

Hearing Date: March 26, 2013

**Report to the Board of Appeals
Request for a Special Exception Renewal
Surface Mining of more than 10 acres
Docket #704**

SUMMARY OF REQUEST

Mine Site Area: Approximately 229 acres, located within a tract of 547.92 acres.

Location of Site: To the north of Maryland Route 6, approximately 2,000 feet east of Keech Road, and 4,000 feet east of the entrance to Gilbert Run Park, in the Eighth Election District; Tax Map 57, Parcel 4.

Owner: Crescent Run, LLC

Applicant: Howlin Concrete, Inc.

Zoning: Agricultural Conservation (AC)

Proposed Activity: (Use #7.05.120) Surface mining of more than 10 acres

SUMMARY

The Applicant requests the renewal of Special Exception #704 for sand and gravel extraction. A sand and gravel mining operation has existed on the project site since 1990, by an approved Special Exception ordered January 9, 1990, later subject to modification and renewal in March 1997, November 2000, May 2002, and July 2007.

The following is a discussion of specific issues by the Planning Division for consideration by the Board of Appeals. The Applicant proposes to continue a sand and gravel surface mining operation. The affected property is zoned Agricultural Conservation. The application requests the Board to consider whether the proposed use continues to be consistent with the current *Zoning Ordinance*, and whether the facility operates within the regulatory guidelines of the specific Special Exception, as established in the *Zoning Ordinance*.

SPECIAL EXCEPTION REQUIREMENT

According to the current *Zoning Ordinance*, the proposed activity requires a Special Exception in the Agricultural Conservation (AC) zoning district (see Figure IV-1 Table of Permissible Uses, §297-63, Use #7.05.120).

MINIMUM ZONING REQUIREMENTS

The *Zoning Ordinance* requires the proposed facility to comply with the minimum standards established in Article XIII, §297-212, and must satisfy the minimum requirements as provided specific to the AC - Agricultural Conservation Zoning District (§297-87), and in the Resource Protection Zone (RPZ; Article XI). The applicant submitted a site plan and text, demonstrating adequate consistency with the requirements of the AC zoning district and RPZ. A site plan must be approved and permits specific to mining must be obtained from State and County agencies, prior to any mining operation, should the Board of Appeals grant the request to renew the current Special Exception.

IMPACT ON SURROUNDING USES AND ENVIRONMENT

The mine is located within the AC Zone, and all adjacent properties are zoned AC. The Planning Division performed a field inspection on November 16, 2012, determining forest cover dominates most of the perimeter of the project property and residences located adjacent to the property have a 100 foot minimum setback of forested buffer. In Phase 8, the forested buffer has been expanded to 250 feet where adjoining homes are within 250 feet of the approved portion of the tract. Sediment and erosion control devices were visibly operable, protecting the quality of runoff toward streams located to the east and west of the mine site. The streams flow into Gilbert Swamp Run, located to the north.

The submitted application states the limit of disturbance is limited to above the 150-foot elevation contour. Therefore, the mining operation will continue to avoid excavation into the water table, thereby avoiding adverse impacts to the hydraulic gradient toward nearby streams, and protecting the associated quantity and rate of ground-water recharge to the streams and moisture-dependent riparian habitat.

Based on review of the submitted information and the field inspection on November 16, 2012, the requested renewal is not anticipated to be detrimental to the use, peaceful enjoyment, economic value, or development of surround properties or the surrounding neighborhood. The mine site is surrounded by woodland, farm land, and low density residential development, resulting in minimal potential for adverse effects on surrounding land uses. Uses within the project area, such as the streams, are protected by avoiding excavation into the water table and by the Resource Protection Zone buffering the streams. Sediment and erosion control measures including sediment traps and silt fences are currently maintained and are protecting the quality of surface-water discharging from the site. Reclaimed areas have been seeded to establish grass cover and regeneration of woody tree and shrub vegetation. The Planning Division did not locate evidence of non-compliance. Any complaints that may have occurred, regarding the operation of the project site, have not been brought to the attention of the Planning Division.

