATE FORCE MAIN PROFILES (SHEET 1 OF 2)
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37	LANDFILL CROSS SECTIONS (SHEET 2 OF 2)
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43	STORMWATER MANAGEMENT SYSTEM DETAILS (SHEET 4 OF 4)*
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45	STORMWATER CULVERT PROFILES (SHEET 2 OF 2)
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47A	BASIN NO. 1 SECTION AND SUMMARY SHEETS*

INDEX OF DRAWINGS

DESCRIPTION

DWG NO.



SCALE: 1"= 2,000'

	INDEX OF DRAWINGS
DWG NO.	DESCRIPTION
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49A	BASIN NO. 3 SECTION AND SUMMARY SHEETS*
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67	INTERMEDIATE CONSTRUCTION STAGE D (CELL 12)*
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70	INTERMEDIATE CONSTRUCTION STAGE G AND G1 (CELL 15 AND PHASE 4)*
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93	ROAD ENTRANCE DRAINAGE AREAS (WITH SOIL TYPES) (1"=150')(3 OF 3)*
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SOIL AND EROSION CONTROL PLAN SPECIFIC DRAWINGS

#### NOTES:

- THIS PROJECT INCLUDES FOUR (4) PONDS FOR STORMWATER MANAGEMENT (IDENTIFIED AS BASIN Not) THROUGH BASIN No4). THREE OF THE BASINS (BASIN Not) THROUGH BASIN No3) ARE DESIGNED TO FUNCTION AS SEDIMENT PONDS DURING THE ACTIVE LIFE OF THE FACILITY.
- 2. NOTIFY MARYLAND DEPARTMENT OF ENVIRONMENT AT LEAST 48 HOURS BEFORE COMMENCEMENT OF WORK, WORK MAY NOT COMMENCE OF EACH PHASE.
- 3. SEQUENCE OF CONSTRUCTION IS PROVIDED ON DRAWINGS ES-2. INITIAL CONSTRUCTION IS EXPECTED TO REQUIRE 21.9 MONTHS. LANDFILL OPERATION AND SEQUENTIAL CONSTRUCTION IS EXPECTED TO OCCUR OVER A 12 YEAR PERIOD. FINAL CAPPING AND SITE STABILIZATION AFTER COMPLETION OF WASTE DISPOSAL IS EXPECTED TO REQUIRE 7.3 MONTHS.
- EROSION CONTROL MONITORING DEVICE (IRON STAKE) WILL BE INSTALLED AT LOCATIONS SPECIFIED BY AASCD.
- 5. AFTER INSTALLATION OF SEDIMENT CONTROLS, CONTACT INSPECTOR FOR
- 6. REMOVAL OF SEDIMENT CONTROL (AND ACCUMULATED SEDIMENT) MAY BE PERFORMED WITH INSPECTOR'S APPROVAL AFTER SITE IS 95% STABILIZED.
- THE SURVEY WAS PERFORMED BY JOHNSON, MIRMIRAN & THOMPSON (JMT) (HUNT VALLEY, MD) (JMT #8-0568-001) MARYLAND STATE PLAN COORDINATE SYSTEM NAD 83 (2011), ZONE 1900 (GEOID 12A).
- 8. EXCAVATION SPOILS SHALL BE PLACED A MINIMUM OF 20 FEET FROM BASINS.
- INSPECTOR SHALL INDICATE ACCEPTANCE OF BASIN CONSTRUCTION AND VERITY THAT THE NEXT PHASE OF CONSTRUCTION MAY BEGIN.

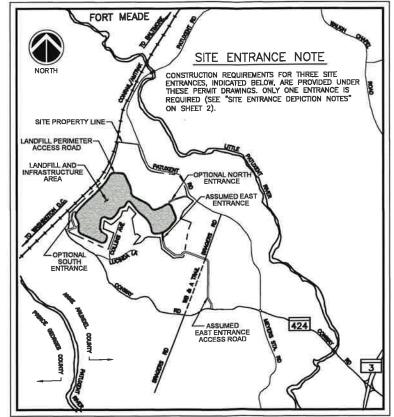
#### SITE ANALYSIS:

TOTAL SITE AREA = 480.0 ACRES TOTAL DISTURBED AREA = 193.2 ACRES TOTAL VOLUME - CUT = 2.664.000 CY TOTAL VOLUME - FILL = 2,466,000 CY EXCESS VOLUME (TO BE REMOVED) = 198,000 CY SITE IS 93% BALANCED

#### CONSULTANT'S CERTIFICATION

The Developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. I certify that this plan of erosion and sediment control represents a practical and workable plan based on my personal knowledge of this site and was prepared in accordance with the requirements of the AASCD Plan Submittal Guidelines and the current Maryland Standards and Specifications for Soil Brosion and Sediment Control, I have reviewed this erosion and sediment control plan with the requirements are presented to the control of the property of the plant of t

MID P.E. Licenie # 2168	
MD Land Surveyor License # 14	
MD Landscape Architect #	13
Name Para STRATAGO	STONAL ENG
Firm Name Apriliary Gan Services Con	10/4/2021
Address OSS America De South	
City Livy Course State Pa Zip Code 19380	



### **LOCATION MAP**

SCALE: 1"= 2,000"

#### STANDARD RESPONSIBILITY NOTES

- All development and construction will be done in accordance with this administ and existing sensiol plan, and fasther, sutherize the right of entry for periodic on-site evaluation by the Arme Annote Soli Conservation District (AASCD) Breef of Supervisions or feels without and agric.
   Any expectable personnel involved in the construction priject will have a certificate of nucleations from the Maryland Department of the Environment's reported by the control of sediment and creation before beginning.
- c If applicable, the appropriate enclosure will be constructed and maintained on addingent buriefs) included in this plant. Such atmeture(s) will be in compliance with the Anne Arundel County Code.

- Such structure(xyl) will be in compliance with the Ause Annold County Code.

  The developer is reappended for the acquisition of all cusmonant, tight, ender rights-of-way that may be required for the sediment and evolute control pendices, stores water insuagement specifies and the discharge of atoms water units acquisition or decemberant propagative lackability in plan.

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Tripping National Company of the State of

#### GENERAL INFORMATION RELATED TO SEQUENCE OF CONSTRUCTION

- 1. THE PROPOSED PROJECT INCLUDES THE CONSTRUCTION OPERATION OF A RUBBLE LANDFILL.
- 2. THE PROPOSED LANDFILL IS REGULATED BY MARYLAND DEPARTMENT OF THE ENVIRONMENT.
- THE PROJECT WILL SPAN A PERIOD OF APPROXIMATELY 15 YEARS. THIS INCLUDES THE PERIOD FROM START OF INITIAL CONSTRUCTION, THROUGH LANDFILL OPERATIONS (RECEIPT AND PLACEMENT OF WASTE MATERIAL) TO FINAL CLOSURE AND CAPPING.
- 4. THE MDE ALSO REGULATES POST—CLOSURE CARE AND MAINTENANCE OF THE SITE THAT INCLUDES ROUTINE MONITORING, INSPECTIONS, REPORTING AND REPAIRS.
- THE TIME PERIOD THAT THE LANDFILL CAN ACTUALLY RECEIVE AND DISPOSE OF WASTE IS ESTABLISHED AS 12 YEARS UNDER A SPECIAL EXCEPTION BY ANNE ARUNDEL COUNTY.
- FROM A CONSTRUCTION AND OPERATION PERSPECTIVE THE SITE CAN BE CONSIDERED AS A MAIN ENTRANCE, EAST DISPOSAL AREA AND WEST DISPOSAL AREA. BEFORE THE SITE CAN START RECEIVING WASTE AN ENTRANCE ROAD AND THE EAST DISPOSAL AREA MUST BE CONSTRUCTED.
- 7. THE PROPOSED DESIGN SHOWS 3 ENTRANCES. THE PLANNED ENTRANCE WILL BE THE EAST ENTRANCE'FROM CONWAY ROAD AS SHOWN ON DRAWING 4. ALTERNATE ENTRANCES REFERRED TO AS THE OPTIONAL NORTH AND OPTIONAL SOUTH ENTRANCES (SEE DRAWINGS B9 AND 90) ARE ONLY PROVIDED IN THE EVENT THAT THE OWNER IS UNABLE TO SECURE ACCESS FOR THE EAST ENTRANCE. USE OF EITHER THE NORTH OR SOUTH ENTRANCES WILL REQUIRE A CHANGE FROM A COUNTY CONDITION REPOULING ACCESS FROM CONWAY ROAD. CONDITION REQUIRING ACCESS FROM CONWAY ROAD.
- 8. THE ANTICIPATED CONSTRUCTION STAGES ARE PRESENTED IN TABULAR FORM ON DRAWING 58. EACH CONSTRUCTION STAGE HAS BEEN ASSIGNED A LETTER DESIGNATION (I.E. A, B C, ETC.). IN SOME INSTANCES, THE STAGE HAS BEEN SUBDIVIDED TO LIMIT THE AREA OF DISTURBANCE.
- 9. CONSTRUCTION ACTIVITIES THAT ARE ASSOCIATED WITH THE SITE INFRASTRUCTURE HAVE BEEN ASSIGNED PHASE DESIGNATIONS, IN ADDITION TO THEIR STAGE DESIGNATIONS, AS PRESENTED ON DRAWNG 51. AS SHOWN, CONSTRUCTION OF THE ENTRANCE, CONSTRUCTION OF THE STORMANTER MANAGEMENT AND DRAWNAGE FEATURES AROUND THE EAST DISPOSAL AREA, AND THE PERIMETER LANDFILL ACCESS ROAD AROUND THE EAST DISPOSAL AREA ARE CONSTRUCTED DURING PHASES 1, 2 AND 3. PHASES 1, 2 AND 3. ARE ALL PART OF STAGE A. CONSTRUCTION OF THE STORMWATER MANAGEMENT, DRAWNAGE FEATURES AND PERIMETER ACCESS ROAD AROUND THE WEST DISPOSAL AREA ARE CONSTRUCTED DURING PHASES 4, 5 AND 6.
- 10. THE TABLE ON DRAWING 58 INCLUDES THE DESIGNATED STAGE/PHASE OF CONSTRUCTION, THE THE LABLE ON DIRAMING SI INCLODES THE DESIGNATED STREET OF THE PROJECT, A DESCRIPTION OF THE ACTIVE CONSTRUCTION ACTIVITY, MAXIMUM TOTAL AREA OF DISTURBANCE WITHIN EACH STAGE/PHASE, AND CRITICAL INFORMATION REGARDING MATERIAL VOLUMES (INCLUDING CUT/FILL AND A TABULATION OF STOCKPILED MATERIAL VOLUMES).
- 11. DURING THE OPERATING LIFE OF THE LANDFILL ANY PRECIPITATION FALLING ON THE WASTE IS COLLECTED AND MANAGED AS LEACHATE. IT DOES NOT ENTER THE STORMWATER MANAGEMENT SYSTEM, THEREFORE: THE AREA OF THE CELLS WHERE ACTIVE WASTE PLACEMENT IS OCCURRING IS NOT INCLUDED IN THE TOTAL AREA OF DISTURBANCE.
- 12. AS PRESENTED ON DRAWING 58 THE TOTAL AREA OF DISTURBANCE IN ANY PARTICULAR STAGE/PHASE IS LESS THAN 20 ACRES, EXCEPT DURING STAGE JI/PHASE 6 (20.1 ACRES), STAGE K (28.3 ACRES) AND STAGE MI (20.6 ACRES). THE STAGE K AND STAGE MI AREAS OF DISTURBANCE ARE DRIVEN BY THE AREA OF CAPPING (17.9 ACRES AND 18.1 ACRES, RESPECTIVELY) THAT ARE ASSUMED TO BE OCCURRING AT THOSE TIMES.
- 13. THE TOTAL ANTICIPATED TIME FOR CONSTRUCTION IS 171.4 MONTHS (14.3 YEARS).
- 14. OVERALL THE PROJECT WILL GENERATE EXCESS MATERIAL (ESTIMATED TO BE 197,877 CUBIC YARDS).
- 15. THE GENERALIZED SEQUENCE OF CONSTRUCTION IS PROVIDED IN SECTION II(E) ON DRAWING 63

NATIONAL WASTE MANAGERS
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CHESAPEAKE TERRACE RUBBLE LANDFILL
PATUXENT ROAD, ODENTON
ANNE ARUNDEL COUNTY, MARYLAND

Ces ADW/NCI PIKE EAST, SUITE 1

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ONTROL PLAN
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- PROPERTY LINE

\_\_\_\_ \_ LIMIT OF DISTURBANCE (FUTURE)

100-YEAR FLOODPLAIN (SEE NOTE 5) FXISTING MONITORING WELL (SEE REFERENCE 2)

FORMER MONITORING WELLS DAMAGED BY VANDALS (NOT USEABLE) (SEE REFERENCE 2)

HISTORICAL BOREHOLES (SEE REFERENCE 3)

EXISTING GROUNDWATER MONITORING WELLS THAT WERE UNABLE TO BE LOCATED (SEE

PERMANENT MONITORING WELL INSTALLED IN 2013

(SCREENED ABOVE CLAY CONFINING UNIT) (SEE REFERENCE 2)

PERMANENT MONITORING WELL INSTALLED IN 2013 (SCREENED BELOW CLAY CONFINING UNIT) (SEE REFERENCE 2)

BORING LOCATIONS ALONG TA/B/TB TRANSITION (B-101 TO B-105) COMPLETED APRIL/MAY 2013

ADDITIONAL BORINGS LOCATIONS REQUESTED BY MDE (8-106 AND 8-107)

COMPLETED APRIL/MAY 2013 HYDROGEOLOGIC AREA DIVIDE (SEE REFERENCE 2)

(A) HYDROGEOLOGIC AREA (SEE REFERENCE 2)

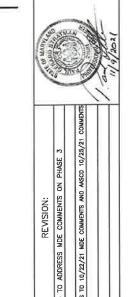
JURISDICTIONAL DETERMINATION (JD) WETLANDS BOUNDARY (APPROX.) WITH IDENTIFICATION AND AREA (SEE REFERENCE 6)

#### REFERENCES

- BASEMAP SHOWN, INCLUDING TOPOGRAPHICAL INFORMATION, IS FROM DIGITAL FILE (2 OF 68) SITE PLAN. DWG, ENTITLED "SITE PLAN," PREPARED BY CENTURY ENGINEERING, INC., DATED APRIL 12, 2010.
- 2.) MONITORING WELL LOCATIONS DIGITIZED FROM HARD COPY OF DRAWING ENTITLED "PERMANENT GROUNDWATER MONITORING WELL PLAN," PREPARED BY CENTURY ENGINEERING, INC., DATED MAY 2008.
- 3.) ADDITIONAL HISTORICAL BORING LOCATIONS FROM HARD COPY OF DRAWING ENTITLED "PLATE 2, CHESAPEAKE RUBBLE LANDFILL HYDROGEOLOGIC BASE MAP," DATED NOVEMBER 2003, CREATED BY MARK SCHULTZ ASSOCIATES, ANNAPOLIS, MARYLAND.
- 4.) HYDROGEOLOGIC AREAS & BOUNDARIES TAKEN FROM "PHASE II PERMIT APPLICATION", PREPARED BY ADVANCED GEOSERWICES CORP DATED JUNE 2020.
- 5.) THE POST-2012 100-YEAR FLOOD PLAIN LIMITS SHOWN ARE BASED ON FEMA NATIONAL FLOOD INSURANCE PROGRAM MAP NUMBER 24033C0136E, DATED 10/16/2012, AND PROVIDED AS PLATE 3 OF THE "PHASE II PERMIT APPLICATION", PREPARED BY ADVANCED GEOSERVICES CORP DATED JUNE 2020.
- 6.) JURISDICTIONAL WETLAND BOUNDARIES OBTAINED FROM FIGURES ATTACHED TO THE ARMY CORPS OF ENGINEERS PUBLIC NOTICE DATED NOVEMBER 22, 1991, AND AS SUBSEQUENTLY AMENDED IN WRITING BY MCCARTHY AND ASSOCIATES ON APRIL 2, 1997

#### NOTES

- 1.) HYDROLOGIC AREAS AND THEIR MAPPING IS BASED ON FORMATIONS MAPPED IN FIELD BOREHOLES, SURFACE OBSERVATION, HISTORICAL ARRIAL PHOTOGRAPHS, AND REGIONAL GEOLOGIC MAPS AS DESCRIBED IN THE PHASE III APPLICATION.
- 2.) THE CONRAIL TRACKS ARE ALSO SHARED WITH AMTRAK FOR HIGH-SPEED COMMUTER TRAINS BETWEEN BOSTON, MASSACHUSETTS AND WASHINGTON, D.C.
- 3.) THE PROPERTY WAS PREVIOUSLY USED FOR SAND AND GRAVEL MINING ACTIVITIES. PORTIONS OF THE SITE CURRENTLY HAVE NO VEGETATION AND ARE BARREN.
- 4.) WATER LEVELS IN WELLS MW-2, MW-7, MW-8, MW-9, MW-11, MW-23, MW-26, AND MW-31 WERE NOT OBTAINED DURING FIELD ACTIVITIES BY GOLDER ASSOCIATES IN 2014 AND ADVANCED GEOSERVICES IN 2019 AS THE WELLS COULD NOT BE LOCATED.
- 5.) THE BLUE 100-YEAR FLOODPLAIN LINE REPRESENTS THE BOUNDARY IMPORTED FROM REFERENCE 5 AND ADJUSTED BASED ON THE FEMA PROJECTED ELEVATIONS AND THE ACTUAL ON-SITE TOPOGRAPHIC INFORMATION. THE BLUE FLOODPLAIN LINE REFLECTS THIS ADJUSTED LINE.



NATIONAL WASTE MANAGERS
PHASE III APPLICATION
CHESAPEAKE TERRACE RUBBLE LANDFILL
PATUXENT ROAD, ODENTON
ANNE ARUNDEL COUNTY, MARYLAND WASTE MANAGERS

HILL, NJ 08003 ADVANCED ADVANCES

1878 MARLTON PIKE EAST, SUITE 10, 1 CONDITIONS

STING

DRAWING 2

1 inch =300 ft.



- PROPERTY LINE

LANDFILL PERIMETER ACCESS ROAD (FUTURE)

SITE ENTRANCE (FUTURE)

LANDFILL LIMITS (FUTURE)

LANDFILL CELL SEPARATION BERM (FUTURE)

- LIMIT OF DISTURBANCE (FUTURE)

MW-12

----- 100-YEAR FLOODPLAIN (SEE NOTE 5)

FORMER MONITORING WELLS DAMAGED BY VANDALS (NOT USEABLE) (SEE REFERENCE 2) (SEE NOTE 5)

EXISTING PERMANENT MONITORING WELL (SCREENED ABOVE MCU) (INSTALLED IN 2013)

PROPOSED PERMANENT MONITORING WELL (SCREENED ABOVE MCU)

EXISTING PERMANENT MONITORING WELL (SCREENED BELOW MCU) (INSTALLED IN 2013)

EXISTING MONITORING WELL (SCREENED ABOVE CLAY CONFINING UNIT) (SEE REFERENCE 2)

EXISTING MONITORING WELL (SCREENED BELOW CLAY CONFINING UNIT) (SEE REFERENCE 2)

HYDROGEOLOGIC AREA DIVIDE (SEE REFERENCE 4)

HYDROGEOLOGIC AREA (SEE REFERENCE 4)

JURISDICTIONAL DETERMINATION (JD) WETLANDS BOUNDARY (APPROX.) WITH IDENTIFICATION AND AREA (SEE REFERENCE 6)  $\,$ 

#### REFERENCES

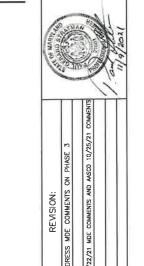
- 1.) BASEMAP SHOWN, INCLUDING TOPOGRAPHICAL INFORMATION, IS FROM DIGITAL FILE (2 OF 6B) SITE PLAN.DWG, ENTITLED "SITE PLAN," PREPARED BY CENTURY ENGINEERING, INC., DATED APRIL 12, 2010.
- MONITORING WELL LOCATIONS DIGITIZED FROM HARD COPY OF DRAWING ENTITLED "PERMANENT GROUNDWATER MONITORING WELL PLAN," PREPARED BY CENTURY ENGINEERING, INC., DATED MAY 2008.
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- 6.) JURISDICTIONAL WETLAND BOUNDARIES OBTAINED FROM FIGURES ATTACHED TO THE ARMY CORPS OF ENGINEERS PUBLIC NOTICE DATED NOVEMBER 22, 1991, AND AS SUBSEQUENTLY AMENDED IN WRITING BY MCCARTHY AND ASSOCIATES ON APRIL 2, 1997

#### **NOTES**

- 1.) HYDROLOGIC AREAS AND THEIR MAPPING IS BASED ON FORMATIONS MAPPED IN FIELD BOREHOLES, SURFACE OBSERVATION, HISTORICAL AERIAL PHOTOGRAPHS, AND REGIONAL GEOLOGIC MAPS AS DESCRIBED IN THE PHASE III
- 2.) THE CONRAIL TRACKS ARE ALSO SHARED WITH AMTRAK FOR HIGH-SPEED COMMUTER TRAINS BETWEEN BOSTON, MASSACHUSETTS AND WASHINGTON, D.C.
- 3.) THE PROPERTY WAS PREVIOUSLY USED FOR SAND AND GRAVEL MINING ACTIVITIES, PORTIONS OF THE SITE CURRENTLY HAVE NO VEGETATION AND ARE BARREN.
- 4.) WATER LEVELS IN WELLS MW-2, MW-7, MW-8, MW-9, MW-11, MW-23, MW-26, AND MW-31 WERE NOT OBTAINED DURING FIELD ACTIVITIES BY GOLDER ASSOCIATES IN 2014 AND ADVANCED GEOSERVICES IN 2019 AS THE WELLS COULD NOT BE LOCATED.
- 5.) THE BLUE 100-YEAR FLOODPLAIN LINE REPRESENTS THE BOUNDARY IMPORTED FROM REFERENCE 5 AND ADJUSTED BASED ON THE FEMA PROJECTED ELEVATIONS AND THE ACTUAL ON-SITE TOPOGRAPHIC INFORMATION. THE BLUE FLOODPLAIN LINE REFLECTS THIS ADJUSTED LINE.