Correspondence with the State Highway Administration (SHA) dated November 27, 2012 offered no objections to the approval of this renewal since the present access point meets current SHA standards.

COMPREHENSIVE PLAN CONSISTENCY

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

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

The surface mine operation will be consistent with the *Comprehensive Plan* if the operation continues to comply with the *Zoning Ordinance* and any conditions imposed by the Board of Appeals, and applicable final site plan approvals and permits are obtained. According to the submitted information, upon completion of the proposed mining and reclamation, the project site is proposed for uses consistent with the *Comprehensive Plan* and Charles County's land planning process. Specifically, the proposed use of the mining site after reclamation is a subdivision including cluster development and farmettes (small farms). The reclamation plan is bonded, to be released upon State inspection and approval. The design and location of mining activities have incorporated methods for protection of adjacent properties, including protection of sensitive natural resources such as wetlands and streams. Existing neighborhoods and residential adjacent properties have been protected by maintaining forested buffers.

PLANNING DIVISION FINDINGS

The request for the renewal of Special Exception #704 was evaluated based upon the standards set forth in Article XXV Section 297-415; and Article XIII, Section 297-212, Use #7.05.110, of the *Charles County Zoning Ordinance*. The following Findings of Fact are offered for consideration by the Board:

1. Crescent Run LLC owns the project property located on Tax Map #57, Parcel 4, in the 8th Election District, in the AC Zoning District. Howlin Concrete is the Applicant requesting the renewal of a Special Exception for surface mining over 10 acres. The project parcel is approximately 548 acres in area with a proposed mining area of 229 acres, according to the submitted site plan dated September 2012 and revised October 2012.
2. The requested use is permissible in the AC – Agricultural Conservation Zoning District by Special Exception.
3. Based on the information submitted to date and visible site conditions, evidence does not exist to indicate that the proposed use has or will cause detriment to the use, peaceful

enjoyment, economic value or development of the surrounding properties and affected neighborhood. The existing uses in the surrounding vicinity consist of agricultural, mining, and low density residential development. Proposed buffers as required by the *Zoning Ordinance* will continue to mitigate potential adverse effects to the surrounding neighborhood, and the proposed plan protects environmentally sensitive areas to the extent feasible.

4. Negative effects to groundwater recharge of streams may result if the proposed mining were to significantly breach the water table; however, the submitted application states that the limit of disturbance does not include area below the 150-foot elevation contour, thereby avoiding any significant excavation into the water table. Potential impacts related to increased stormwater runoff and off-site sedimentation have been mitigated so far through sediment/erosion control structures, such as sediment traps and silt fences, as defined in the mining plan. The continued mining operation, based on the submitted information, is not expected to endanger public health, safety and general welfare, provided the Applicant complies with the conditions contained herein and as previously approved, and performs in accordance with the testimony and exhibits presented.
5. The submitted application and proposed activity complies with the minimum standards in Article XIII, Section 212, for use #7.05.110, of the *Charles County Zoning Ordinance*, as follows:
 - a. The Applicant certifies the existing and proposed surface mine use complies with all local, State and Federal regulations, and permitted requirements.
 - b. A 100 foot wide natural buffer has been and is proposed to be preserved along the perimeter of the property, as required by the *Zoning Ordinance*. Furthermore, as required the setback is increased to 250 feet where adjoining homes are within 250 feet of the approved mining portion of the tract.
 - c. The Applicant acknowledges that the height of structures below the maximum allowed and any manmade form may be limited by the Board. It should be noted that there are no structures proposed as part of this Special Exception.
 - d. No processing equipment is proposed under this Special Exception. Sediment traps are located consistent with existing topography of the property. Furthermore, there are no plans to utilize sediment ponds on the site at this time.
 - e. The Applicant states that all operations shall be conducted in a safe manner to prevent hazards to persons, physical or environmental damage to lands and improvements to damage to any street, bridge, or public right-of-way. The Applicant also acknowledges the mining operation must conform to the performance standards contained in Article II, Section 287-32 and 297-33 regarding noise and air quality. The Applicant states the operation has been consistent with the Charles County Zoning Ordinance and the permits issued for the project.