GRAPHIC SCALE

( IN FEET ) 1 inch =300 ft

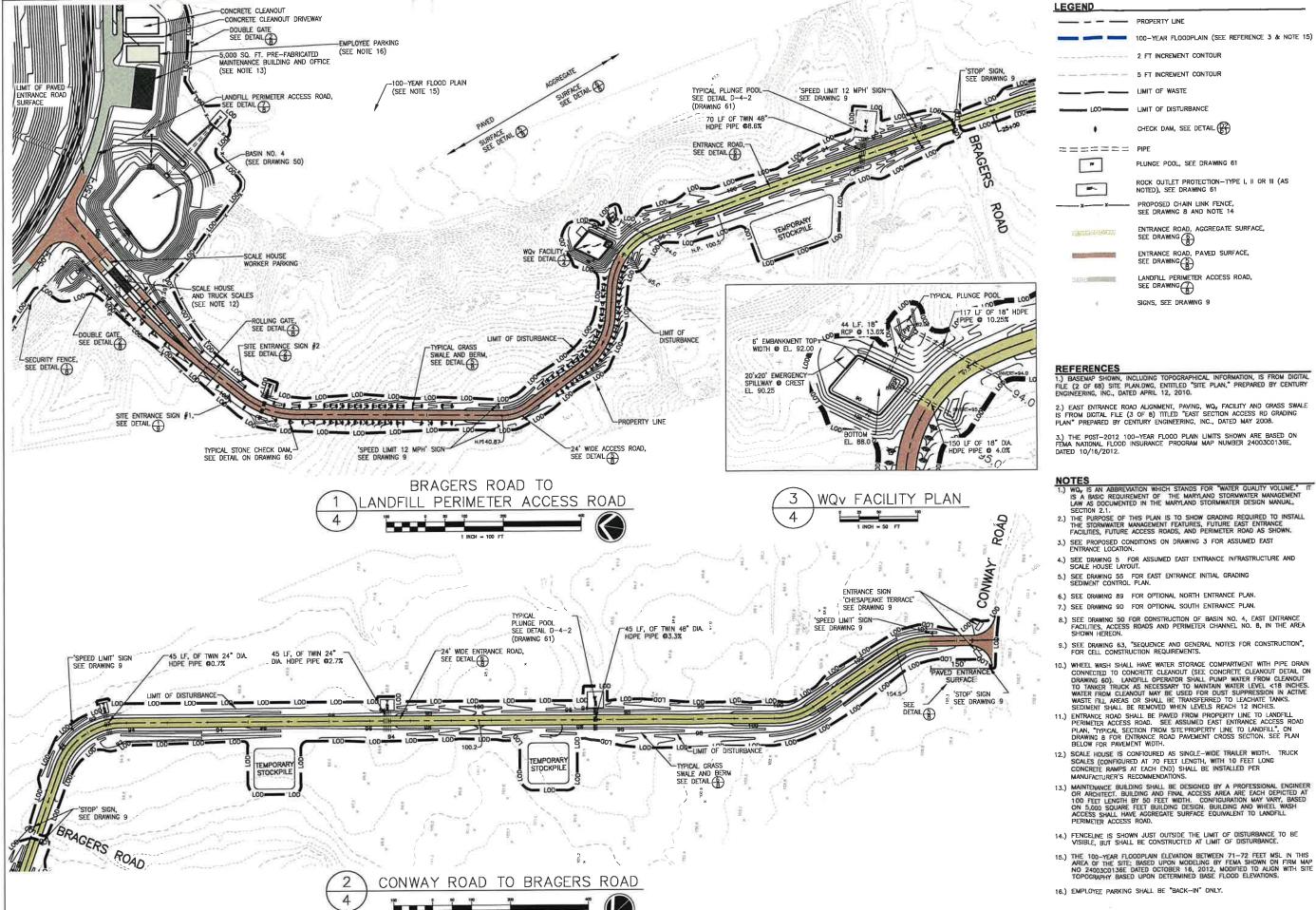


NATIONAL WASTE MANAGERS
PHASE III APPLICATION
CHESAPEAKE TERRACE RUBBLE LANDFILL
PATUXENT ROAD, ODENTON
ANNE ARUNDEL COUNTY, MARYLAND . WASTE MANAGERS

ces ADWACED ReoServ 1878 MARLTON : 856,354,2273

CONDITION

PROPOSED



100-YEAR FLOODPLAIN (SEE REFERENCE 3 & NOTE 15) PLUNGE POOL, SEE DRAWING 61 ROCK OUTLET PROTECTION-TYPE I, II OR III (AS FNTRANCE ROAD, AGGREGATE SURFACE, ENTRANCE ROAD, PAVED SURFACE, LANDFILL PERIMETER ACCESS ROAD, SEE DRAWING

2.) EAST ENTRANCE ROAD ALIGNMENT, PAYING, WQ, FACILITY AND GRASS SWALE IS FROM DIGITAL FILE (3 OF 8) TITLED "EAST SECTION ACCESS RD GRADING PLAN" PREPARED BY CENTURY ENGINEERING, INC., DATED MAY 2008.

3.) THE POST-2012 100-YEAR FLOOD PLAIN LIMITS SHOWN ARE BASED ON FEMA NATIONAL FLOOD INSURANCE PROGRAM MAP NUMBER 24003C0136E, DATED 10/16/2012.

- PLAN, "TYPICAL SECTION FROM SITE PROPERTY LINE TO LANDFILL", ON DRAWING 8 FOR ENTRANCE ROAD PAVEMENT CROSS SECTION. SEE PLAN
- SCALES (CONFIGURED AT 70 FEET LENGTH, WITH 10 FEET LONG CONCRETE RAMPS AT EACH END) SHALL BE INSTALLED PER
- MANUTACIDIERS RECOMMENDATIONS

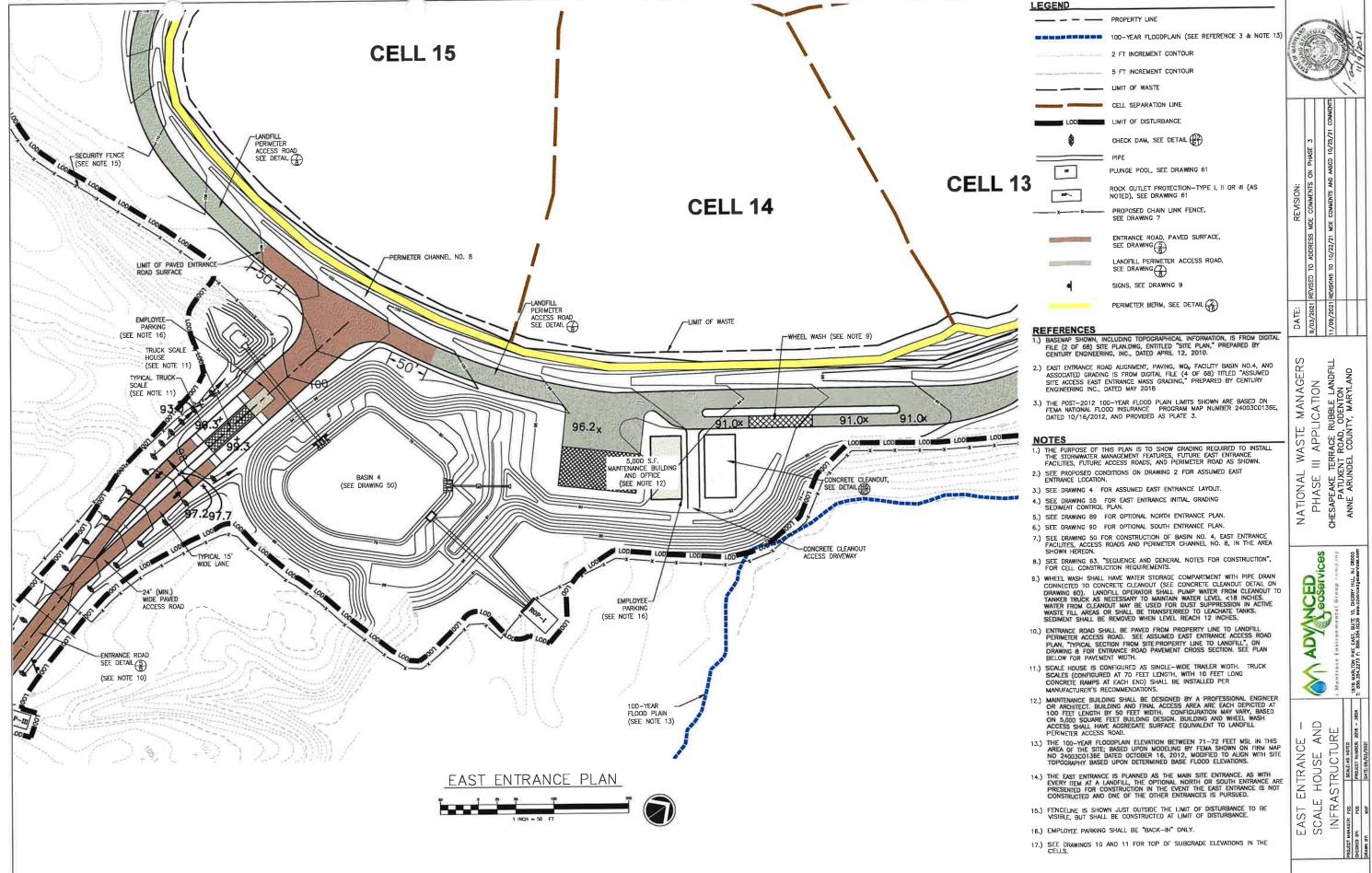
  13.) MAINTENANCE BUILDING SHALL BE DESIGNED BY A PROFESSIONAL ENGINEER
  OR ARCHITECT, BUILDING AND FINAL ACCESS AREA ARE EACH DEPICTED AT
  100 FEET LENGTH BY 50 FEET WIDTH. CONFIGURATION MAY VARY, BASED
  ON 5,000 SQUARE FEET BUILDING DESIGN, BUILDING AND WHEEL WASH
  ACCESS SHALL HAVE AGGREGATE SURFACE EQUIVALENT TO LANDFILL
- 15.) THE 100-YEAR FLOODPLAIN ELEVATION BETWEEN 71-72 FEET MSL IN THIS AREA OF THE SITE: BASED UPON MODELING BY FEMA SHOWN ON FIRM MAP NO 24003C0136E DATED OCTOBER 16, 2012, MODIFIED TO ALION WITH SITE TOPCORAPHY BASED UPON DETERMINED BASE FLOOD ELEVATIONS.

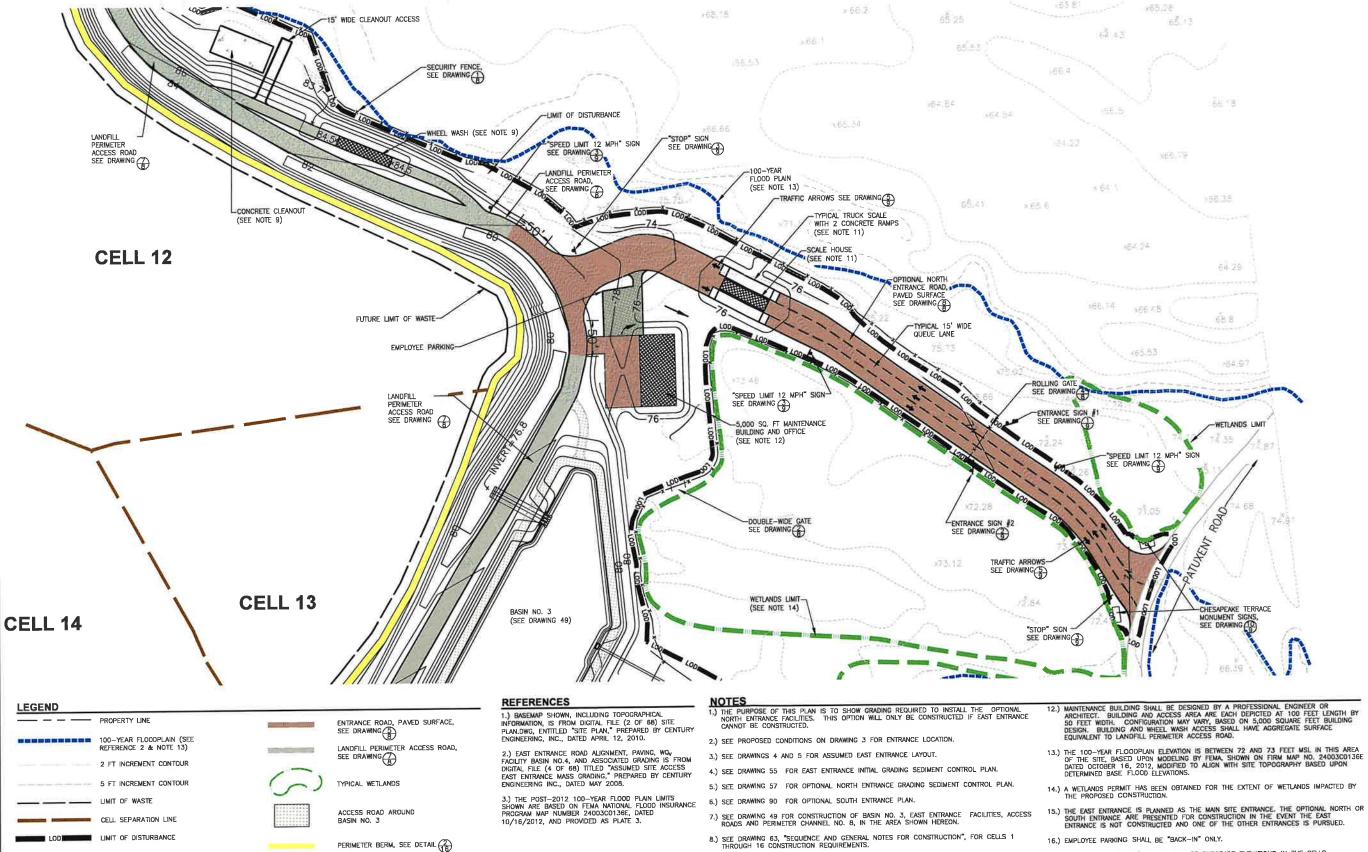
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PIKE EAST, SUITE 10, CHERRY F: 858.354.8238 www.advance

1878 MANLTON P T: 858,354,2273 F AN 딩교

EAST ENTRANC ACCESS ROAD ROAD





- 16.) EMPLOYEE PARKING SHALL BE "BACK-IN" ONLY.
- 17.) SEE DRAWINGS 10 AND 11 FOR TOP OF SUBGRADE ELEVATIONS IN THE CELLS.

OPTIONAL NORTH ENTRANCE PLAN



PERIMETER BERM, SEE DETAIL (2)

10.) OPTIONAL NORTH ENTRANCE ROAD (IF CONSTRUCTED) SHALL BE PAVED FROM PATUXENT ROAD TO LANDFILL PERIMETER ACCESS ROAD. SEE DETAIL 8 ON DRAWING 8 FOR ENTRANCE ROAD PAVEMENT CROSS SECTION. OPTIONAL NORTH ENTRANCE ROAD PAVEMENT WIDTH IS 45 FEET.

9.) WHEEL WASH SHALL HAVE WATER STORAGE COMPARTMENT WITH PIPE DRAIN CONNECTED TO CONCRETE CLEANOUT (SEE CONCRETE CLEANOUT DETAIL ON DRAWING 60). LANDFILL OPERATOR SHALL PUMP WATER FROM CLEANOUT TO TANKER TRUCK. WATER FROM CLEANOUT MAY BE USED FOR DUST SUPPRESSION IN ACTIVE WASTE FILL AREAS OR SHALL BE TRANSFERRED TO LEACHATE TANKS.

11.) SCALE HOUSE IS CONFIGURED AT SINGLE—WIDE TRAILER WIDTH. TRUCK SCALES (CONFIGURED AT 70 FEET LENGTH, WITH 10 FEET LONG CONCRETE RAMPS AT EACH END) SHALL BE INSTALLED PER MANUFACTURER'S RECOMMENDATIONS.

ROP-I

ROCK OUTLET PROTECTION-TYPE I (SEE

PROPOSED CHAIN LINK FENCE, SEE DRAWING B

SIGNS, SEE DRAWING (3)

ADWNCED A eoservices

RUBBLE LANDFILL D, ODENTON JNTY, MARYLAND

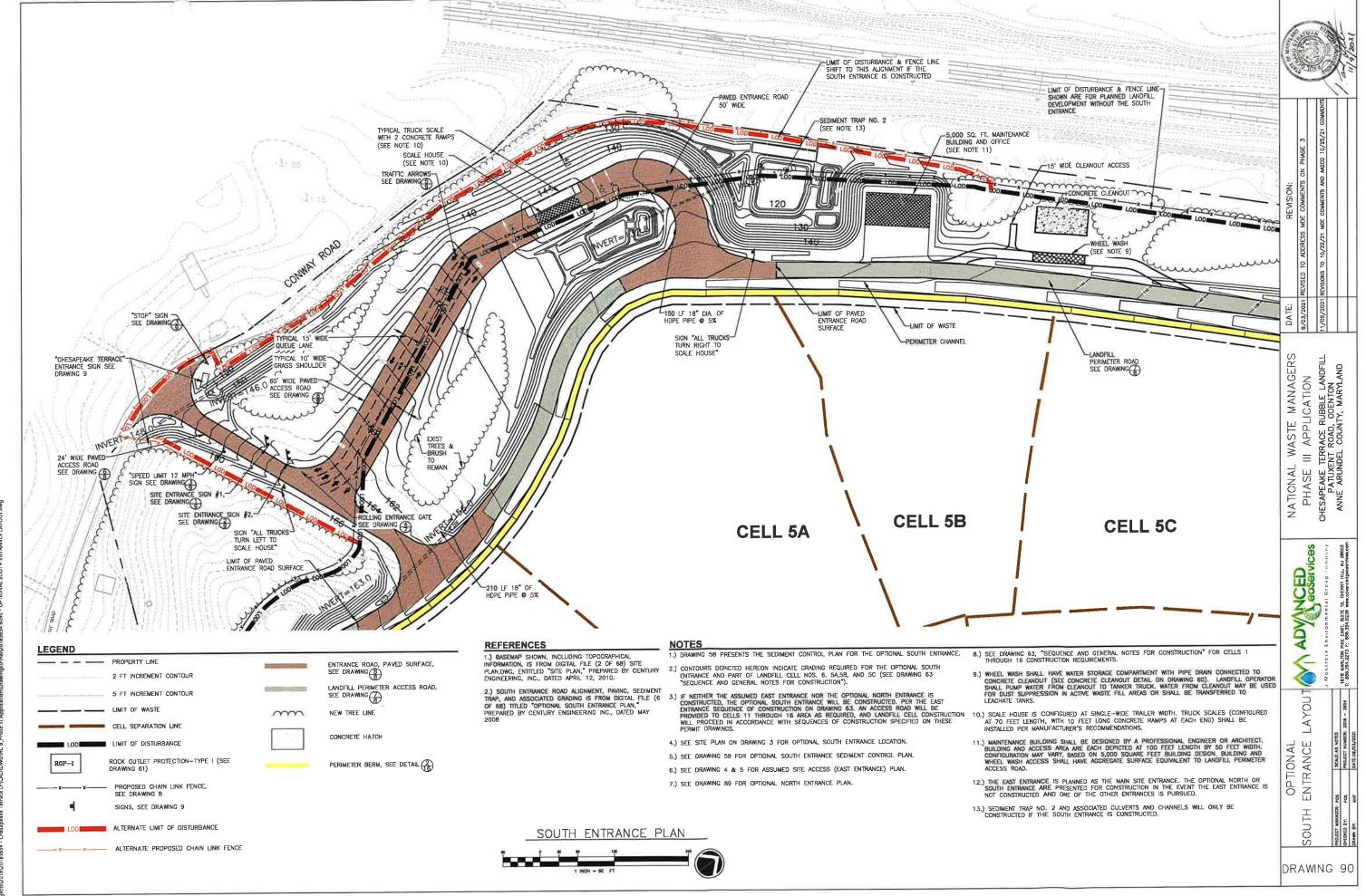
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ANNE ARUNDEL COUNTY

1878 MARLTON 1: 858,354,2273

TIONAL SCALE: AS NO Ţ

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Eastern Outdoor Advertising Co. v. Mayor and City
Council of Baltimore, Md.App., September 6, 2002
339 Md. 131

Court of Appeals of Maryland.

HALLE COMPANIES et al. v. CROFTON CIVIC ASSOCIATION et al.

> No. 129, Sept. Term, 1994. | July 17, 1995.

Reconsideration Denied Aug. 17, 1995.

#### **Synopsis**

Opponents of applications for special exception and variance approval for landfill sought judicial review of decision of county board of appeals granting special exception and variance requests, subject to specific conditions. The Circuit Court, Anne Arundel County, Martin A. Wolff, J., reversed. Following grant of certiorari, 337 Md. 70, 650 A.2d 957, the Court of Appeals, Karwacki, J., addressing an issue of first impression, held that board, on de novo review of decision of administrative hearing officer, had authority to address issue of alternative road access and to condition grant of applications on alternative road access, even though issue of alternative access road was not raised before hearing officer.

Reversed.

West Headnotes (12)

## [1] **Zoning and Planning** ←Power and Authority

County board of appeals is purely statutory creation and may exercise only those powers expressly granted to it by law or those which can be fairly implied. Code 1957, Art. 25A, § 5(U).

1 Cases that cite this headnote

#### [2] **Zoning and Planning**

Conditions attached to grant

Power to impose conditions upon grant of variance or special exception is one which is implicit in power to grant variance or special exception.

3 Cases that cite this headnote

#### [3] Zoning and Planning

Conditions attached to grant

Both variance and special exception authorize uses which otherwise would not be permitted and, having been given power to authorize such unusual uses, county board of appeals also had to have power to limit those uses to protect health, safety and welfare of community. Code 1957, Art. 25A, § 5(U).

#### [4] Zoning and Planning

Administrative review

Although issues to be addressed on de novo review by county board of appeals may be limited, new and additional evidence is permitted, and proceedings, therefore, are wholly original with regard to all issues properly raised. Code 1957, Art. 25A, § 5(U).

2 Cases that cite this headnote

#### [5] **Zoning and Planning**

Nature and form of remedy and jurisdiction

County board of appeals may not entertain truly

original petition for variance or special exception, but may review actions of administrative hearing officer and take any action which officer could have taken in original proceeding. Code 1957, Art. 25A, § 5(U).

#### [6] **Zoning and Planning**

Scope of review

**Zoning and Planning** 

**→**Determination

On applications for special exception or variance, additional evidence may be presented in de novo proceedings to county board of appeals, and board may impose any conditions it feels necessary to protect public health, safety and welfare; it is appellate review mainly in sense that decision by administrative hearing officer is prerequisite to proceeding before board, and not in sense that board is restricted to record before hearing officer. Code 1957, Art. 25A, § 5(U).

#### [7] **Zoning and Planning**

Scope of review

Issue of alternate road access was so inextricably intertwined with administrative hearing officer's decision denying applications for special exceptions and variance approval for landfill operations that issue was properly before county board of appeals and could be addressed on board's de novo review; county's two-tier process did not preclude board from addressing by condition any aspect of zoning proposal which might affect public welfare, main reasons for administrative hearing officer's denial of applications were traffic and environmental impacts which would be produced by originally proposed access road, and while alternative road access was not specifically discussed in prior proceedings, broad issue of access was addressed.

#### 6 Cases that cite this headnote

#### [8] Zoning and Planning

**→**Jurisdiction

Acting de novo, county board of appeals exercises jurisdiction akin to original jurisdiction.

1 Cases that cite this headnote

#### [9] **Zoning and Planning**

←Administrative review

In de novo hearing before county board of appeals, new or different evidence beyond that presented during original proceeding may be used concerning any issue properly before tribunal.

1 Cases that cite this headnote

#### [10] **Zoning and Planning**

Landfills and waste disposal; junkyards

County board of appeals, on de novo review of administrative hearing officer's denial of applications for special exceptions and variance approval for proposed landfill, did not exceed its de novo authority in requiring alternate road access as condition to grant of special exceptions and variance, which condition board found would alleviate wetlands and traffic problems associated with landfill and mitigate effect upon neighboring property community at large, even though applicant did not own property across which alternative road access would be built; requirement that applicant obtain fee simple estate in property across which road would be built was explicitly made condition of grant of exceptions and variance, and alternative access condition was justifiable in terms relating to public health,

safety and welfare.

1 Cases that cite this headnote

#### [11] Zoning and Planning

Conditions attached to grant

Uncertainty of occurrence of prerequisite for granting special exception and variance approval is irrelevant if county board of appeals is satisfied that, once that prerequisite occurs, approved activities would be appropriate.

#### [12] **Zoning and Planning**

Landfills and waste disposal; junkyards

Decision of county board of appeals granting applications for special exceptions and variance approval for landfill, conditioned on alternative access road, did not impermissibly enlarge substance of application, despite alleged intensity of ancillary activities possibly to be performed; board's order did not mention off-site support facilities, which applicant had agreed to locate on property, rather than along access road.

#### **Attorneys and Law Firms**

\*\*683 \*134 Steven P. Resnick (Kevin Reynolds, on the brief), Annapolis, for petitioner.

Lynn A. Robeson, Asst. County Atty., (Phillip F. Scheibe, County Atty.; Stephen M. LeGendre, Deputy County Atty., all on brief), Annapolis, Warren K. Rich (Rich and Henderson, P.C., on the brief), Annapolis, for respondent.

Argued before MURPHY, C.J., and ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI, BELL and RAKER, JJ.

#### **Opinion**

KARWACKI, Judge.

In this case, we shall analyze the authority of the Anne Arundel County Board of Appeals to impose a condition upon the grant of a special exception when that condition was not sought during earlier proceedings before the county administrative hearing officer.

I

This case originated from applications filed with the Anne Arundel County Department of Planning and Code Enforcement by the Halle Companies and its totally owned enterprise, Chesapeake Terrace (referred to collectively hereafter as "Halle"). Specifically, in 1990, Halle sought administrative approval for sand and gravel landfill operations. Those operations were to be conducted on approximately 108 acres of land located near the intersection of Routes 3 and 424, in Odenton, Maryland.1 Of the 108 acres subject to the special exception \*135 request, only 35 acres of previously cleared property was proposed for sand and gravel extraction. Halle also sought approval for rubble landfill operations to be conducted at that same location on approximately 482 acres (including the 108 acres for the sand and gravel landfill). Of the 482 acres, only 150 acres of previously cleared property was contemplated for landfill use, to be accomplished through the sequential filling of a number of small cells on the property. Halle's applications for special exception and variance approval were denied by Anne Arundel County's administrative hearing officer.

\*\*684 Halle appealed that decision to the Anne Arundel County Board of Appeals ("the Board"), which heard the appeal *de novo*, pursuant to § 603 of the Anne Arundel County Charter.<sup>2</sup> Evidence produced at the sixteen administrative hearings held over seventeen months demonstrated that the site was within a resource extraction area on the master plan of the County, was the subject of an existing special exception granted for a sand and gravel operation, and that the subject property had been mined off and on for 40 years. The site was likened to a moonscape, and photographs of the site showed debris, deep ravines, and erosion on the property.

Photographs of the property showed trees falling into eroding ravines which were 30-45 feet deep, abandoned sediment basins, and unclaimed excavation pits. Illegal dumping, target shooting, and hunting regularly occurred on the property. After its site inspection, the Board observed that "because of previous mining which has occurred on this property, the land is cratered virtually up to the property line."

Halle offered expert testimony on subjects including traffic impact and road improvements, environmental protection and wetland preservation, hydrology and ground water contamination, land use planning and development, civil and environmental \*136 engineering related to landfill development, and acoustical engineering. Each expert testified at length and addressed the impact of the landfill and sand and gravel operations at the site upon vicinal properties. The County and the protestants claimed that harsh environmental impact on the Patuxent River and the surrounding wetlands and floodplain would result, and further asserted that their primary concern was traffic. Patuxent Road access required truck travel along "a bad curve ... referred to as a reverse horizontal curve," and also "would require disturbing major wetlands." Questions were raised as to "the relationship of the landfill to the 100 year flood plain on Patuxent Road," and the potential threat of Patuxent Road access to residential communities north and west of the site.

Due to these concerns, Halle suggested an alternate access to the site from Conway Road at the first of the Board's sixteen hearings. Conway Road access would alleviate both the wetlands and traffic problems raised by the County and the protestants. It was also a shorter access route, would affect fewer people overall, and would direct the traffic further from the Patuxent River. The County Department of Public Works evaluated the proposed Conway Road access and concluded that such access was preferable because it addressed the traffic and environmental concerns.

The County argued that the Board could not consider the access from Conway Road because Halle could not propose an alternative entrance after having filed the initial appeal. The Board rejected the County's argument:

"Although the County argues that the Petitioners could not suggest this alternative entrance after filing the initial appeal (an argument which this Board rejects), the County also indicated in its closing argument that the Conway Road entrance is a much better choice because it avoids the wetlands and the heavier traffic on Patuxent Road as well as directing the traffic further from the Patuxent River. This Board has often accepted modifications to an initial plan when the modifications were offered during the hearing process. There does not appear to be any reason that the \*137 proposed use of the Conway Road entrance must be rejected by this Board."

After three months of deliberation, an on-site visit by the members of the Board to the property, and a review of the record taken as a whole-consisting of more than 2,000 pages of transcribed testimony and voluminous documents-the Board determined that the landfill would advance the public welfare of the County. It recognized the need for the landfill, concluded that its location was well suited to the use, and determined that the special exception and variance proposals \*\*685 would benefit the vicinal community by reclaiming and restoring previously mined ravines and properties "cratered" up to the property line. Accordingly, the Board granted the special exception and variance requests, subject to eight specific conditions.<sup>3</sup>

Petitioners, several community associations led by the Crofton Civic Association and eighteen individual property owners, sought judicial review of the decision of the Board in the Circuit Court for Anne Arundel County. The circuit court \*138 granted Anne Arundel County's motion to intervene and, after oral argument, reversed the decision of the Board, holding that the Board exceeded its *de novo* authority by imposing the Conway Road access as a condition of its special exception and variance approvals, as the Conway Road access went beyond the scope of the original application.

The circuit court concluded that the condition of access from Conway Road was a "so-called" condition and not a proper one, because it in effect substantially augmented the property "touched" by Halle's application:

"The central question, then, which this Court must resolve is whether the Board had the authority under its "de novo" power to address the Conway Road access even though it was not part of the original application.

\* \* \* \* \* \*

"[Halle] argues that the introduction of the Conway Road access was simply a new issue which the Board had every right to consider. The Court agrees with [Halle] that the Board, pursuant to its de novo power, can address new issues. Boehm [v. Anne Arundel County, 54 Md.App. 497, 459 A.2d 590 (1982) ]. It cannot, however, indiscriminately entertain matters which in effect change the nature of the original controversy or application. In this case, the Board's entertainment of the Conway Road access was not a mere consideration of a new issue. It was much more. Indeed, given the amount of property affected by the Conway Road access and the intensity of the ancillary activities possibly to be performed thereon, the Board's decision impermissibly enlarged the substance of [Halle's] application. Therefore, it is the opinion of this Court that under the circumstances, the Board, in entertaining the Conway Road issue, expanded the scope of its inquiry to such a degree that the nature of the original application was significantly altered. In so doing, the Board exceeded the bounds of its de novo authority.

"For the reasons aforementioned, this Court finds that the Board erred as a matter of law when it granted the \*139 special exceptions and variance beyond the scope of [Halle's] original application." (footnotes omitted).

Halle noted an appeal to the Court of Special Appeals and then filed a petition for a writ of certiorari in this Court prior to consideration of the case by the intermediate appellate court. We granted certiorari to determine whether the Board exceeded its *de novo* authority in requiring the Conway Road access as a condition to the grant of the special exceptions and variance.

#### \*\*686 II

Petitioners first point out that the Board has the authority to impose conditions to the grant of special exceptions or variances to preserve the health, safety, and welfare of the community. Further, petitioners stress that the proceedings before the Board were conducted *de novo*, or as if the proceedings before the administrative hearing officer had never occurred. As the broad issue of access was before the administrative hearing officer, petitioners conclude that, pursuant to its *de novo* power, the Board had the authority to address the alternative access to the site.

Respondents argue that Halle modified its application before the Board by proposing the alternative Conway Road access and thereby impermissibly expanded the scope of its original application. Further, respondents point out that the "amendment" for the new access road was not included in the notice of the public hearing and that Halle had not yet obtained ownership of the private intersecting access road with Conway Consequently, respondents conclude that the circuit court was correct in reasoning that the proceedings before the Board of Appeals constituted an original rather than appellate proceeding regarding what was, in essence, a new application.

III

[1] Under the Express Powers Act, Md.Code (1957, 1994 Repl. Vol.), Art. 25A, § 5(U), each county is authorized to \*140 create a board of appeals. Anne Arundel County, by its charter, created the Board of Appeals as an independent unit of county government and vested the Board with the power to hear de novo all appeals authorized by the Express Powers Act.4 Anne Arundel County provides for initial action upon a special exception or variance request by an administrative hearing officer. Thereafter, appeal may be taken from the decision of the hearing officer to the Board of Appeals. Anne Arundel County Charter § 603 mandates that "[a]ll decisions by the County Board of Appeals shall be made after notice and hearing de novo upon the issues before said Board." The Board is purely a statutory creature and may exercise only those powers expressly granted to it by law or those which can be fairly implied. Baylis v. Mayor & City Council of Baltimore, 219 Md. 164, 168, 148 A.2d 429, 432 (1959).

<sup>[2]</sup> [3] The power to impose conditions upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception. "This is so because the whole basis for the exception is the peculiar hardship to the applicant, and the Board is justified in limiting the exception in such a way as to mitigate the effect upon neighboring property and the community at large." *Id.* at 169, 148 A.2d at 432. *See also Skipjack Cove Marina, Inc. v. Board of County Comm'rs of Cecil County,* 264 Md. 381, 287 A.2d 49 (1972); 3 Yokley, *Zoning Law and Practice,* § 21-12. Both a variance and a special exception authorize uses which \*141 otherwise would not be permitted. Having been given the power to authorize such unusual uses, the Board

must also have the power to limit those uses to protect the health, safety, and welfare of the community. See Skipjack Cove Marina, Inc., 264 Md. at 386, 287 A.2d at 51 (The board is justified in limiting the special exception in such a way as to mitigate its effect upon neighboring property and the community at large.); 3 Rathkopf, The Law of Zoning and Planning, § 40.02 [3] ("Even in the absence of any specific provision therefor in the ordinance, the board would thus have inherent power to condition a variance. If this were not so, the \*\*687 board, for lack of such right, might be forced, at times, to deny a variance and thus perpetuate the hardship which the restrictions have imposed upon the landowner.").

IV

I<sup>4</sup> Respondents cite the three cases in which we have previously addressed *de novo* review by a county board of appeals, *United Parcel Serv.*, *Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 650 A.2d 226 (1994) ("UPS"); County Fed. Sav. & Loan Assoc. v. Equitable Sav. & Loan Assoc., Inc., 261 Md. 246, 274 A.2d 363 (1971), and Daihl v. County Bd. of Appeals, 258 Md. 157, 265 A.2d 227 (1970). In the latter two of those cases, however, we addressed the Board's jurisdiction rather than the scope of *de novo* review. In Daihl, we held that a board of appeals cannot review actions which were not appealed specifically:

"We think that the context in which the term de novo is used in Section 501.6 and 501.3 ... means that on appeal there shall be a de novo hearing on those issues which have been appealed and not on every matter covered in the application. In this sense *de novo* means that the Board of Appeals may hear testimony and consider additional evidence pertaining to the issue or issues presented on appeal. See Vol. 2, The Law of Zoning and Planning, Rathkopf, ch. 65-30, § 7. The original nature of a de novo hearing with its quality of newness is in contra-distinction to a review upon the record as exists where matters are heard on

certiorari. 73 C.J.S. Public Administrative Bodies and Procedure, § 204."

Daihl, 258 Md. at 162, 265 A.2d at 229. We made a similar holding in County Federal, quoting the above language from Daihl. County Federal, 261 Md. at 253-54, 274 A.2d at 367. Contrary to respondents' assertions, neither of these holdings affects the disposition in this case, as they show that we have consistently treated de novo appeals as wholly original proceedings, with the word "appeal" meaning simply that the proceedings are new and independent rather than strict review of prior proceedings. See also Lohrmann v. Arundel Corp., 65 Md.App. 309, 318, 500 A.2d 344, 348 (1985) ("the use of the word 'appeal,' to the extent it denotes review of the action of a lower tribunal, is a misnomer, for there is no review."); Hardy v. State, 279 Md. 489, 369 A.2d 1043 (1977); Travelers Indemnity Co. v. Nationwide Construction Corp., 244 Md. 401, 224 A.2d 285 (1966). Although the issues to be addressed on review by the Board may be limited, new and additional evidence is permitted. The proceedings, therefore, are wholly original with regard to all issues properly raised.

<sup>[5]</sup> <sup>[6]</sup> In *UPS*, we interpreted the power granted by the Express Powers Act as providing charter counties the option to vest the board of appeals with either original jurisdiction or appellate jurisdiction over any subject matter set forth therein. *UPS*, 336 Md. at 588, 650 A.2d at 236. We concluded that it was the intent of the General Assembly that "[u]nder the Express Powers Act, a board of appeals is primarily an appellate tribunal, having only such original jurisdiction as a county's charter and ordinances expressly grant [.]" *Id.* at 591, 650 A.2d at 237.

"The protestants also rely upon People's Counsel v. Crown Development, 328 Md. 303, 316, 614 A.2d 553, 559 (1992), where this Court held, inter alia, that on an appeal from the decision of administrative officials granting final approval of a development plan, the Baltimore County Board of Appeals was authorized under the Express Powers Act and local law to receive and consider evidence in addition to that contained in the record before the administrative \*143 officials. The Crown Development case, like the Hope [v. Baltimore County, 288 Md. 656, 421 A.2d 576 (1980) ] case, was concerned only with the appellate jurisdiction of the Board of Appeals. Our holding with regard to additional or de novo evidence before the Board of Appeals does not support the view that the Board has original jurisdiction over all subjects delineated in §

5(U). The fact that an appellate tribunal may be authorized to receive additional evidence or hear a case *de novo* does not mean that it is exercising original jurisdiction. A *de novo* appeal is nevertheless an exercise of appellate jurisdiction rather than original jurisdiction. \*\*688 See Hardy v. State, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977). Whether a tribunal's exercise of jurisdiction is appellate or original does not depend on whether the tribunal is authorized to receive additional evidence. Instead, as Chief Justice Marshall explained, '[i]t is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause...." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 175, 2 L.Ed. 60, 73 (1803)."