- f. The submitted site plan defines the limits of disturbance, and the Applicant acknowledges that existing trees and ground cover along public road frontage and lot lines are required to be maintained, preserved, and supplemented by selective cutting, transplanting and additional new trees, shrubs and ground cover. A RPZ is also provided to the east and west adjacent to the limits of mining.
- g. The submitted site plan, at a scale of 1 inch = 200 feet, identifies slopes great than 15%. It appears the RPZ has been expanded in several locations affected by steep slopes. The Applicant states in the submitted information that the site plan indicates the limits of the RPZ in accordance with the Charles County Zoning Ordinance, and that no activities shall impact the RPZ.
- h. The Applicant states the site shall be thoroughly drained in accordance with mining plans and associated permits. Also, appropriate sediment and erosion control devices and measures shall be provided, as required.
- i. The haul road satisfies the width requirement, at not less than 20 feet, and is hard-surfaced and maintained for at least a distance of 150 feet from MD route 6. The Applicant states that all roads are being treated as needed with a preventative to control dust.
- j. The Applicant acknowledges the requirement of the Board to limit the duration of the permit to operate a surface mine. The Order of 2002 (Docket #704) and subsequent 2007 Order reviewing Docket #704 limited the duration to five (5) years from the date of Order, thus requiring renewal for the Special Exception after the expiration date. Due to the logistics involved in obtaining land use approval, subsequent mining permits, and the amount of land being mined, the petitioner's experience has been that a 5-year timeframe reflects an appropriate estimate of time for the commencement of mining activities. Therefore, the Applicant is currently requesting an extension of five (5) years.
- k. The Applicant acknowledged that the Board shall establish operation hours, and that hours shall be restricted to no more than nine hours daily between 6:00 a.m. and 4:00 p.m., except that Saturday operations shall be limited to between 7:00 a.m. and 3:00 p.m., with no operations permitted on Sundays except for repairs to equipment. The Board's approval in 1997 established the hours of operation consistent with the minimum standard, as stated above, except that hours on weekdays were limited to between 6:30 am and 3:30 pm during daylight savings time. The Applicant is requesting the hours of operation to remain the same.
- l. The Applicant proposes to continue the hauling of 150 loads per day, as previously approved.
- m. The Applicant provided at Site Plan at a scale of 1 inch = 200 feet, dated September 2012, revised October 2012. The Site Plan illustrates the following information, as per minimum standard:

- (1) Setback areas are shown on the Special Exception Site Plan. At this time there are no plans to utilize sediment ponds. It is the petitioner's intention to limit the drainage area to each sediment control device to thereby only require sediment traps.
 - (2) The portion of the tract subject to current and proposed mining is delineated. The submitted plan graphically illustrates the area of the mine site that has been mined and reclaimed, the area mined and subject to ongoing reclamation activities, and the remaining area proposed to be mined in phases.
 - (3) There are no existing or proposed structures associated with the site.
 - (4) Existing and proposed access roads are illustrated on the mine site plan. The haul road remains unchanged from the previous approvals.
 - (5) Facilities for water supply and sewage disposal facilities are not proposed.
 - (6) Sediment traps are planned and identified on the submitted site plan.
 - (7) The plan identifies the locations of planned temporary stockpiles.
 - (8) The haul road access to MD Route 6 has a locked gate to prevent unauthorized entry to the site. The gate is unlocked during mining hours of operation. "No Trespassers" signs to control unauthorized entry along the site perimeter are posted along the limits of the project property according to the submitted application.
 - (9) The proposed hauling from the mine site is unchanged from that previously approved, therefore there would not be increased truck traffic on the local road network.
 - (10) Environmental features are identified, including topography, streams, and forested areas.
 - (11) Historic resources are not known to exist on the project site.
 - (12) The Applicant acknowledges that the Board may request that an environmental impact analysis of an application be conducted by the applicant and submitted to the County staff for review and comment. Additional information in the form of an environmental impact analysis does not appear to be necessary for the requested renewal based on the Applicant's plans to limit mining to elevations above the water table and proposed protection of the RPZ and adjacent streams.
6. The proposed use will not cause significant objectionable impacts from traffic noise, type of physical activity, fumes, odors, dust or glare.
 7. Given the submitted information, public facilities and improvements, such as power utilities, facilities for water and sewerage, access roads, and storm drain facilities, are adequately provided by the project, as reasonably necessary for the proposed land use. The proposed project does not require and Adequate Public Facilities review by the Planning Commission.
 8. The site provides adequate ingress and egress through the existing paved entrance, and is designed and maintained in accordance with State and County standards and permits.
 9. The proposal is consistent with the Comprehensive Plan.