Id. at 589-90, 650 A.2d at 236. That decision, however, does not conflict with our prior interpretation of de novo proceedings. The Anne Arundel County Board of Appeals may not entertain a truly original petition for variance or special exception, but it may review the actions of the administrative hearing officer and take any action which that officer could have taken in the original proceeding. See Soothcage v. King, 227 Md. 142, 152-53, 176 A.2d 221, 227 (1961). Additional evidence may be presented in the de novo proceedings, and the Board may impose any conditions it feels necessary to protect the public health, safety, and welfare. It is appellate review mainly in the sense that a decision by the administrative hearing officer is a prerequisite to proceedings before the Board and not in the sense that the Board is restricted to the record made before the administrative hearing officer. See also 3 Rathkopf, *The Law of Zoning and Planning*, § 37.01[7][a] ("A person aggrieved by the decision [of the \*144 administrative hearing officer] appeals to the board of appeals, asking it to rule upon the correctness of the administrative officer's determination; the board may reverse or affirm, wholly or partly, or may modify the order requirement, decision, or determination appealed from, and make such order, requirement, decision, or determination as, in its opinion, ought to be made in the case.").

We are left, therefore, with a question of first impression in this state regarding the scope of a board of appeals' *de novo* review. We shall first determine whether the Board had the authority under its *de novo* power to address the Conway Road access in the first instance, as it was not part of the original application. Then we shall address whether the conditions imposed by the Board were proper.

V

<sup>17]</sup> The circuit court concluded that, although the Board could address issues not raised before the administrative hearing officer, it could not "indiscriminately entertain matters which in effect change the nature of the original controversy or application.... [T]he Board, in entertaining the Conway Road issue, expanded the scope of its inquiry to such a degree that the nature of the original application was significantly altered."

<sup>[8]</sup> As acknowledged by the County in this case, and as noted by the Court of Special Appeals in *Lohrmann v. Arundel Corp.*, 65 Md.App. 309, 319, 500 A.2d 344, 349 (1985) (quoting *Boehm v. Anne Arundel County*, 54 Md.App. 497, 511, 459 A.2d 590, 599):

"[T]he *de novo* hearing contemplated by section 603 ... 'is an entirely new hearing at which time *all aspects of the case should be heard anew, as if no decision has been previously rendered* [.]" (emphasis added).

Acting *de novo*, the Board exercises jurisdiction akin to original jurisdiction. *See Kaouris v. Kaouris*, 324 Md. 687, 714-15, 598 A.2d 1193, 1206 (1991); *Volz v. State Roads Comm'n*, 221 Md. 209, 214-15, 156 A.2d 671, 673 (1959).

\*145 In *Kaouris*, we held that on appeal *de novo* from the orphans' court, a circuit court could consider issues not raised or decided below:

"A party is foreclosed from challenging for the first time on appeal, the propriety of the exercise by a court of its power to act. Where, however, the appeal is from an orphans' court to a circuit court pursuant to Courts Article § 12-502, the exercise of that orphans' court's power may be challenged in the circuit court even though the issue was not raised in the orphans' court. This is so because the matter is heard *de novo*."

324 Md. at 715-16, 598 A.2d at 1207; see also Barbee v. Barbee, 311 Md. 620, 537 A.2d 224 (1988) (directing the circuit court hearing a \*\*689 case de novo to determine issues not raised in the district court).

[9] As discussed in Part IV, supra, the Board conducts wholly original proceedings with regard to all issues properly before it, and may consider new and additional evidence beyond that introduced before the administrative hearing officer. The issue appealed to the Board was whether the sand and gravel and rubble landfill operations would be in the best interest of the public health, safety, and welfare. The main reasons for the administrative hearing officer's denial of Halle's application were the traffic and environmental impacts the Patuxent Road access would produce. Although the Conway Road access was not specifically discussed in the prior proceedings, the broad issue of access was addressed. The same issue of how access to the site would affect the public health. safety, and welfare was raised before the Board, but, in essence, different evidence was used to prove Halle's position that the public safety would not be in danger. In a de novo hearing before a board of appeals, new or different evidence beyond that presented during the original proceeding may be used concerning any issue properly before the tribunal. See Daihl and UPS, supra.

We reject an interpretation of the County's two-tier process that would preclude the Board from addressing by condition \*146 any aspect of a zoning proposal which might affect the public welfare. The access issue was so inextricably intertwined with the administrative hearing officer's decision that it was an issue properly before the Board which could be addressed.

#### VI

the *de novo* powers of a county board of appeals in zoning cases, we have made it clear that a board of appeals can, and should in many cases, impose conditions when granting a special exception or variance to protect the public welfare. *See, e.g., Rohde v. County Board of Appeals*, 234 Md. 259, 199 A.2d 216 (1964); *Montgomery County v. Mossburg*, 228 Md. 555, 180 A.2d 851 (1962); *Oursler v. Board of Zoning Appeals*, 204 Md. 397, 104 A.2d 568 (1954). "It has long been held and is firmly established that it is not only proper but desirable to attach to the grant of a special exception conditions which do not violate or go beyond the law and are appropriate and reasonable." *Mossburg*, 228 Md. at 558, 180 A.2d at 852.

The power of the Board to address all issues properly before it by condition goes hand-in-hand with the authority to take whatever action the administrative hearing officer could take if presented with the same evidence. After determining that permitting the proposed operations would be in the best interest of the public, therefore, the Board had the authority to address the access issue by imposing conditions as part of its *de novo* power.

Respondents contend that the condition imposed by the Board of Appeals was only a "so-called" condition rather than a true condition. In support of this conclusion, respondents point to the circuit court's reasoning:

"The Court of Appeals, in *Baylis v. City of Baltimore*, 219 Md. 164 [148 A.2d 429] (1959), summarized the nature and scope of conditions imposed upon special exceptions: '[T]he Board is justified in *limiting the [special] exception in such a way as to mitigate the effect upon neighboring property and the community at large.' \*147 <i>Baylis*, 219 Md. at 169 [148 A.2d 429] (emphasis added). A review of the circumstances in this case reveal that the Board's 'condition' of the Conway Road access is contrary to the characterization of the term as described by the *Baylis* court."

This analysis, however, ignores the findings by the Board that the Conway Road access would alleviate the wetland and traffic problems associated with the landfill and "mitigate the effect upon neighboring property and the community at large." The main difficulty with which the circuit court seems to have struggled is the fact that Halle did not own the property across which the Conway Road access would be built. The circuit court believed that a separate administrative proceeding was necessary for approval of such access:

\*\*690 "[I]t seems logical to this Court that an access road of the significance as the one here must also be authorized by a special exception. To authorize such a substantial use as a 'condition' of the special exception, rather than authorizing the use of the access pursuant to a specific special exception grant, is contrary to reason and adverse to the plain reading and spirit of the zoning statute."

[11] In Rohde, supra, we upheld a special exception to which a board of appeals had imposed a condition similar

to the one at issue in this case. There, we upheld a condition that access be acquired over property owned by third parties. The developer proposed to reclassify 37 acres of undeveloped land to a zoning classification which permitted apartment development, and sought a special exception permitting two high rise apartment buildings on the tract. The reclassification allowed 592 apartment units, and the special exception would add 240 more. The court noted:

"A proposal ... [had] been pending for some time, to extend a substantial highway known as Goucher Boulevard so as to run southeast from Taylor Avenue and with Loch connect Boulevard. As planned, it would pass close to the northeast side of the Ortel land, but would not actually touch that tract. A small strip of land, now zoned R-6 \*148 would be left between, but would useless for development purposes."

Rohde, 234 Md. at 263, 199 A.2d at 218. The board of appeals granted both the reclassification and the special exception conditioned upon the extension of Goucher Boulevard for access. We addressed the contention that the special exception could not be granted due to the uncertainty of the completion of the Goucher Boulevard extension in our holding:

"In reaching this conclusion, we have not overlooked Bonhage v. Cruse, supra, [233 Md. 10, 194 A.2d 803 (1963) ], which involved the same provision of the Baltimore County Zoning Regulations. There, we found that there was no assurance that a side street which led into a development behind the subject property would be widened, and that unless this street were widened it could not be shown that congestion would not result. Consequently Section 502.1 b was not satisfied. The situation here presented is different in that the extension of Goucher Boulevard is required as a condition precedent to construction and access to that new road is implicitly required, so that we think the Board could find that with the new road built and with access to it provided, it appeared that traffic congestion would not result from the grant of the exception."

Id. at 265, 199 A.2d at 219-20. Similarly, Halle must obtain a fee simple estate rather than an easement in the Conway Road access land before the landfill operations may proceed. That was explicitly made a condition of the Board's grant of the exception and variance. The uncertainty of a prerequisite's occurrence is irrelevant if the Board is satisfied that, once that prerequisite occurs, the approved activities would be appropriate. See also Gulick v. Board of Environmental Protection, 452 A.2d 1202, 1210 (Me.1982) ("The Board is free to set any conditions that fall within the range of its statutory authority. If any of those conditions require action by someone other than the applicant itself, it is up to that applicant to get whatever agreements or guarantees it needs."). The Board here imposed a true condition, not an illusory one. Contrary to the circuit court's conclusion, the condition imposed \*149 does in fact restrict Halle's use of the property. We shall uphold that condition, as it is justifiable in terms relating to the public health, safety and welfare. See 3 Yokley, Zoning Law and Practice, § 21-12; Exxon, Inc. v. City of Frederick, 36 Md.App. 703, 375 A.2d 34 (1977) (special exception conditioned upon entrance to and exit from gas station being positioned at a specific location).

#### VII

<sup>[12]</sup> The circuit court also determined that because of the "intensity of the ancillary activities possibly to be performed, the Board's decision impermissibly enlarged the substance of respondents application." Petitioners contend that this conclusion was erroneous, and that "the 'fundamental flaw' in the \*\*691 court's reasoning was that on its face, neither the Board's opinion nor the condition at issue authorized these facilities along the access road." Petitioners are correct, as the Board's order merely grants landfill and sand and gravel approval for the property; it does not mention off-site support

#### facilities.

It is true that at the first hearing before the Board, Halle submitted an exhibit depicting support facilities along the alternative access and off of the 482 acres. After inquiry by the Board, however, Halle agreed to locate the support facilities within the 482 acres and submitted exhibits specifically locating them in that area. Halle stated that it could seek a subsequent special exception if it later desired to locate those facilities along the access road.

The Board recognized that the scope of Halle's application was limited to the 482 acre tract and appropriate access. Uses outside that tract were a question to be resolved in a separate application; hence, Halle

agreed to keep the facilities within the acreage at issue. Nowhere in its opinion did the Board authorize support facilities along the access road, and the circuit court incorrectly concluded otherwise.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. COSTS TO BE PAID BY RESPONDENTS IN EQUAL SHARES.

#### **All Citations**

339 Md. 131, 661 A.2d 682

#### **Footnotes**

- The property in question is located nearly two miles northwest of the intersection of Maryland Routes 3 and 424, along Conway Road. It is bordered on the north by the Little Patuxent River and to the west by the Conrail railroad tracks.
- Anne Arundel County Charter, § 603 provides, *inter alia*, that "[a]ll decisions by the County Board of Appeals shall be made after notice and hearing *de novo* upon the issues before said Board."
- Two of the Board's conditions addressed the access issue:
  - "The special exceptions for a sand and gravel operation and rubble landfill operation are granted with the following conditions:
  - "1. Patuxent Road shall not be used as an entrance to the operation.
  - "2. Conway Road is to be used as the entrance to the operations, with the following conditions:
  - "a. A right turn lane shall be constructed on eastbound Conway Road at Maryland Route 3 to a minimum length of 500 feet.
  - "b. From the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12 foot travel lanes and 8 foot shoulders improved to county standards (pursuant to Article 26, Section 3-202(d), Anne Arundel County Code) where the county right-of-way exists. Additionally, the Petitioners shall pursue a diligent course to obtain the right-of-way from private property owners where possible.
  - "c. The Road improvements on Conway Road from Route 3 to Patuxent Road shall be constructed before any rubble landfill or sand and gravel operation begins; road improvements from the intersection of Conway Road and Patuxent Road to the entrance of the site are to be completed within one year of the start of operations.
  - "d. The access obtained to the site from Conway Road shall be through a fee-simple right-of-way, not through an easement."
- The Express Powers Act, Md.Code (1957, 1994 Repl.Vol.), Art. 25A, § 5(U) provides that a county board of appeals may make a decision

"on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; ..."

Halle Companies v. Crofton Civic Ass'n, 339 Md. 131 (1995)						
661 A.2d 682						
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#### BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

IN THE MATTER OF:

: CASE NO. BA12-13V

BA13-13V

MANAGERS, INC./ NATIONAL WASTE

CHESAPEAKE TERRACE

Tuesday, January 26, 2022

Pursuant to Notice, the above-entitled hearing was held before the Anne Arundel County Board of Appeals, at the Arundel Center, 44 Calvert Street, Council Chambers, Annapolis, Maryland 21401, commencing at 5:00 p.m., there being present on behalf of the respective parties:

#### ON BEHALF OF THE PETITIONER:

SUSANNE K. HENLEY, ESQUIRE Henley & Henley, Attorneys at Law 47 West Street Annapolis, Maryland 21401

HUNT REPORTING COMPANY Court Reporting and Litigation Support Serving Maryland, Washington, and Virginia 410-766-HUNT (4868) 1-800-950-DEPO (3376)

ON BEHALF OF PROTESTANT, FORKS OF THE PATUXENT IMPROVEMENT ASSOCIATION, INC.:

JOSEPH DEVLIN, ESQUIRE ANA L. HENRY, ESQUIRE Council, Baradel, Kosmerl & Nolan, P.A. 125 West Street, 4th Floor Annapolis, MD 21401

# ON BEHALF OF ANNE ARUNDEL COUNTY:

KELLY P. KENNEY, ESQUIRE Anne Arundel County Office of Law 2660 Riva Road, Fourth Floor Annapolis, Maryland 21401

## BOARD MEMBERS PRESENT:

Anthony Lamartina, Chairman
Richard Forgo, Vice Chairman
Patsy Baker-Blackshear, Board Member
Mike Jacobs, Board Member
Maria K. Patterson, Board Member
Cathleen F. Ward-Pratz, Esquire, Counsel
Amanda Schmidt, Esquire, Counsel

Deana Bussey, Clerk Tracy L. McFadden, Assistant Clerk

REPORTED BY: CHRIS HOFER

\* \* \* \* \*

1	$\underline{P} \ \underline{R} \ \underline{O} \ \underline{C} \ \underline{E} \ \underline{E} \ \underline{D} \ \underline{I} \ \underline{N} \ \underline{G} \ \underline{S}$
2	CHAIRMAN LAMARTINA: Good evening. And
3	welcome to the Board of Appeals. Once again, thank you
4	for wearing your face coverings, and please keep them
5	on the entire time we're in here.
6	All right. Before we begin, I know we're
7	going to start with cross-examination of Mr. Chisholm.
8	As you can see, the vice chairman is not here, and I
9	want he wants to remain on the case, and if you have
10	any objection to that, you can state it for the record.
11	Okay. We'll begin with cross-examination.
12	Mr. Devlin.
13	MR. DEVLIN: Thank you, Mr. Chairman. Mr.
14	Chisholm, I just wanted to take care of a quick
15	housekeeping matter.
16	(Pause)
17	Whereupon,
18	MR. CHISHOLM,
19	the witness, called for examination by Counsel for
20	Petitioner, was previously sworn, and was examined and
21	testified as follows:
22	CROSS-EXAMINATION BY COUNSEL FOR PROTESTANT
23	BY MR. DEVLIN:
24	Q You were here for the testimony of Mr.
25	Stratman, were you not?

	1	A	That's	correct.
--	---	---	--------	----------

- Q Okay. And then the -- and that was one of
- 3 the property owners that had to be traversed, and then
- 4 there was the Piney Orchard property above it, correct?
- 5 A Yes.
- 6 Q Okay. And the road, Alternative A, again
- 7 came up Stachitas, came over to Piney Orchard, and then
- 8 took a turn up into the National Waste. It's National
- 9 Waste all up here, correct?
- 10 A Yes.
- 11 O Okay. And that was the Alternative A?
- 12 A If that's what --
- 13 Q To the best of your knowledge?
- 14 A Best of my knowledge.
- 15 Q Now -- and I think what you indicated was
- that in 1993, that you indicated that -- I don't think
- it was you, but I think it was people on behalf of your
- 18 client, Halley, had reached out to the parties. I
- don't think you got into both the names of who gave you
- 20 a written one and who gave you an oral one, but
- 21 indicated a contact had been made and that it was
- 22 believed that you would get the property from them; is
- 23 that correct?
- 24 A I was not involved in the details of the
- 25 property acquisition.

- 1 A I can't say. It hasn't been -- I wasn't --
- 2 that wasn't in my level of duties. That was handled by
- 3 higher up in the company.
- 4 O Mr. Chisholm, do you recall having a
- 5 telephone conversation with Mr. Greg Swain, the county
- 6 attorney, on February 2nd, 2021, asking about
- 7 purchasing the land -- the Piney Orchard land that had
- 8 been conveyed and was now owned by Anne Arundel County?
- 9 A Yes, I did.
- 10 Q Okay. Let me show you this, which we'll mark
- 11 as Exhibit 14 -- Protestant's 14.
- 12 (Protestant's Exhibit No. 14 marked for
- 13 identification.)
- 14 BY MR. DEVLIN:
- 15 Q So that is an email -- or what is that, Mr.
- 16 Chisholm?
- 17 A I was asked by -- I don't remember
- 18 specifically who in Halley, to check with I believe it
- 19 was County Attorney Greg Swain to see if the county
- 20 would be interested either in selling or facilitating
- 21 the access. That's all I know.
- 22 O Facilitating the access to what?
- 23 A From -- the Stachitas property.
- 24 Q Basically to get to here, right?
- 25 A Yes. Yes.

1	Q	And	this	was	actually	 you	were	actually

- 2 talking to them about the property up north, right, the
- 3 Piney Orchard piece?
- 4 A Yes.
- 5 Q 2021?
- 6 A Yes.
- 7 Q Okay. And I think -- and so this is an email
- 8 -- I guess the -- it's a two-page exhibit. The first
- 9 page is an email from you to Mr. Swain, is that
- 10 correct? And the top one is Mr. Swain responding to
- 11 you; is that right?
- 12 A Yes. I was asked to ask if the county would
- 13 be interested in discussing the access with National
- 14 Waste.
- 15 O Okay. And what was the answer that you
- 16 received, Mr. Swain?
- 17 A Apparently, it was no.
- 18 Q Apparently or it says the answer was no?
- 19 A It says the answer was no.
- 20 Q Thank you.
- 21 CHAIRMAN LAMARTINA: Objection?
- MR. DEVLIN: (Indiscernible).
- MS. HENLEY: No objection.
- 24 CHAIRMAN LAMARTINA: That will be Exhibit 14.
- 25 (Protestant's Exhibit No. 14 admitted into

- 1 evidence.)
- 2 BY MR. DEVLIN:
- 3 Q Okay. At the time that -- excuse me. I
- 4 don't think counsel should have a conversation with
- 5 their witnesses. I would just note, Mr. Chisholm, am I
- 6 correct that the contact that you made in 2021 was
- 7 concerning this property up here (indiscernible) that
- 8 had actually been sold to the county in 2004?
- 9 A It was whatever the county owned to get
- 10 access to the Chesapeake Terrace site.
- 11 Q So that land here was sold to the county in
- 12 2004?
- 13 A If that's what the deed says.
- 14 Q That is what that deed says. I'm just asking
- you to make sure that we're tying it back to this.
- 16 A If I recall, that parcel was part of the open
- 17 space at Piney Orchard, and it was conveyed to the
- 18 county.
- 19 Q Okay. But whatever it was -- the reason for
- 20 conveyance, or what it was conveyed for, that would all
- 21 be contained in the deed, correct? It would just
- 22 diverted the deed; is that fair to say?
- 23 A Yes.
- Q Are you aware that that acquisition was made
- with program open space money?