PLANNING DIVISION RECOMMENDATIONS

The Planning division staff finds that the applicant has met or justified compliance with the criteria for approval. Therefore, for the purposes of providing compliance with the requirements of the *Zoning Ordinance*, the Planning division staff recommends the following Conditions of Approval, should the Board choose to approve the application for Renewal of Special Exception Docket #704:

1. The requested modification of Special Exception Docket #704 for surface mining is Granted from the date of this order, and shall be effective for a period of five (5) years following the first date subsequent to the date of this order.
2. The current and proposed mining operation shall maintain compliance with all previous Conditions of Approval, except for Condition #1 (superseded by Condition #1 above) in the Orders of March 25, 1997, November 14, 2000, May 14, 2002 and October 2, 2007 except as specifically cited herein.
3. Special Exception approval is limited to the mine site area affected by current and proposed mining, a total of +/- 229 acres, as delineated on the Mine Site Plan dated October 2012, subject to any decrease in mining area resulting from refinement of the RPZ delineation, superseding previous orders with respect to approved mine site area. The mining operation shall continue avoidance of significant excavation into the water table, to the extent feasible, generally limiting excavation to above the 150-foot elevation.
4. Land previously mined and reclaimed shall no longer be eligible for a mining Special Exception, once that land area is subject to final reclamation.
5. The transport of mined materials shall be limited to 150 truck-loads per day, southbound on MD Route 6 toward MD Route 5, and the Applicant shall remove any and all operation-related mud and soil from public roads, as approved and required through the previous Orders of March 25, 1997, November 14, 2000, May 14, 2002 and October 2, 2007.
6. There shall be no blasting or explosive materials used on the site.
7. The capacity of, and removal of sediment from, sediment traps and basins, and other related maintenance activities, shall be adjusted to compensate for any conditions, induced by nature or the operator, that may increase the rate of sedimentation within such devices. Elements of storm-water management and sediment control, including but not limited to sediment traps and basins, may be subject to inspection by County Staff randomly. The inspections may commence immediately, and be coordinated with the Maryland Department of the Environment. Any non-compliance with the conditions of the Special Exception, or County, State and Federal laws and regulations affecting water quality, shall be reported by the Applicant, to the Board of Appeals.
8. The Applicant shall comply with all minimum standards established in Article IX of the

current *Zoning Ordinance*. In particular, the expansion of the Resource Protection Zone (RPZ) shall be refined based on detailed identification of steep slope (slope greater than 15%), subject to review for compliance as a requirement of the Development Services Permit.

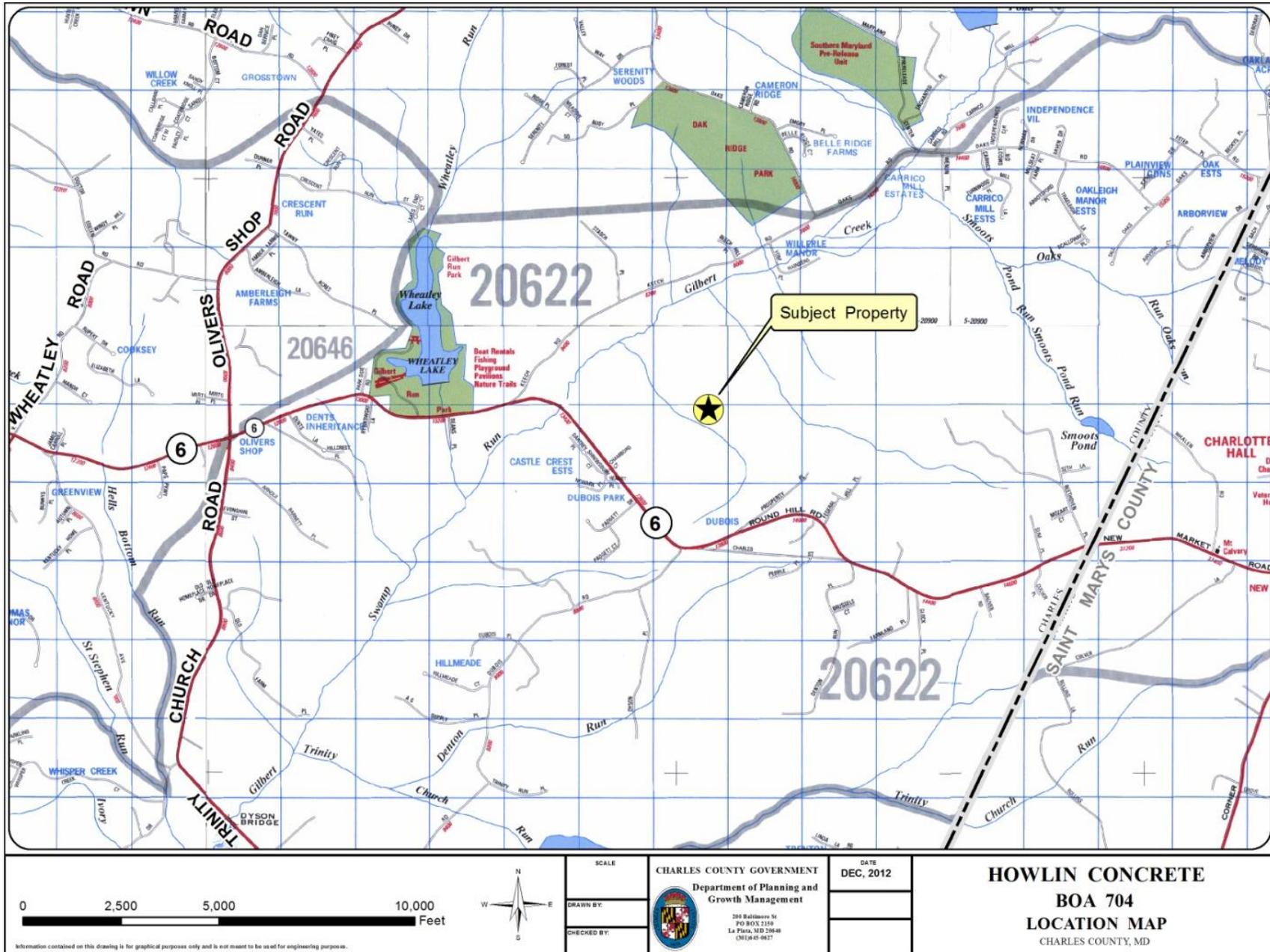
9. The continued operation of this Special Exception is contingent upon compliance with all applicable county, state, and federal regulations, including, but not limited to, the following local regulations: Charles County Zoning Ordinance, Grading and Sediment Control Ordinance, Road Ordinance, Storm Water Management Ordinance, Forest Conservation Ordinance, and Floodplain Ordinance.
10. The operation and maintenance of this Special Exception shall be in compliance with any and all testimony which was on the record in this matter, including the previous Special Exception approvals dated March 25, 1997, November 14, 2000, May 14, 2002 and October 2, 2007.
11. The Board of Appeals for Charles County, Maryland, may, after proper notice and hearing, suspend and/or revoke this Special Exception, provided findings by the Board of Appeals that any of the above-stated conditions have not been subject to full compliance by the Applicant, its agents, assignees, or successors in interest.