1	A	T'm	not	aware	of	that.

- 2 CHAIRMAN LAMARTINA: Sustained. I see her
- 3 ready to object.
- 4 MS. HENLEY: Yes.
- 5 CHAIRMAN LAMARTINA: Sustained.
- BY MR. DEVLIN:
- 7 Q Mr. Chisholm, just to close the loop on this,
- 8 other than that inquiry made by you in February of
- 9 2021, am I correct that you do not recall making any
- 10 other overtures to -- whether it was Anne Arundel
- 11 County or Piney Orchard concerning acquisition of the
- 12 parcel we talked about by National Waste?
- 13 A I don't recall anything other than that
- 14 conversation with Greg Swain.
- 15 O Okay. Thank you. Now, Mr. Chisholm, last
- 16 night Ms. Henley made the statement that National Waste
- owns fee simple access from Conway Road to the
- 18 landfill. Do you recall her saying that?
- 19 A Not specifically.
- 20 Okay. Are you aware of any authorized access
- 21 by the Board from Conway Road, other than the one we're
- 22 talking about?
- 23 A Authorized access by the Board?
- Q By the Board.
- MS. HENLEY: Objection. The 1993 decision is

- 1 very plain. It says entrance from Conway Road.
- 2 Anywhere they would enter on Conway Road would be
- 3 authorized by the 1993 decision. It doesn't limit it
- 4 to any place. The decision speaks for itself.
- 5 CHAIRMAN LAMARTINA: I agree. Interpretation
- of it is left to other people other than -- well, we'll
- 7 interpret the portions we have to, but then I'm sure
- 8 this is going to end up in court again. So --
- 9 MR. DEVLIN: And yeah, and we'd like to not -
- 10 to be sustained.
- 11 Court's indulgence.
- 12 (Pause.)
- 13 BY MR. DEVLIN:
- 14 Q Now, Mr. Chisholm, you indicated, again, that
- this was the Conway Road area. Would you agree with me
- 16 -- let's go basic. You have participated in a few
- 17 special exception cases in your career; have you not?
- 18 A Yes, I have.
- 19 Q How many would you estimate you have
- 20 participated in?
- 21 A I don't have no -- I don't have an idea.
- 22 Q More than 10?
- 23 A Or less.
- 24 Q Ten or less. Okay. Now, in -- would you
- 25 agree with me that if you had a choice in terms of

- impact upon neighbors, or whatever, that the traffic or
- 2 the route to be run from this area here up to here
- 3 (indiscernible). This is all (indiscernible) Road, is
- a shorter use of public way than to here? Or I'm
- 5 sorry, this is shorter use of public right of way than
- 6 Patuxent Road going up here. Do you agree with that?
- MS. HENLEY: Objection, Your Honor. The
- 8 diagram speaks for itself. He's not --
- GHAIRMAN LAMARTINA: If you know the answer,
- 10 you can answer it. If you have opinion of the answer,
- 11 you can answer it if you know it.
- 12 THE WITNESS: We should probably be looking
- 13 at the 1993 map, which is an error that --
- 14 BY MR. DEVLIN:
- 15 O These were not there then. These were not
- 16 there. That's correct.
- 17 A Nothing was there. Two large parcels, if I
- 18 remember, and sand and gravel.
- 19 Q But my question is not about that. My
- 20 question is that the distance to be traveled by trucks
- 21 accessing the landfill are much longer using Patuxent
- 22 Road than using Conway Road to this entry point,
- 23 correct?
- MS. HENLEY: Objection, again, because the
- 25 1993 document says we cannot use Patuxent Road. It's

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- MR. DEVLIN: And the reason why this question
- 3 is important and I need it to be part of the record,
- 4 okay, is that the court of appeals has already stated
- 5 that the purpose of requiring this access was to serve
- 6 public safety. I ultimately want to see if Mr.
- 7 Chisholm agrees.
- MS. HENLEY: Objection. That is not what the
- 9 Court of Appeals has said at any particular point in
- 10 time.
- 11 CHAIRMAN LAMARTINA: To the extent that it
- might have impact on the neighborhood, I'm going to
- 13 allow him to answer the question.
- 14 BY MR. DEVLIN:
- 15 Q Would traversing a shorter distance on public
- 16 roads be less of an impact than traversing longer
- 17 distances with truck on the local citizenry?
- 18 A Yes.
- 19 O Thank you. Mr. Chisholm, are you aware of
- 20 any efforts undertaken by National since 1993 to
- 21 acquire the right of way that was required by the Board
- to be extended along Highway Road (indiscernible)?
- MS. HENLEY: Objection. This has been asked
- 24 and answered. He's testified --
- 25 CHAIRMAN LAMARTINA: All right. Let him ask

- for it one more time as it goes to diligence, I would
- 2 assume.
- 3 THE WITNESS: Could you ask it again, please?
- 4 BY MR. DEVLIN:
- 5 Q Are you aware of any efforts by or on behalf
- of National (indiscernible) require right of away along
- 7 Highway road from Patuxent Road to the access point, as
- 8 required by (indiscernible)?
- 9 MS. HENLEY: Objection to the question.
- 10 There is no route required by the Board of Appeals in
- 11 the 1993 decision.
- 12 CHAIRMAN LAMARTINA: I'm going to note that
- objection for the record. Let him say yes or no,
- 14 please, so we can move on.
- THE WITNESS: I don't recall specifically.
- 16 CHAIRMAN LAMARTINA: All right. There you
- 17 qo.
- 18 BY MR. DEVLIN:
- 19 O You don't recall any efforts?
- 20 A It's 20 -- it's 30 years ago. I don't recall
- 21 1993.
- 22 O Okay. They didn't call you to do that, I
- 23 quess, then, right?
- 24 A I don't recall.
- Q Okay. Assuming for purposes of discussion,

- think he'll get the question out, and we'll be over --
- 2 and we'll be finished with this point.
- BY MR. DEVLIN:
- 4 Q And so this Exhibit 3, which testimony is
- 5 indicated it was presented to the Board in 1992, that
- 6 this is what -- it points back to this here in the
- 7 blue, right?
- 8 A Right.
- 9 Q You've heard that testimony. You've been
- 10 here every night, right?
- 11 A Yes.
- 12 O Okay. You heard and you saw the plans from
- 13 Mr. Stratman that his plans show this access, right?
- 14 A I believe that's what he said, yeah.
- Okay. So this is the access that Halley has
- been, or National Waste has been processing all these
- 17 years, correct?
- 18 A Well, there have been alternatives. I mean,
- 19 there are --
- 20 Q Where does the Board provide them in the
- 21 alternatives?
- 22 A Not on here. Okay?
- Q Where in the 1993 decision does the Board
- 24 provide them any alternatives?
- 25 A I would have to say probably nowhere.

- 2 A I don't know for a fact, but I'll say nowhere
- 3 just to --
- 4 Q Well, it's either a one or it's two.
- 5 A Well, that was their proposed access.
- 6 Q Okay. Thank you. This one right here.
- 7 Thank you. Mr. Arason, when we talk about due
- 8 diligence in this instance, and I know that this has
- 9 had quite a history, as we all know and have heard
- 10 repeatedly, due diligence in the context of a temporal
- 11 variance -- the temporal variance is ultimately for the
- 12 county special exception, is it not?
- 13 A That's correct. There were a couple
- 14 variances, but it's mostly for the special exception.
- Okay. There was special exception for the
- 16 rubble, special exception for the sand and gravel, and
- 17 variances, correct?
- 18 A Yeah.
- 19 Q Okay. And we're seeking -- the applicant is
- 20 seeking extensions of those, right?
- 21 A That's why we're here.
- 22 Q Okay. And -- so due diligence, as that
- 23 phrase is termed, is not mutually exclusive -- or not
- 24 exclusive to MDE, is it?
- 25 A It's not exclusive, but it's wise not to

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- 2 A Some plans that I saw. And I'm sorry I
- 3 didn't bring them with me.
- 4 Q That's okay. We can pull them out if we need
- 5 to, but I don't think we do. And again, that gets back
- 6 into the east entrance, which is the assumed entrance,
- 7 which is the one that's shown in blue on there,
- 8 correct?
- 9 A Correct.
- 10 Q And then we got one up to the north and one
- up to the south that are optional; is that right?
- 12 A Well, the north would be Patuxent.
- 13 Q Yeah.
- 14 A Correct? Which they can't do.
- 15 Q Yeah.
- 16 A And the one that you call to the south, I'd
- 17 kind of say it's to the east --
- 18 Q Okay.
- 19 A -- where the S is, that was the other option.
- O Okay. And in fact, you were here when Mr.
- 21 Stratman testified, right?
- 22 A Yeah.
- 23 Q And we've got documentation, but Mr. Stratman
- 24 did agree that the applicant has noted in their MDE
- 25 program documents that they do not have the ability to

WITNESS	C O N T E N T S EXAMINATION BY		PAGE
Mr. Chisholm	Cross - Mr. Devlin Cross - Ms. Kenney Members of the Boar	~d	3 40
	Mr. Jacobs Redirect - Ms. Henl		49 50
Jon Arason	Direct - Ms. Henley Cross - Mr. Devlin Cross - Ms. Kenney Members of the Boar		53 77 104
	Ms. Blackshear Mr. Jacobs Redirect - Ms. Henl Recross - Mr. Devli	еу	108 112 117 124
		.ii	124
	<u>E X H I B I T S</u>		
PETITIONER	DESCRIPTION	MARKED	REC'D
No. 31	Arason CV.	53	54
PROTESTANT	DESCRIPTION	MARKED	REC'D
No. 12	Chisholm Drawing.	8	11
No. 13	Piney Orchard Deed.		29

\* \* \* \* \*

32

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MARKED

33

REC'D

Swain Email.

DESCRIPTION

Site Plan.

No. 14

COUNTY

No. 1

## CERTIFICATE OF NOTARY

I, Chris Hofer, Notary Public, before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that said testimony is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of the action; and that the testimony was reduced to typewriting by me or under my direction.

This certification is expressly withdrawn upon the disassembly or photocopying of the foregoing transcript, including exhibits, unless disassembly or photocopying is done under the auspices of Hunt Reporting Company, and the signature and original seal is attached thereto.

CHRIS HOFER, Notary Public in and for the State of Maryland 8/1/24

My Commission Expires:

#### ANNE ARUNDEL COUNTY BOARD OF APPEALS

IN THE CASE OF

: CASE NOS.: BA 12-13V

NATIONAL WASTE MANAGERS, INC. :

BA 13-13V

Wednesday, October 27, 2021

Pursuant to Notice, the above-entitled
hearing was held before Anthony Lamartina, Chairman,
Anne Arundel County Board of Appeals, 44 Calvert
Street, Council Chambers, Annapolis, Maryland 21401,
commencing at 5:00 p.m., there being present on behalf
of the respective parties:

BOARD MEMBERS PRESENT:

ANTHONY V. LAMARTINA, CHAIRMAN SCOTT MACMULLAN, VICE CHAIRMAN PATSY BAKER BLACKSHEAR RICHARD FORGO MIKE JACOBS

ON BEHALF OF THE BOARD:

CATHLEEN F. WARD, ESQUIRE Ward & Company, Chartered 308 Crain Highway, Northwest Glen Burnie, Maryland 21061

# ON BEHALF OF THE PETITIONERS:

SUSANNE K. HENLEY, ESQUIRE Henley & Henley 47 West Street Annapolis, Maryland 21401

# ON BEHALF OF THE PROTESTANTS:

JOSEPH F. DEVLIN, ESQUIRE
ANA L. HENRY, ESQUIRE
Council, Baradel, Kosmerl & Nolan
125 West Street
Suite 4
Annapolis, Maryland 21401

## ON BEHALF OF THE COUNTY:

KELLY P. KENNEY, ESQUIRE Anne Arundel County Office of Law 2664 Riva Road Annapolis, Maryland 21401

BOARD SECRETARY: DEANA BUSSY

REPORTED BY: KATHLEEN A. COYLE, Notary Public

1	PROCEEDINGS
2	CHAIRMAN LAMARTINA: Good afternoon. Welcome
3	to the Board of Appeals. Before we begin and call the
4	case to order, I would like to thank you all for
5	wearing your face covering. I remind you that they
6	must remain on properly the entire time you're in here.
7	If they're not, I'm going to have to recess the hearing
8	until we can remedy the situation. Having said that,
9	do you want to call the case to order, Ms. Bussy.
10	MS. BUSSY: The Anne Arundel County Board of
11	Appeals is convened this 27th day of October, 2021, to
12	hear testimony on case numbers BA 12-13V and BA 13-13V,
13	National Waste Managers, Incorporated/Chesapeake
14	Terrace, a matter before this Board as a remand from
15	Circuit Court of Anne Arundel County in Case Number C-
1.6	02-CV-18-003469. This is an appeal of the conditional
17	granting of a variance to allow an extension in the
1.8	time required for the implementation and completion of
L9	a previously approved special exception and variance
20	for a rubble landfill and an appeal of the conditional
21	granting of a variance to allow an extension in the
22	time for the implementation and completion of a
23	previously approved special exception for a sand and
24	gravel operation, for property known as 515 Patuxtent
25	Road, Odenton.

- are excerpted pages out of the phase three submittal
- 2 that was made by you, and others I guess, I believe on
- 3 September 3, 2021. And I just wanted to confirm that
- 4 these do, that that's what these are? And then we see
- 5 I highlighted certain things on them, but these are
- 6 excerpts of the plans that you submitted as part of
- 7 your phase three application here in September?
- 8 A Yes, they are.
- 9 Q And those were submitted in response to those
- 10 comments that you had gotten, I guess in July, as to
- 11 the July 2020 submission?
- 12 A Correct.
- 13 Q Okay. Now, let's go to --
- MR. DEVLIN: I guess I would like to
- 15 introduce into evidence this exhibit 2.
- 16 CHAIRMAN LAMARTINA: Any objection?
- MS. KENNEY: No objection.
- 18 CHAIRMAN LAMARTINA: I will be part of the
- 19 record.
- MS. HENLEY: No objection.
- 21 (Whereupon, the document was marked for
- identification, Protestant's Exhibit No. 2.)
- BY MR. DEVLIN:
- Q Now, another thing I would like to do, is I
- 25 would like to show you what we'll mark exhibit 3. And I

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- 1 would ask if you recognize this document as I (audio
- 2 interference) the access road from Conway Road to what
- 3 you have called on your plans as the east entrance?
- 4 A Yes, it is.
- 5 Q Okay. So this, in concert with drawing one
- of exhibit 2, the map with regard to the proposed
- 7 access road on east entrance, which is the access road
- 8 from Conway Road?
- 9 A Yes.
- 10 Q Okay. And are you -- would you agree with me
- 11 that that is the access road that was required by the
- 12 Board of Appeals in a special session hearing?
- 13 A Yes.
- 14 Q Okay. Now, the last thing is --
- MR. DEVLIN: So I would ask that be
- 16 introduced into evidence, Mr. Chairman.
- 17 CHAIRMAN LAMARTINA: Any objection?
- MS. HENLEY: No objection.
- MS. KENNEY: No objection.
- 20 CHAIRMAN LAMARTINA: Okay. That will be
- 21 exhibit 3.
- 22 (Whereupon, a document was marked for
- 23 identification, Protestant's Exhibit No. 3.)
- BY MR. DEVLIN:
- 25 Q Now, the other -- the last thing I'd like to

- 1 do, Mr. Stratman, is that we have confirmed that your
- 2 September 21 drawing that -- or at least it's certainly
- 3 the one on page, on drawing one, and the Board
- 4 identified Conway Road access are basically the same.
- 5 I ask you to -- I will ask you to take a look here at
- 6 this Board here. And would you tell me, based on
- 7 taking a look at your drawing one and the exhibit 3
- 8 that shows the Board mandated access, whether this blue
- 9 line is substantially shows the same thing?
- 10 A Yes, it does.
- 11 Q Okay. And this is --
- MS. HENLEY: Objection to the question, the
- 13 Board mandated. The Board set access --
- MR. DEVLIN: I respectfully disagree, Ms.
- 15 Henley. And if you have an objection you can pick it
- 16 up at another time. But he said that that is which he
- 17 thought this is what came out of the Board hearing.
- 18 MS. HENLEY: The Board of Appeals document
- 19 speaks or it says, it says access Conway.
- MR. DEVLIN: Right. Okay.
- 21 BY MR. DEVLIN:
- 22 O So access Conway, your drawing one, and this
- 23 Board all show the access Conway basically the same
- 24 position, correct?
- 25 A Yes, they do.

- Okay. Now, let's go back to your exhibit --
- 2 let's go back to your exhibit, your drawing one,
- 3 Applicant's exhibit 2.
- 4 CHAIRMAN LAMARTINA: Applicant's exhibit 2 is
- 5 the CV.
- 6 MR. DEVLIN: I'm sorry, Protestant exhibit 2.
- 7 Okay. Which is drawing one of your -- which is the set
- 8 of documents. I'm directing your attention to drawing
- 9 1. Okay.
- 10 BY MR. DEVLIN:
- 11 Q And quick question in terms of the process.
- 12 The permit that you're seeking is for the landfill,
- 13 correct?
- 14 A Correct.
- Okay. And that permit is basically has
- review by MDE as to all aspects of that landfill
- 17 operation, correct?
- 18 A Correct.
- 19 Q And the access roads to the landfill
- operation, to the landfill facility, the part of the
- 21 operation that is reviewed by MDE?
- 22 A Yes.
- 23 O Okay. And on this drawing -- or let me ask
- 24 another question. In your experience it's not unusual
- 25 that addition to having to meet the MDE type

- requirement, for example, that an applicant would also
- 2 have to comply with whatever zoning requirements?
- 3 A Correct.
- 4 O Okay. And you are familiar with special
- 5 exceptions?
- 6 A Yes.
- 7 Q Okay. And would you agree with me that many
- 8 times special exceptions are granted with conditions?
- 9 A Yes.
- 10 Q Okay. Now, let's take a look at this drawing
- 11 here. And I would note that --
- 12 MR. DEVLIN: Does the Board have them?
- 13 CHAIRMAN LAMARTINA: Yes.
- 14 BY MR. DEVLIN:
- 15 Q Would you note that what we've got here is,
- 16 let's see, what's that, east. Assume east entrance
- 17 access road is just above location, location, and that
- goes up and into the entrance of the landfill. And
- 19 that's the one that's showing blue, right?
- 20 A Correct.
- 21 Q That is called assuming. Why is it called
- 22 assuming?
- 23 A Because that is -- my understanding is the
- 24 preferring entrance into the facility and what I picked
- up in designing a project, it has already been sort of

- 1 slated as the primary entrance.
- Q Okay. I guess are you familiar that, again,
- 3 that the Board of Appeals mandated Conway Road access
- 4 for the facility?
- 5 A Yes.
- 6 Q Okay. And so I'm just curious, why isn't it
- 7 noted as the required entrance location?
- 8 A I -- it was -- has been shown as assumed I
- 9 think on previous submissions. My understanding is
- 10 that the final location has not been finalized.
- 11 Q Final location of what?
- 12 A The entrance road.
- 13 Q But doesn't the entrance road have to meet
- 14 the special exception that underlies this --
- MS. HENLEY: Objection.
- 16 CHAIRMAN LAMARTINA: Basis?
- 17 MS. HENLEY: He's asking this person for a
- 18 legal conclusion. The only restriction on the entrance
- on this is that there's access from Conway Road. There
- 20 are three entrances shown, two of which are on Conway
- 21 Road.
- 22 CHAIRMAN LAMARTINA: Okay. With regards to
- 23 the legal decision, based on whether the Board of
- 24 Appeals decision fails, I will sustain that. But the
- 25 rest, go ahead.

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2	PETITIONER'S	DESCRIPTION	MARK	REC'D
3	No. 14	MDE comment Letter, 10/22/21	80	80
4	No. 15	Email, 10/26/21	81	81
5 6	No. 16	Anne Arundel Soil District Letter, 10/25/21	83	83
7 8	PROTESTANT'S	DESCRIPTION	MARK	REC'D
9 10 11	No. 1	Halle Companies, et al., V. Crofton Civic Assoc, Court of Appeals Decision	32	32
12 13	No. 2	Excerpt from Sectional 8 Drawings	85	85
14	No. 3	Small Road drawing	86	86
15	No. 4A	Response to Comment, 9/23/21	105	105
16	No. 4B	Excerpt of 4A	105	105
17	No. 5A	MDE Letter, 7/22/21	107	108
18	No. 5B	Excerpt of Letter	107	108
19	No. 6	Counter Letter, 7/27/05	109	109
20	No. 7A	1993 Area Map	118	118
21 22	No. 7B	2021 Area Map	118	118

2	CERTIFICATE OF NOTARY
3	I, Kathleen A. Coyle, Notary Public, before
4	whom the foregoing testimony was taken, do hereby
5	certify that the witness was duly sworn by me; that
6	said testimony is a true record of the testimony given
7	by said witness; that I am neither counsel for, related
8	to, nor employed by any of the parties to this action,
9	nor financially or otherwise interested in the outcome
10	of the action; and that the testimony was reduced to
11	typewriting by me or under my direction.
12	This certification is expressly withdrawn
13	upon the disassembly or photocopying of the foregoing
14	transcript, including exhibits, unless disassembly or
15	photocopying is done under the auspices of Hunt
16	Reporting Company, and the signature and original seal
17	is attached thereto.
18 19 20 21 22 23 24	KATHLEEN A. COYLE Notary Public in and for the State of Maryland

25 My Commission Expires: <u>April 30, 2022</u>

IN THE MATTER OF: :
NATIONAL WASTE MANAGERS, : CASE NOS. BA12-13V
BA13-13V INC/CHESAPEAKE TERRACE :

(AD 4, CD 4)

\_\_\_\_\_\_

BA13-13V

Tuesday, January 25, 2022

Pursuant to Notice, the above-entitled hearing was held before the Anne Arundel County Board of Appeals, at the Arundel Center, 44 Calvert Street, Council Chambers, Annapolis, Maryland 21401, commencing at 5:01 p.m., there being present on behalf of the respective parties:

# ON BEHALF OF THE PETITIONER:

SUSANNE K. HENLEY Henley & Henley 47 West Street Annapolis, Maryland 21401

#### ON BEHALF OF ANNE ARUNDEL COUNTY:

KELLY PHILLIPS KENNEY, ESQUIRE Anne Arundel County Office of Law 2660 Riva Road, Fourth Floor Annapolis, Maryland 21401

# ON BEHALF OF PROTESTANT:

JOSEPH F. DEVLIN, ESQUIRE SALLY V. BALDWIN, ESQUIRE Council, Baradel, Kosmerl & Nolan, P.A. 125 West Street, Fourth Floor Annapolis, Maryland 21404

## BOARD MEMBERS PRESENT:

Anthony LaMartina, Chairman Richard Forgo, Board Member Patsy Baker Blackshear, Board Member Scott MacMullen, Board Member Cathleen F. Ward, Esquire, Counsel

Tracy McFadden, Clerk

REPORTED BY: WALTER MURPHY

\* \* \* \* \*

1	$\underline{P} \ \underline{R} \ \underline{O} \ \underline{C} \ \underline{E} \ \underline{E} \ \underline{D} \ \underline{I} \ \underline{N} \ \underline{G} \ \underline{S}$
2	CHAIRMAN LAMARTINA: Good evening and welcome
3	to the Board of Appeals. First, I want to thank you
4	all for wearing your face coverings and remind you to
5	keep them on the entire time that we're in here. Okay.
6	We're you want to call this case to order?
7	THE CLERK: The Anne Arundel County Board of
8	Appeals has convened the 25th day of January 2022 to
9	continue testimony on Case Nos. BA12-13V and BA13-13V,
10	National Waste Managers, Incorporated and Chesapeake
11	Terrace, a matter before this Board as a remand from
12	the Circuit Court of Anne Arundel County in Case No. C-
13	02-CV-18-003469. This is an appeal of the conditional
14	granting of a variance to allowing extension in the
15	time required for the implementation and completion of
16	a previously approved special exception and variance
17	for rubble landfill
18	UNIDENTIFIED SPEAKER: And an appeal.
19	THE CLERK: of the conditional granting of
20	a variance to allow an extension in the time for the
21	implementation and completion of a previously approved
22	special exception for a sand and gravel operation for
23	property known as 515 Patuxent Road in Odenton.
24	CHAIRMAN LAMARTINA: Thank you. Okay.
25	Before we start the hearing and then for the record, as

7	3.40	DESTRUCTION OF STREET	B #	and the second s		1 1 1	1100		7 . 7
	IVID	1)H/// 1.1 M •	IVI T 7	guestion	1.120	aid	MII)H.	Or	A I A
	1.117	DIV TITIV.	T.T A	AUCDLIOII	WCLD		1.11717		

- 2 National Waste indicate in their response that they
- 3 would not be able to use the north or south optional
- 4 entrances or anything other than the east entrance
- 5 without modifying their special exception?
- 6 MS. HENLEY: Objection.
- 7 (Cross-talk.)
- 8 CHAIRMAN LAMARTINA: The document does speak
- 9 for itself.
- 10 THE WITNESS: Well, okay.
- MR. DEVLIN: Introduced in the record, that's
- 12 fine.
- 13 CHAIRMAN LAMARTINA: Okay.
- 14 BY MR. DEVLIN:
- Now, Mr. Grenzer (sic), let's take a plan
- 16 here. Okay. And this plan -- let me ask you this.
- 17 You mentioned that the access is part of the
- 18 operational review --
- 19 A Uh-huh.
- 20 you guys did, right, the entrance access
- 21 and the Applicant here has shown you that their access,
- their preferred access, is coming off of Conway up to
- 23 the landfill, correct?
- 24 A That's what they indicated on the plan.
- Q Okay. And has National Waste, and I'm not

# $\underline{C} \ \underline{O} \ \underline{N} \ \underline{T} \ \underline{E} \ \underline{N} \ \underline{T} \ \underline{S} \ (Cont'd)$

PETITIONER	DESCRIPTION	MARKED	REC'D
No. 29	Authorization letter.	108	108
No. 30	Photographs.	110	110
PROTESTANT	DESCRIPTION	MARKED	REC'D
No. 8	Special Exception.	62	62
No. 9	Plans.	73	73
No. 10	Letter.	77	77
No. 11A and B	Cover letter and document	ts. 78	78

\* \* \* \* \*

# CERTIFICATE OF NOTARY

I, Walter Murphy, Notary Public, before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that said testimony is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of the action; and that the testimony was reduced to typewriting by me or under my direction.

This certification is expressly withdrawn upon the disassembly or photocopying of the foregoing transcript, including exhibits, unless disassembly or photocopying is done under the auspices of Hunt Reporting Company, and the signature and original seal is attached thereto.

Math D. Maryly &

WALTER MURPHY, Notary Public in and for the State of Maryland 11/6/22

My Commission Expires:

## BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

-----

IN THE MATTER OF:

: CASE NOS. BA 12-13V

(2012-0300-V)

BA 13-13V

NATIONAL WASTE MANAGERS, : INC./CHESAPEAKE TERRACE :

(2012-0301-V)

\_\_\_\_\_

Tuesday, March 1, 2022

Pursuant to Notice, the above-entitled hearing was held before the Anne Arundel County Board of Appeals, at the Arundel Center, 44 Calvert Street, Council Chambers, Annapolis, Maryland 21401, commencing at 5:02 p.m., there being present on behalf of the respective parties:

ON BEHALF OF THE PETITIONER:

SUSANNE K. HENLEY, ESQUIRE Henley & Henley 47 West Street Annapolis, MD 21401

ON BEHALF OF PROTESTANT, FORKS OF PATUXENT IMPROVEMENT ASSOCIATION, ET AL.

JOSEPH F. DEVLIN, ESQUIRE SALLY V. BALDWIN, ESQUIRE Council, Baradel, Kosmerl, P.A. 125 West Street, 4th Floor Annapolis, MD 21401

# ON BEHALF OF ANNE ARUNDEL COUNTY:

KELLY PHILLIPS KENNEY, ESQUIRE Anne Arundel County, Office of Law 2660 Riva Road 4th Floor Annapolis, Maryland 21401

#### BOARD MEMBERS PRESENT:

Anthony Lamartina, Chairman Michael Jacobs, Board Member Dr. Patsy Blackshear, Board Member Scott MacMullan, Board Member Cathleen F. Ward, Esquire, Counsel Tracy McFadden, Clerk

REPORTED BY: WALTER MURPHY

\* \* \* \* \*

1	$\underline{P} \ \underline{R} \ \underline{O} \ \underline{C} \ \underline{E} \ \underline{E} \ \underline{D} \ \underline{I} \ \underline{N} \ \underline{G} \ \underline{S}$
2	CHAIRMAN LAMARTINA: Good evening and welcome
3	to the Board of Appeals.
4	Okay. We will I believe where we left
5	off, we had finished the Protestant's case. We heard
6	from one Protestant's audience from the audience and
7	I believe we are now in Ms. Kenney's case.
8	MS. KENNEY: That's correct, Mr. Chairman.
9	Kelly Kenney, on behalf of Anne Arundel County.
10	I'd like to call Rob Konowal.
11	(Witness sworn.)
1.0	Whereupon,
12	whereupon,
13	ROB KONOWAL,
	CONTRACTOR OF A CONTRACTOR OF
13	ROB KONOWAL,
13 14	ROB KONOWAL, a witness called for examination by counsel for Anne
13 14 15	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and
13 14 15 16	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and  testified as follows:
13 14 15 16 17	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and  testified as follows:  THE CLERK: State your name and position with
13 14 15 16 17	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and  testified as follows:  THE CLERK: State your name and position with  the County.
13 14 15 16 17 18	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and  testified as follows:  THE CLERK: State your name and position with  the County.  THE WITNESS: Robert Konowal (ph). I'm a
13 14 15 16 17 18 19 20	ROB KONOWAL,  a witness called for examination by counsel for Anne  Arundel County, was duly sworn, and was examined and  testified as follows:  THE CLERK: State your name and position with  the County.  THE WITNESS: Robert Konowal (ph). I'm a  planner with the Office of Planning and Zoning, Zoning
13 14 15 16 17 18 19 20 21	ROB KONOWAL,  a witness called for examination by counsel for Anne Arundel County, was duly sworn, and was examined and testified as follows:  THE CLERK: State your name and position with the County.  THE WITNESS: Robert Konowal (ph). I'm a planner with the Office of Planning and Zoning, Zoning Administration Division.

is not here. He has a family emergency, and will

25

1	The residential community has grown since 2017
2	making the realization of the fee simple access all the
3	more crucial so as to ensure the proposed rubble
4	landfill use does not alter the essential character of
5	the neighborhood nor negatively impact the appropriate
6	use and development of adjacent properties and the
7	public welfare.
8	Since the original 2013 application date of this
9	time extension, in particular since 2017, it has become
10	apparent that the applicant cannot secure the land
11	needed for the fee simple access.
12	As a consequence, the applicant cannot ensure the
13	use will not alter the essential character of the
14	neighborhood, negatively impact the appropriate use or
15	development of adjacent properties and the public
16	welfare.
17	Those lands necessary for the establishment of a
18	fee simple road have since past from private parties to
19	the County for a part and to the County and then to the
20	Board of Education for a school and are now in the
21	process of being used, or will be used, for public
22	purposes.
23	Over the past 25 plus years, the applicant has
24	repeatedly presented to the Maryland Department of
25	Environment plans showing access points that were not

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1	approved by the Board of Appeals decision. But, in
2	fact, were expressly prohibited.
3	The current submission to the MDE again shows a
4	total of three access points, two of which were not
5	included in the original Board of Appeals decision.
6	One such access point is off Patuxent Road which
7	use of was specifically denied by the 1993 decision.
8	This, along with the failure to secure lands over
9	the past 30 years for the fee simple access, indicates
10	that the applicant has no intention in pursuing the
11	approved fee simple access. But, rather, one or both
12	of these alternate access points, that have not been
13	approved, and which, if implemented, will alter the
14	essential character of the neighborhood, negatively
15	impact the appropriate use and development of adjacent
16	properties and the public welfare.
17	Given that the applicant has not demonstrated they

Given that the applicant has not demonstrated they will be able to comply with the conditions of the special exception approval, there is no practical purpose in proceeding further with these applications. In fact, it would be irresponsible to approve it because we're only leading the applicant down a road that it's already -- we've already hit the end.

Furthermore, there is no opportunity to modify the

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previous special exception use because it is no longer

### $\underline{C}$ $\underline{O}$ $\underline{N}$ $\underline{T}$ $\underline{E}$ $\underline{N}$ $\underline{T}$ $\underline{S}$

WITNESS	EXAMINATION BY	PAGE
ANNE ARUNDEL COUNTY WITNESS		
Mr. Konowal	Direct - Ms. Kenney Cross - Ms. Henley Cross - Ms. Baldwin Redirect - Ms. Kenney Re-cross - Ms. Henley Re-cross - Ms. Baldwin	4 28 51 59 63 66

### <u>E X H I B I T S</u>

ANNE ARUNDEL COUNTY	DESCRIPTION	MARKED	REC'D
No. 1	Mr. Konowal's Findings		8
PETITIONER'S	DESCRIPTION	MARKED	REC'D
No. 32	Transcript of testimony Of John Fury		43
No. 33	October 18, 21 Letter re Surface Mining Permit	70	

\* \* \* \* \*

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### CERTIFICATE OF NOTARY

I, Walter Murphy, Notary Public, before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that said testimony is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of the action; and that the testimony was reduced to typewriting by me or under my direction.

This certification is expressly withdrawn upon the disassembly or photocopying of the foregoing transcript, including exhibits, unless disassembly or photocopying is done under the auspices of Hunt Reporting Company, and the signature and original seal is attached thereto.

Math. Mayly

WALTER MURPHY, Notary Public in and for the State of Maryland 11/6/2022

My Commission Expires:

DEED

TAX ID: 4-000-00315187 and 4-000-90059786

THIS DEED, made this 23 day of December, 2004, by and between PINEY ORCHARD MASTER PARTNERSHIP, a Maryland general partnership, Grantor, party of the first part, and ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, Grantee, party of the second part.

WITNESSETH, That Grantor, for and in consideration of the sum of One Hundred Forty Thousand Dollars (\$140,000.00), and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby grant, convey and assign unto the said ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, in fee simple, all those tracts or parcels of ground situate, lying and being in the Fourth Assessment District of Anne Arundel County, Maryland, and described as follows:

See Exhibit A attached for legal description.

BEING a part of the same property conveyed to Piney Orchard Master Partnership by deed from Barton S. Mitchell dated March 1, 1988, and recorded among the Land Records of Anne Arundel County, Maryland, in Liber 4556, folio 303.

SAVING AND EXCEPTING THEREFROM 5.022 acres conveyed from Piney Orchard Master Partnership to Patuxent Road Limited Partnership by deed dated march 1, 1991, and recorded among the Land Records of Anne Arundel County, Maryland, in Liber 5296, folio 372.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described parcel of ground and premises, above described and mentioned, and hereby intended to be conveyed together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, in fee simple.

AND the said party of the first part warrants specially the property hereby granted; and that it will execute such further assurances of the same as may be requisite.

RECEIVED FOR TRANSFER STATE DEPARTMENT OF ASSESSMENTS & TAXATION FOR ANNE ARUNDEL COUNTY

JOSEPH V. GLORJOSO

EXHIBIT I

LENS ARE PAID AS

### BK 15743PG N 548

SUBJECT, HOWEVER, to the following covenant and condition:

Natural Resources Article 5-906(e)(7) states, Land acquired or developed under a State grant from POS may not be converted without written approval of the Secretary of the Department of Natural Resources and the Secretary of the Department of Budget and Management and the Secretary of the Maryland Department of Planning from outdoor public recreation or open space use to any other use. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value; and (8)(1) For any conversion of land acquired or developed under a State grant from Program Open Space as provided in paragraph (7) of this subsection, the appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land.

(Signature page to follow)

### OS LSTUBER 0549

### CLERK'S NOTATION

PARCEL NO. 1

Document submitted for record in a condition not permitting satisfactory photographic reproduction.

DESCRIPTION OF 96.923 ACRES PARCEL

PART OF BARTON MITCHELL PROPERTY

SOUTH SIDE OF PATUXENT ROAD, EAST AND WEST OF W.B.& A. PAILROAD FOURTH DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

BEGINNING for the same at the point where the south side of Patuxent Road (30 feet right-of way) is intersected by the Sruth 23 1/2 West 40.8 perches line of the land conveyed by John Wist, widower and unremarried, to John H. Wist, et £1, by deed dated widower and unremarried, to John H. Wist, et £1, by deed dated February 26, 1983 and recorded among the Land Records of Anne Arundel County, Maryland, in Liber E.A.C. No. 3562, page 267 and the said beginning point also being the print where the said south side of Patuxent Road is intersected by the sixth or South 23 West and of Patuxent Road is intersected by the sixth or South 23 West 43 3/4 perches line of the second parcel of land described in the deed from Irene Barton Mitchell to Farton S. Mitchell, dated June deed from Irene Barton Mitchell to Farton S. Mitchell, dated June 28 1982 and recorded among the said Land Records in Jiber W. G. L. 1982 and recorded among the said Land Records in Jiber W. G. L. 1982 and recorded among the said begin(ling point running Not 1982) and recorded among the said begin(ling point running Not 1982 and recorded among the said begin(ling point running Not 1982) and recorded among the said begin(ling point running Not 1982) and recorded among the said begin(ling point running Not 1982) and recorded among the said begin(ling point running Not 1982) and recorded among the said begin(ling point running Not 1982) and recorded among the said begin b

(1) South 16 46'22" West 642.97 feet; thence continuing and running with the seventh line of the second parcel of land described in the above mentioned deed to Mitchell and also running with the second line of the land conveyed in the above mentioned deed to Wist,

(2) South 05 28 38" East 577.50 feet; thence continuing and running with part of the eighth or last line of the second parcel of land described in the above mentioned deed to Mitchell and also running with the third line of the land conveyed by the above mentioned deed to Wist, (3) South 50 01'22" West 816.75 feet to a pin found; thence

(3) South 50 01 22" West 818... There to a pin today, and leaving the parcel conveyed to Wist and continuing and running with part of the said eighth line of the second parcel of land described in the above mentioned deed to Mitchell and also running, reversely, with the North 53 54'40" East 79.00 feet line of the land conveyed by Paul Lawrence Nowottnick and Thelma L. Nowottnick, his wife, to Paul L. Nowottnick, Jr. and Angela F. Nowottnick, his wife, by deed dated December 12, 1986 and recorded among the said Land Records in Liber No. 4217, page 227.

(4) South 52 33'59" West 98.92 feet to a stone found at the beginning point of the second parcel of land described in the above mentioned deed to Mitchell, the said stone also being the end of the first or South 68 05' East 654.3 feet line of the land described in the deed from Harvey W. Ihrig and Harvey W. Ihrig, dated December Jr. to Harvey W. Ihrig, Jr. and Emily Sue Ihrig, dated December 13, 1984 and recorded among the said Land Records in Liber No. 13, 1984 and recorded among the said stone running with the first line of the second parcel of land described in the above mentioned deed to Mitchell and also running, reversely, with the said first line of the land described in the above mentioned deed to Ihrig line of the land described in the above mentioned deed to Ihrig and continuing and running, reversely, with the second or South 68 and continuing and running, reversely, with the deed from the land described in the deed from the deed from the land described in the la

### Parcel No. 1 continued

John E.M. Gantt and Alice V. Gantt, his wife, to Milton D. Routzahn and Florence E. Poutzahn, his wife, dated November 11, 1918 and recorded among the said Land Records in Liber W.N.W. No. 9, page 318, in all,

(5) North 74 14'27" West 1534.50 feet ( passing over a stone at the distance of 1009.16 feet from the beginning of the herein described line, the said stone being the end of the third or North 26 30' East 270.00 feet line of the land described in the deed from Ernest Zuknick to Ernest Frederick Zuknick, dated November 1975 and recorded among the said Land Records in Liber No. 2314. page 372) to a point in the easterly outline of the land described in the deed from the Flintkote Company to Genstar Stone Products Company, dated October 27, 1996 and recorded among the said Land Records in Liber E.A.C. No. 4180, page 737; thence running with the said easterly outline of the land described in the last above mentioned deed and continuing and running, reversely, with the South 24 32' West 898.20 feet line of the land conveyed by The State of Maryland to Anne Arundel County by deed dated January 25, 1974 and recorded among the said Land Records in Liber No. 2661, page 839 and also running with the second and third lines of the second parcel of land described in the above mentioned deed to

second parcel of land described in the above mentioned deed to Mitchell the following two (2) courses and distances, viz:

(6) North 05 45 33 East 1014.75 feet and

(7) North 17 00 33 East 1319.81 feet to intersect the above mentioned South Side of Laturent Road; theore running with the missaid south Bids of Patty of Frad the following ten (10) courses, and distances, viz:

(8) South 55 00 28 East 199.40 feet,

(9) Bouth 57 56 32 East 199.43 feet,

(10) South 65 16 09 East 169.63 feet,

(11) South 67 12 40 East 188.38 feet.

- (11) South 67 12'40" East 188.38 feet, (12) South 65 47'15" East 255.42 feet, (13) South 69 12'50" East 307.19 feet,
  - (14) South 60 52'48" East 76.43 feet,
  - (15) South 64 33'33" East 107.47 feet,
  - (16) South 62 06'37' East 451.11 feet and
- (17) South 57 17'14" East 193.79 feet to the place of beginning.

CONTAINING 96.923 acres of land, more or less.

SUBJECT to the right of way of the W.B.& A. Railroad which traverses the herein described parcel from north to south.

BEING the second parcel of land, as now surveyed, described in the deed from Irene Barton MItchell to Barton S. Mitchell. dated June 28, 1732 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316.

### continued EXHIBIT A

PARCEL NO. 2

### DESCRIPTION OF 9.165 ACRES PARCEL

PART OF MITCHELL PROPERTY N.W. CORNER OF PATUXENT ROAD AND W.B.& A. RAILEDAD

FOURTH ASSESSMENT DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

BEGINNING for the same at the point where the westmost right of way line of the W.B.& A. Railroad is intersected by the sixth or North 15 30' West 990 feet line of the saventh parcel of land described in the deed from Irene Barton Mitchell to Barton S. Mitchell dated June 28, 1982 and recorded among the said Land Records in Liber W.B.L. No. 3709, page 316; thence from the said beginning point running with part of the said sixth line, with bearings referred to the Maryland State Flane Coordinate System, (1) North 21 50 05" West 904.89 feet; thence continuing and

running with part of the seventh line of the land described in

running with part of the seventh line of the land described in above mentioned seventh parcel,

(2) North 26 50:05" West 57.85 feet to the end of the tenth or Southwise Stucket 1527 the billines of the land described in the deed from Vames Grantham Dick to all to Diana C. Kimm, dated July, 30:1987 and recorded among the said Land Records in Liber No. 4412, page 554, thence continuing and running with the eleventh, twelfth and thirteenth lines of the land described in the last above mentioned deed the following three (3) courses and above mentioned deed the following three (3) courses and distances, viz: (3) North 67 04'55" East 569.00 feet,

(4) Bouth 69 40'05" East 123.50 feet and (5) South 64 55'03" East 110.00 feet to a point in the above mentioned westmost right of way line of the W.B.& A. Railroad; thence running with the said right of way line,

(A) Souti. 20 12'40" West 1090.79 feet to the place of beginning.

CONTAINING 9.165 acres of land, more or less.

BEING part of the seventh parcel of land, as now surveyed, described in the deed from Irene Barton Mitchell to Barton 3. MItchell, dated June 28, 1982 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316.

### 8K 15743 PG 0552 EXHIBIT A

PARCEL NO. 3

### DESCRIPTION OF 7.975 ACRES PARCEL

FART OF MITCHELL PROFERTY WEST SIDE OF W.B.& A. RAILROAD, 1500 FT NORTH OF FATUXENT ROAD FOURTH ASSESSMENT DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

BEGINNING for the same at a point in the westmost right of way line of the W.B.& A. Reilroad, the said beginning point being the end of the first line or North 26 East 369.7 feet line of the land described in the deed from James Grantham Dick, et al to Diana C. Kimm, dated July 3, 1987 and recorded among the Land Records of Anne Arundel County, Maryland in Liber No. 4412, page 654; thence leaving the said Railroad and running with the second through the seventh lines and with part of the eighth line of the land described in the above mentioned deed the following seven (7) courses and distances, with bearings referreed to the Maryland State Plane Coordinate System, viz:

State Plane Coordinate System, viz:

(1) South 53 49'55" West 150.20 feet,

(2) 107:00 feet along the arc of a curve to the left having feet;

(3) 100.00 feet along the arc of a curve to the left having a raulus of 1447-69 feet and chord North 42 25'40" West 99.98

a radius of 1447.69 feet and chord North 42 25 40" West 99.98 feet,

(4) North 44 24'24" West 60.00 feet,

(5) 296.31 feet along the arc of a curve to the right having a radius of 463.24 feet and chord North 26 04'51" West 291.28 feet,

(6) North 09 55'05" West 250.00 feet and (7) North 23 55'05" West 81.48 feet to a point in the tenth or South 68 30' Fast 660.00 feet line of the seventh parcel of land described in the deed from Irene Sarton Mitchell to Barton S. Mitchell, dated June 28, 1982 and recorded among the said Land Records in Liber W.B.L. No. 3/09, page 316; thence leaving the outline of the land conveyed to Kimm and running with part of the

said tenth line,
(8) South 73 35'05" East 194.27 feet; thence continuing and running with part of the eleventh line of the said eventh parcel

conveyed to Mitchell.

(9) North 83 54'55" East 571.07 feet to a point in the aforementioned westmost right of way line of the W.B. & A. Railroad; thence running with the said westmost right of way (10) South 20 12'49" West 750.52 feet to the place of

beginning.

CONTAINING 7.975 acres of land, more or less.

BEING part of the seventh parcel of land described in the deed from Irene Barton Mitchell to Barton S. Mitchell, dated June 28, 1982 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316.

### EXHIBIT A CONLINGED 3 PG 0 5 5 3

PARCEL NO. 4

DESCRIPTION OF 0.955 ACRE PARCEL

PART OF MITCHELL PROPERTY ADJACENT TO N.W. CORNER OF KIMM TRACT

FOURTH ASSESSMENT DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

BEGINNING for the same at a point in the seventh or North 21 45' West 1617 feet line of the seventh parcel of land described in the deed from Irene Barton Mitchell to Barton S. Mitchell, dated June 28, 1982 and recorded among the Land Records of Arme Arundel County, Maryland in Liber W.G.L. No. 3707, page 316, the said beginning point also being the end of the ninth or South B1 West 913 feet line of the land described in the deed from James Grantham Dick, et al. to Diana C. Kimm, dated July 3, 1987 and coorded among the said Land Records in Liber No. 4412, page 654; thence from the said beginning point running with part of the above mentioned seventh line, with bearings referred to the Maryland State Plane Coordinate System,

running with the First above mentioned deed, thence continuing and described in the First above mentioned deed, thence continuing and (2) North 24 05 05 West 247.50 feet; thence continuing and

running with part of the minth line of the seventh parcel of land described in the first above mentioned deed,

(3) South 68 35'05" East 426.99 to intersect the above mentioned ninth line of the second above mentioned deed; thence continuing and running with part of the said minth line, (4) South 71 04 55" West 297.05 feet to the place of Mark Some Links

beginning.

CONTAINING 0.953 acre of land, more or lass.

BEING part of the seventh parcel of land described in the deed from Irene Barton Mitchell to Barton S. Mitchell, dated June 28, 1982 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316.

### EXHIBIT A continued

PARCEL NO. 5

### DESCRIPTION OF 37.211 ACRE FARCEL

PART OF MITCHELL PROPERTY
LYING BETWEEN BITUMINOUS CORP. PROPERTY AND RIVER

FOURTH ASSESSMENT DISTRICT, ANNE ARUNDEL COUNTY, MARYLAND

BEGINNING for the case at the point where the eastmost right of way line of the W.B.? A. Feil-bed is intersected by the eleventh or North 87 East 724 feet line of the seventh parcel of land described in the deed from Trene Berton Mitchell to Barton S. Mitchell, dated June 28, 1782 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316; thence from the said beginning point running with a part of the said eleventh line, with bearings referred to the Maryland State Plane Coordinate System,

running with part of the twelfth line of the above mentioned

PARTY 2) SOUTH 51705/051/East 172 feet, more or less, to the west shore in a court experience running with the said shore line in a coutheasterly direction; when the court east of shore line in a coutheasterly direction; when the court east of the nineteenth or (3) \$3766 feet, more or less to the end of the nineteenth or

North 76 54' East 498.27 feet line of the land described in the deed from James R. Strohecker, et al. to Fred A. Greene, Jr., et al., dated November 22, 1967 and recorded among the said Land Records in Liber No. 2126, page 490; thence leaving the said River and running, reversely, with the last above mentioned line, (4) South 76 54'00" West 498.27 feet to the end of the

(4) South 76 54'00" West 498.27 feet to the end of the fourteenth or South 35 21' East 2730 feet, more or less, line of the land described in the deed from Jamer P. Barton and Irene B. Mitchell to The Bituminous Construction Company, dated December 31, 1976 and recorded among the said Land Records in Liber W.G.L. No. 2983, page 132; thence running, reversely, with part of the said fourteenth line.

said fourteenth line, (5) North 35 29'00" West 2606.00 feet to the said eastmost right of way line of the said Railroad; thence running with the said eastmost right of way line,

(6) North 20 12'40" East 834.00 feet to the place of beginning.

CONTAINING 57.211 acres of land, more or less.

BEING part of the seventh parcel of land described in the deed from Irene Barton Mitchell to Barton S. Mitchell, dated June 28, 1982 and recorded among the Land Records of Anne Arundel County, Maryland in Liber W.G.L. No. 3709, page 316.

PARCEL NO. 6

BESCRIPTION DENGE OF ACRE PARCEL EVINE SOUTH OF AND ABYACENT TO LITTLE PATURENT RIVER

FOURTH ASSESSMENT DISTRICT, TAME ARUNDEL COURT DE LE COURT DE LE COURT DE LA C

reversely, with the eleventh and part of the tenth lines of the reversely, with the eleventh and part of the tenth lines of above mentioned seventh parcellof land, the following three (3) courses and distances, (with bearings referred to the Marylond Courses and distances, (with bearings referred to the Marylond Courses and distances, (with bearings referred to the Marylond Courses and Courses of Marylond Courses of the Same C

deed from James Grantham Dick, et al to Diana C. Finn, Sales July 3, 1987 and recorded among the said Land Records in Liber No. 4412, page 534; thence leaving the outline of the percet conveyed to. Mitchell and running with part of the eighth line and continuing and running with part of the ninth line of the land described in the last above centioned deed the following two (2)

courses and distances, viz;

(4) North 23 55 05" West 507.52 feet and

(5) South 71 04 55" West 613.95 feet to a point in the right or South 63 30' East 792 feet line of the above motioned seventh parcel conveyed to Fitchell; thence leaving the parcel conveyed to Kimm and running, reversely, with part of the list mentioned

(6) North 69 35'05" West 425.77 feet to the beginning of the ninth line, said minth line; thence leaving the said seventh parcel conve,ed to Mitchell and running with the northwesterly prolongation of the eighth or North 19 West 247.3 feat line of the land described in

the said seventh parcel, West 500 feet, more or less to the (7) North 24 05'C5" West 500 feet, more or less to the center of the Little Patuxent River; thence running with the center of the said river in an easterly and southeasterly oirection \_000 feet, more or less; thence running westerly, (8) 43 feet, more or less to the place of beginning.

CONTAINING 33.5 acres of land, more or less.

SUBJECT TO the right of way of the W.B.& A. Railroad

BEING the parcel of land bounded on the north and east by the Little Patuxent River, on the south by the properties of Barton Mitchell (W.G.L. No. 3707; page 316, 7th parcel) and Diana Kimm (4412-654) and on the west by a division line as indicated on the State Department of Assessment and Taxation Map No. 36. WITNESS the hands and seals of the said Grantor.

PINEY ORCHARD MASTER PARTNERSHIP By PINEY ORCHARD LIMITED PARTNERSHIP,

Managing General Partner of Piney Orchard

Master Partnership

By CONSTRLUATION REAL ESTATE, INC.,

General Partner

(SEAL)

Steven S. Koren, Agent

### STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY, that on this 23 day of December, 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared STEVEN S. KOREN, who acknowledged himself to be the Agent of Constellation Real Estate, Inc., General Partner of Piney Orchard Limited Partnership, Managing General Partner of Piney Orchard Master Partnership, and that he, as such agent, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing, in my presence, the name of the said Partnership by himself as said agent.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires

### AFFIDAVIT AS TO RESIDENCE

THE undersigned certify under the penalties of perjury, that the following is true to the best of his knowledge, information and belief, in accordance with Section 10-912(d)(1) of the Tax-General Article of the Annotated Code of Maryland, (the "Withholding Law"):

That Piney Orchard Master Partnership the transferor of that real property described in the accompanying deed, is a resident entity of the State of Maryland.

DATED this 23 day of December, 2004

### TRANSFEROR

PINEY ORCHARD MASTER PARTNERSHIP
By PINEY ORCHARD LIMITED PARTNERSHIP,
Managing General Partner of Piney Orchard
Master Partnership
By CONSTELLCATION REAL ESTATE, INC.,

(SEAL)

General Partner

Steven S. Koren, Agent

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney at law.

Carl J. Tenner, Attorney

AFTER RECORDING, PLEASE RETURN TO: CARL J. TENNER, ESQUIRE 150 SOUTH STREET, Suite 206 ANNAPOLIS, MD 21401 (410) 269-6720

File No. 5620

vso/cjt/CJT/AACounty/aaco.piney.orch.deed

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ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) SAP 34716, p. 0003, MSA\_CE59\_35158. Date available 06/16/2020, Printed 10/11/2021

Mid-Maryland Title Company, Inc. File No. 12302-20

Tax ID # 04 000 02753400

LR - Government This Deed, made this 26th day of March, 2020, by and between Stachitas Instruments, aaco LLC, a Maryland limited liability company, GRANTOR, and Anne Arundel County, a post er:

corporate and politic of the State of Maryland, GRANTEE.

- Witnesseth -

12:10 06/10/2020 CC02-TT #13744845 CC0501 Anne Arundel County/CC05.01.07 -

That for and in consideration of the sum of One Million Ninety-Two Thensand Five Hundred And 00/100 Dollars (\$1,092,500.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantor does grant and convey to the said Anne Arundel County, a body corporate and politic of the State of Maryland, its successors and assigns, in fee simple, all that lot of ground situate in the County of Anne Arundel, State of Maryland and described as follows, that is to say:

### PARCEL A:

BEGINNING at an iron pipe set in the northerly line of Conway Road, thirty (30) feet wide as now laid out and existing, said iron pipe lying at a corner common to said land of Ihrig and the land of Alice V. Chowanetz and Joseph W. Chowanetz, her son, (Liber 1842, folio 273), said iron pipe lying S 26 degrees 37' 21" E, 0.82 of a foot from an iron pipe found; thence running with the aforesaid northerly line of Conway Road.

1. 60.52 feet along the arc of a curve to the right having a radius of 256.50 feet and a chord bearing S 88 degrees 10' 49" W, 60.38 feet; thence,

N 85 degrees 03' 39" W, 82.60 feet; thence,

137.03 feet along the arc of a curve to the right having a radius of 739.50 feet and a chord bearing N 79 degrees 45' 08" W, 136.84 feet; thence,

N 74 degrees 26' 37" W, 137/77 feet; thence,

5. 201.73 feet along the arc of a curve to the left having a radius of 796.37 feet and a chord bearing N 81 degrees 42' 02" W, 201.20 feet; thence,

N 88 degrees 57' 27" W, 6.63 feet; thence,

147.37 feet along the arc of a curve to the left having a radius of 1,409.00 feet and a chord bearing S 88 degrees 02' 40" W, 147.30 feet; thence,

S 85 degrees 02' 59" W, 175.19 feet to an iron pipe set; thence running with the land of May J. Shepherd (Liber JHH 196, folio 401),

N 05 degrees 20' 22" W, 232.58 feet to an iron pipe set; thence running through said land of Ihrig with the outlines of Parcel 3-South,

10. N 83 degrees 49' 08" E, 6.43 feet to an iron pipe set; thence,

11. N 04 degrees 58' 22" W, 27.43 feet to an iron pipe set; thence,

12. S 83 degrees 49' 08" W, 6.63 feet to an iron pipe set; thence running with the aforesaid land

13. N 05 degrees 20' 22" W, 273.86 feet to an iron pipe set; thence running with the southerly line of a Baltimore Gas and Electric Company right of way, four hundred (400) feet wide (Liber 2414, folio 838)

14. N 87 degrees 02' 01" E, 666.48 feet to an iron pipe set; thence running with the aforesaid land of Chowanetz,

15. S 26 degrees 37' 21" E, 717.63 feet to the place of beginning.

Containing 447,104 square feet or 10.26410 acres of land.

### PARCEL B:

BEGINNING at an iron pipe set at the end of the ninth (or N 05 degrees 20' 22" W, 232.58 feet) line of Parcel A described above; thence running with the said land of Shepherd.

ARE PAID AS



- N 05 degrees 20' 22" W, 27.43 feet to an iron pipe set; thence running with the twelfth, eleventh and tenth lines of Parcel A-South described above,
- 2. N 83 degrees 49' 08" E, 6.63 feet to an iron pipe set; thence,
- 3. S 04 degrees 58' 22" E, 27.43 feet to an iron pipe set; thence,
- 4. \$ 83 degrees 49' 08 W, 6.45 feet to the place of beginning.

Containing 179 square feet or 0.00412 of an acre of land.

PARCELS A AND B CONTAINING IN AGGREGATE 447,283 SQUARE FEET OR 10.26821 ACRES OF LAND.

### PARCEL C:

BEGINNING at an "X" cut in a stone found at a corner common to said land of Ihrig, the land of Barton S. Mitchell (Liber 3709, folio 316, Parcel 2) and the land of Paul L. Nowottnick, Jr. and Angela F. Nowottnick, (Liber 4217, folio 227; see plat of Lot in Liber 4181, folio 810); thence running with said Lot 1 of the land of Nowottnick and with the land of Paul L. Nowottnick and Thelma L. Nowottnick (Liber JHH 291, folio 16),

- 1. S 06 degrees 26' 31" E, 256.07 feet to a nail found; thence running with Parcel 3 of the aforesaid land of Mitchell,
- S 06 degrees 18' 12" E, 496.29 feet to a large four foot iron pipe found; thence running with the land of Anthony E. Pokorny and Mark Pokorny (Liber JHH 205, folio 130),
- S 06 degrees 07' 08" E, 240.49 feet to an iron pipe found; thence running with the aforesaid land of Chowanetz (Liber 1842, folio 273; see Liber WMB 123, folio 100),
- S 05 degrees 52' 29" E, 181.17 feet to an iron pipe found; thence running with the northerly line of the aforesaid Baltimore Gas and Electric Company right of way, four hundred (400) feet wide (Liber 2510, folio 359),
- S 87 degrees 02' 01" 1,239.33 feet to an iron pipe set; thence running with the easterly line of
  an abandoned Washington, Baltimore & Annapolis Electric Railroad right of way, sixty-six
  (66) feet wide (see Liber GW 24, folio 213),
- 6. N 20 degrees 14' 35" E, 1489.80 feet to an iron pipe set; thence running with the aforesaid Parcel 2 of the land of Barton S. Mitchell,
- 7. S 74 degrees 21' 20" E, 617.65 feet to the place of beginning.

Containing 1,186,112 square feet or 27.22938 acres of land.

BEING the fee simple property which, by Deed dated November 28, 2018, and recorded in the Land Records of the County of Anne Arundel, Maryland in Liber 32729, folio 414, was granted and conveyed by Koch Investment Associates, LLC, a Maryland limited liability company unto Stachitas Investments, LLC, a Maryland limited liability company.

Part of the consideration for this Deed is the retention of a Re-Purchase Option by the Grantor, as follows:

In the event Anne Arundel County, Maryland (a) on or before twenty-five (25) years after the date of this Deed fails to commence construction of a school or commence another public educational, recreational, or civic use (defined collectively herein as the "Capital Improvement Project") on the property described herein and/or (b) on or before the date that is fifty (50) years after the date of this Deed attempts to convey the property described herein, or convey or establish any interest in or to the property described herein, to any person, or non-public entity, then in either of those events, Stachitas Investments, LLC shall have the right to re-purchase the property described herein, subject to any necessary approval by the Anne Arundel County Council for a private disposition sale, by delivering written notice of such intent to Anne Arundel County, Maryland (or



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the then-current property owner). Stachitas Investments, LLC shall be required to settle on the repurchase within one hundred twenty (120) days after such notice, unless Anne Arundel County, Maryland and Stachitas Investments, LLC agree to a longer settlement.

If Stachitas Investments, LLC exercises its re-purchase right as set forth herein, the price for such re-purchase (defined herein as the "Re-Purchase Price") shall be as follows:

- (a) For a period of five years following the completion or abandonment of the Capital Project on the property described herein, and on a determination that all or part of the property described herein acquired for the Capital Project is no longer needed for public use, Anne Arundel County, Maryland may convey the property described herein to Stachitas Investments, LLC for ONE MILLION NINETY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,092,500.00); or
- (b) Thereafter, the Re-Purchase Price shall be determined by the average of two appraisals obtained by Anne Arundel County, Maryland at the time of re-purchase of the property described herein by Stachitas Investments, LLC.

The Re-Purchase Price shall be payable in cash or other immediately available funds. Title to the property described herein shall be conveyed to Stachitas Investments, LLC or its designee by special warranty deed. Any liens, including potential mechanics liens or other liens outstanding on the property described herein, shall be discharged by Anne Arundel County, Maryland at the repurchase settlement. The costs of closing and title on the re-purchase shall be paid by Stachitas Investments, LLC. All of the foregoing in this paragraph shall be collectively referred to herein as the "Re-Purchase Option". The Re-Purchase Option shall be deemed a covenant running with the land binding upon all successors and assigns and enforceable by Stachitas Investments, LLC. For purposes of the Re-Purchase Option and this paragraph, the term Stachitas Investments, LLC shall include Stachitas Investments, LLC's successors, assigns and affiliates, and the term "affiliate" shall mean any entity owned, controlled, or under common control with Gary W. Koch, the managing principal of Stachitas Investments, LLC, or his direct descendants or assigns."

The property herein is conveyed together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Anne Arundel County, a body corporate and politic of the State of Maryland, its successors and assigns, in fee simple.



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And the Grantor hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property hereby granted; and that it will execute such further assurances of the same as may be requisite.

As Witness the hand and seal of said Grantor, the day and year first above written.

WITNESS:

Stachitas Investments, LLC, a Maryland limited liability company

By: Richard E. Pezzullo, Jr., President

STATE OF MARYLAND

Connie 9. Full

COUNTY OF ANNE ARUNDEL

I hereby certify that on this 26th day of March, 2020, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Richard E. Pezzullo, Jr., President of Stachitas Investments, LLC, a Maryland limited liability company, the Grantor herein, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be his act, as President of Stachitas Investments, LLC and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires 65042000



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Purchaser: Attest: Anne Arundel County, Maryland Barnie Barress Benjamin Birge, Chief Administrative Officer

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, TO WIT:

I hereby certify THAT ON THIS DAY OF HOT! , IN THE YEAR 2020, BEFORE ME, THE SUBSCRIBER, A Notary Public of the State of Maryland, in and for the County of Anne Arundel, personally appeared Benjamin Birge, Chief Administrative Officer for Anne Arundel County, Maryland, a hour control of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and he acknowledged the same to the state of the State of Maryland, party to the within Deed, and the state of the State of Maryland, party to the within Deed, and the state of the State of the State of the State of Maryland, party to the within Deed, and the state of the State of

WITNESS my Hand and Seal, 20TAR PUNDEL COUNTY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY: Swain, County Attorney

Office of Law

Kelly Phillips Kenney Supervising County Attorney

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Jerome I. Feldman

AFTER RECORDING, PLEASE RETURN TO: Mid-Maryland Title Company, Inc. 200 Westgate Circle Suite 102 Annapolis, MD 21401

2020

MARYLAND FORM WH-AR Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and

paid when a deed or other instrument that effects a change

in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

	Transferor Information  Name of Transferor	nsferor Stachitas Investments, LLC, a Maryland limited liability company							
2,	Description of Property (	Street address. If no address is available, include county, district, subdistrict and Bragers Road, Odenton, MD 21113	d lot numbers).						
3.	Reasons for Exemption								
	Resident Status	As of the date this form is signed, ${f I}$ , Transferor, am a resident of the State of	Maryland.						
	$\overline{\lor}$	Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to document on Transferor's behalf.							
	Principal Residence	Although 1 am no longer a resident of the State of Maryland, the Property is n residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (currently recorded as such with the State Department of Assessments and Ta	ny principal five) years) and is exation.						
 3a	Under penalty of perjury knowledge, it is true, cor  Individual Transferors	, I certify that I have examined this declaration and that, to the best of trect, and complete.  Name	•+Oate						
	Attiticas	Signature							
	. Entity Transferors	STACHITAS INVESTMENTS, LLC, A	MARYI AND						
3E	1 1	STACTITION IN THE COMPANY	MNicient						
3E	1 1	LIMITED LIABILITY COMPANY Name of Entity	HIMITERIO						
31	Cornie a. Fu	LIMITED LIABILITY COMPANY	3/26/20						

\*\* Form must be dated to be valid.

Note: Form is only valid if it was executed on the date the Property was transferred and is properly recorded with the Clerk of the

To the Clerk of the Court: Only an un-altered Form WH-AR should be considered a valid certification for purposes of Section 10-912.

State of Maryland Land Instrument Intake Sheet

[ ] Baltimore City [ X ] County: Anne Arundel
Information provided is for the use of the Clerk's Office and State Department of
Assessments and Taxation, and the County Finance Office only.

		(Type or Pri	int in Black Ink	Only All C	opies M	lust Be Legi	ble)					
11		(110	Check Box if Adde	ndum Intak	e Form i	s Attached.)						
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	of Instruments	Deed of Tr		ase								
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	(if Applicable)	State Transfer										
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		Other		\$			\$					
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5	SDAT requires											
)	submission of all	Locatio	on/Address of Proj	perty Being	Conveye	d (2)						
	applicable information	1127 Bragers R	Road, Odenton, M	1D 21113			_	Wate	r Meter Accoun	t No.		
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3	characters will be											
2	indexed in accordance	Residential [ X ]	or Non-Residenti			ole   X   or G			Amount: \$1	//A		
	with the priority cited in Real Property Article	Partial Conveya	ince?     Yes   X	1 No	Descripti	on/Amt. of Sq	Ft/Acreage T	ransferred:	N/A			
	Section 3-104(g)(3)(i)											
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7			Doc. I - Granto	or(s) Name(s	)			D00. 2	Gramor (s)			
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5	Transferred											
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		Doc. 1 - OW	ner(s) of Record, i	i Dillevent	10111 0112	1110.107						
		-	Doc. 1 - Grante	ee(s) Name(s	)			Doc. 2 -	Grantee(s) Na	me(s)		
8		Anne Arundel										
1	Transferred	rume ruanee.	-									
	То				New	Owner's (Gra	ntee) Mailin	g Address	Iress			
		2660 Riva Roa	d, Annapolis, Mi	D 21401							2000	
9		Doc. 1 - /	Additional Names	to be Index	ed (Optio	onal)	Do	c. 2 - Additional	Names to be In	dexed (Op	tional)	
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5	Information	Firm: Mic	d-Maryland Title	Company,	Inc.	E MD 21/	10.1					
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		11 IMPORTA	Yes X	No	Will the	property be	ing conveye	d be the grantee	's principal re	sidence?		
_		Assessment			Does tra	insfer includ	e personal p	roperty? If yes	, identify:			
5		Information	,									
)			X Yes	No	Was pro	perty survey	ed? If yes,	attach copy of s	urvey (if recor	ded, no co	py required)	
5				Assess	ment U	se Only - I	Do Not Wri	te Below This	Line			
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2		Buildings Total				Town C	d.	Ex. St.	Ex. Cd.			
5		REMARKS:										
T. Control												
i												
1												

0.00

### Deed

	<b>15th</b>		DECEMBER	0001.1
THIS DEED ("Deed"), m	ade this	day.of_		, 2021, by
and between ANNE ARUNDEL	COUNTY, I	MARYLA	ND (hereinafte	r called "Grantor"),
and the BOARD OF EDUCATI	ON OF ANN	E ARIIN	DEL COUNTY	(hereinafter called
and the BOARD OF EDUCATI	ON OF AIM	PAROL		LR – Governme
"Grantee").			~	Instrument

WHEREAS, the County Council of Anne Arundel County, Maryland authorzed they/Board of Education Instrument List: Deec Conveyance effected by this Deed pursuant to Bill No. 91-21.

NOW, THEREFORE, THIS DEED WITNESSETH: That for and in the sum of Zero Dollars (\$0) and other good and valuable 0.81 12/22/2021 01:07 considerations, the receipt whereof is hereby acknowledged, the Grantor does hereby grant(s) CC02-Jb #15737917 CC0501 - and convey(s) unto the Grantee, its successors and assigns in fee simple, all those parcels of County/CC05-01-11 - land located in the Fourth Assessment District of Anne Arundel County, Maryland, and being more particularly described on Exhibit "A" attached hereto ("Property").

TOGETHER, with the buildings and improvements thereupon erected, made or being and all and every the rights, roads, alleys, ways, water privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the land and premises described and mentioned, and hereby intended to be conveyed unto the proper use and benefit of the Grantee, its successors and assigns, forever, in fee simple.

RESERVING, HOWEVER, TO THE GRANTOR, the right to enter the property herein conveyed to maintain, repair or upgrade any existing County public utilities located within the boundaries of the property herein conveyed; provided, however that any disturbance of the property to effectuate these purposes shall be repaired or sectored to pre-entry conditions.

ACCT. <u>4000-0275-3400</u>
ALL LIENS ARE PAID AS
OF PAID AS
OF PAID AS
(3Y; A.A. COUNTY)
(3Y; (00348298.DOC; 1)

WITNESS:

GRANTOR:

ANNE ARUNDEL COUNTY,

MARYLAND

By:

Stadie Bellind

STESSOTIESAESMED

Matthew J. Power

Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

GREGORY J. SWAIN, COUNTY ATTORNEY

Christine Noiderer

Christine B. Neiderer, Senior Assistant County Attorney

Date

I HEREBY CERTIFY that this deed was prepared by an attorney licensed to practice in Maryland or by one of the parties to this instrument.

Obcustance by: Christino Noiderer	12/14/2021
Christine B. Neiderer	Date
Senior Assistant County	Attorney

### STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, TO WIT:

I HEREBY CERTIFY, that on this 15 day of December, 2021, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Matthew J. Power, Chief Administrative Officer for Anne Arundel County, Maryland, and he, being authorized to do so, acknowledged the foregoing Deed to be the act of said Anne Arundel County, Maryland.

Notary Public

AS WITNESS my hand and seal notarial.

MEIDI J MAY
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
AY COMMISSION EXPIRES AUGUST 10, 2024

My commission expires: 8 110/24

BOOK: 38118 PAGE: 217

### EXHIBIT A

### PARCEL A:

BEGINNING at an iron pipe set in the northerly line of Conway Road, thirty (30) feet wide as now laid out and existing, said iron pipe lying at a corner common to said land of Ihrig and the land of Alice V. Chowanetz and Joseph W. Chowanetz, her son, (Liber 1842, folio 273), said iron pipe lying S 26 degrees 37' 21" E, 0.82 of a foot from an iron pipe found; thence running with the aforesaid northerly line of Conway Road.

- 1. 60.52 feet along the arc of a curve to the right having a radius of 256.50 feet and a chord bearing S 88 degrees 10' 49" W, 60.38 feet; thence,
- 2. N 85 degrees 03' 39" W, 82.60 feet; thence,
- 3. 137.03 feet along the arc of a curve to the right having a radius of 739.50 feet and a chord bearing N 79 degrees 45' 08" W, 136.84 feet; thence,
- 4. N 74 degrees 26' 37" W, 137/77 feet; thence,
- 5. 201.73 feet along the arc of a curve to the left having a radius of 796.37 feet and a chord bearing N 81 degrees 42' 02" W, 201.20 feet; thence,
- 6. N 88 degrees 57' 27" W, 6.63 feet; thence,
- 7. 147.37 feet along the arc of a curve to the left having a radius of 1,409.00 feet and a chord bearing S 88 degrees 02' 40" W, 147.30 feet; thence,
- 8. S 85 degrees 02' 59" W, 175.19 feet to an iron pipe set; thence running with the land of May J. Shepherd (Liber JHH 196, folio 401),
- 9. N 05 degrees 20' 22" W, 232.58 feet to an iron pipe set; thence running through said land of Ihrig with the outlines of Parcel 3-South,
- 10. N 83 degrees 49' 08" E, 6.43 feet to an iron pipe set; thence,
- 11. N 04 degrees 58' 22" W, 27.43 feet to an iron pipe set; thence,
- 12. S 83 degrees 49' 08" W, 6.63 feet to an iron pipe set; thence running with the aforesaid land of Shepherd,
- 13. N 05 degrees 20' 22" W, 273.86 feet to an iron pipe set; thence running with the southerly line of a Baltimore Gas and Electric Company right of way, four hundred (400) feet wide (Liber 2414, folio 838)
- 14. N 87 degrees 02' 01" E, 666.48 feet to an iron pipe set; thence running with the aforesaid land of Chowanetz,
- 15. S 26 degrees 37' 21" E, 717.63 feet to the place of beginning.

Containing 447,104 square feet or 10.26410 acres of land.

ANNE ARUI

### PARCEL B:

BEGINNING at an iron pipe set at the end of the ninth (or N 05 degrees 20' 22" W, 232.58 feet) line of Parcel A described above; thence running with the said land of Shepherd.

- 1. N 05 degrees 20' 22" W, 27.43 feet to an iron pipe set; thence running with the twelfth, eleventh and tenth lines of Parcel A-South described above,
- 2. N 83 degrees 49' 08" E, 6.63 feet to an iron pipe set; thence,
- 3. S 04 degrees 58' 22" E, 27.43 feet to an iron pipe set; thence,
- S 83 degrees 49' 08 W, 6.45 feet to the place of beginning.

Containing 179 square feet or 0.00412 of an acre of land.

PARCELS A AND B CONTAINING IN AGGREGATE 447,283 SQUARE FEET OR 10.26821 ACRES OF LAND.

### PARCEL C:

BEGINNING at an "X" cut in a stone found at a corner common to said land of Ihrig, the land of Barton S. Mitchell (Liber 3709, folio 316, Parcel 2) and the land of Paul L. Nowottnick, Jr. and Angela F. Nowottnick, (Liber 4217, folio 227; see plat of Lot in Liber 4181, folio 810); thence running with said Lot 1 of the land of Nowottnick and with the land of Paul L. Nowottnick and Thelma L. Nowottnick (Liber JHH 291, folio 16),

- 1. S 06 degrees 26' 31" E, 256.07 feet to a nail found; thence running with Parcel 3 of the aforesaid land of Mitchell,
- S 06 degrees 18' 12" E, 496.29 feet to a large four foot iron pipe found; thence running with the land of Anthony E. Pokorny and Mark Pokorny (Liber JHH 205, folio 130),
- 3. S 06 degrees 07' 08" E, 240.49 feet to an iron pipe found; thence running with the aforesaid land of Chowanetz (Liber 1842, folio 273; see Liber WMB 123, folio 100),
- 4. S 05 degrees 52' 29" E, 181.17 feet to an iron pipe found; thence running with the northerly line of the aforesaid Baltimore Gas and Electric Company right of way, four hundred (400) feet wide (Liber 2510, folio 359),
- 5. S 87 degrees 02' 01" 1,239.33 feet to an iron pipe set; thence running with the easterly line of an abandoned Washington, Baltimore & Annapolis Electric Railroad right of way, sixty-six (66) feet wide (see Liber GW 24, folio 213),
- 6. N 20 degrees 14' 35" E, 1489.80 feet to an iron pipe set; thence running with the aforesaid Parcel 2 of the land of Barton S. Mitchell,
- 7. S 74 degrees 21' 20" E, 617.65 feet to the place of beginning.

Containing 1,186,112 square feet or 27.22938 acres of land.

BEING the fee simple property which, by Deed dated March 26, 2020, and recorded in

BOOK: 38118 PAGE: 219

the Land Records of the County of Anne Arundel, Maryland in Liber 34716, page 3, was granted and conveyed by Stachitas Investments, LLC, a Maryland limited liability company unto Anne Arundel County, Maryland, a body corporate and politic of the State of Maryland.

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### AFFIDAVIT OF INTENT TO USE ELECTRONIC SIGNATURE (Md. Code, Real Property Title 3, Subtitle 7)

Christine Neiderer  1. I,, am over eigh	teen years of age and competent to testify.
<ol> <li>I have signed the document or documents electronic signature, which is defined in "electronic sound, symbol, or process attack and executed or adopted with the intent to s</li> </ol>	Md. Code, Real Property § 3-701(e) as an hed to or logically associated with a document
3. I have done so with the intent to sign the do	ocument.
4. My use of the electronic signature was not	done for any illegal or fraudulent purposes.
I solemnly affirm under the penalties of perjury the best of my knowledge, information, and belief.	y that the contents of this document are true to
	DocuSigned by:
12/22/2021	Christine Neiderer
	Signature of Affiant
Date	Signature of Artiant
×	Christine Neiderer
27	Printed Name of Affiant

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Ex 33

### MARYLAND DEPARTMENT OF ENVIRONMENT LAND AND MATERIALS ADMINISTRATION MINERALS, OIL & GAS DIVISION 1800 WASHINGTON BLVD STE 655 BALTIMORE, MD 21230

10/18/2021

NATIONAL WASTE MANAGERS, INC. 2900 LINDEN LANE SUITE 300 SILVER SPRING, MD 20910

RE: License to Surface Mine

No: 22-SL-0454

Dear Licensee

The Land and Materials Administration hereby acknowledges the receipt of your application for your Surface Mining License. Your license is enclosed, please refer to the license number in future correspondence regarding your license.

If you have any questions or require additional information, please do not hesitiate to contact this office at (410) 537 - 3557.

Sincerely,

Molly Michaelson, C.P.G.

Program Manager, Mining Program

MM/ljc

**Enclosures: MDE Receipt** 

**Surface Mining License** 



## State of Maryland

Department of The Environment Land and Materials Administration

### SURFACE MINING LICENSE 2022



## **EXPIRATION DECEMBER 31, 2022**

This is to certify that

# NATIONAL WASTE MANAGERS, INC.

Annotated Code of Maryland as amended; and is duly licensed as a has complied with the Maryland Surface Mining Act of 1975, specifically Section 15-807 of the Environment Article of the surface mine operator in the State of Maryland.

This License:

1. is not transferable

2. must be displayed publicly3. may be suspended or revoked for cause.

Milly Michaelson, C.P.G. Program Manager Land and Materials Administration



Larry Hogan, Governor Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary Horacio Tablada, Deputy Secretary

October 4, 2021

Ms. Susan Ford Council Baradel 125 West Street Annapolis, Maryland 21401

RE: National Waste Managers 96-SP-0500

Dear Ms. Ford:

The Department of the Environment received an application from National Waste Managers on January 11, 1996. The application was for 42 acres to mine sand and gravel. The application was assigned permit number 96-SP-0500. The permittee failed to complete the permit process and was notified that the permit application file would be closed. There was no response to that notification. On August 11, 1999, the permit file was closed. Since that date there has been no correspondence form National Waste Managers regarding a surface mine permit. Should National Waste Managers choose to pursue a surface mine permit they will have to apply for a new permit, submit all required documentation and pay the fees.

If I can be of further assistance I can be reached at (410) 537-3568 or molly.michaelson@maryland.gov.

Sincerely,

Molly Michaelson, C.P.G.

Program manager, Mining Program