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

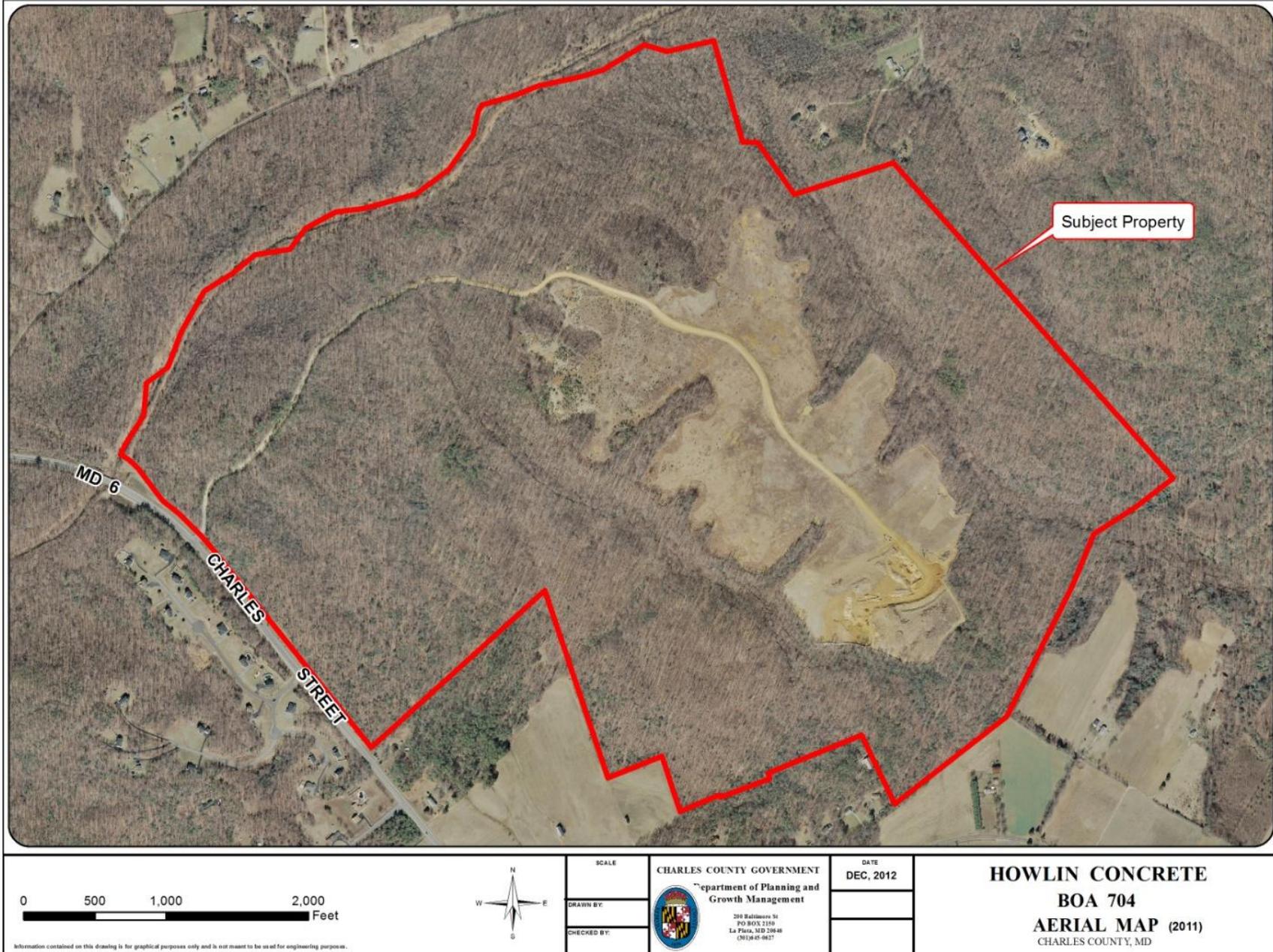
Erica Hahn:  Date: 3/12/13
Reviewing Planner

Charles Rice:  Date: 3-12-13
Env. Program Manager

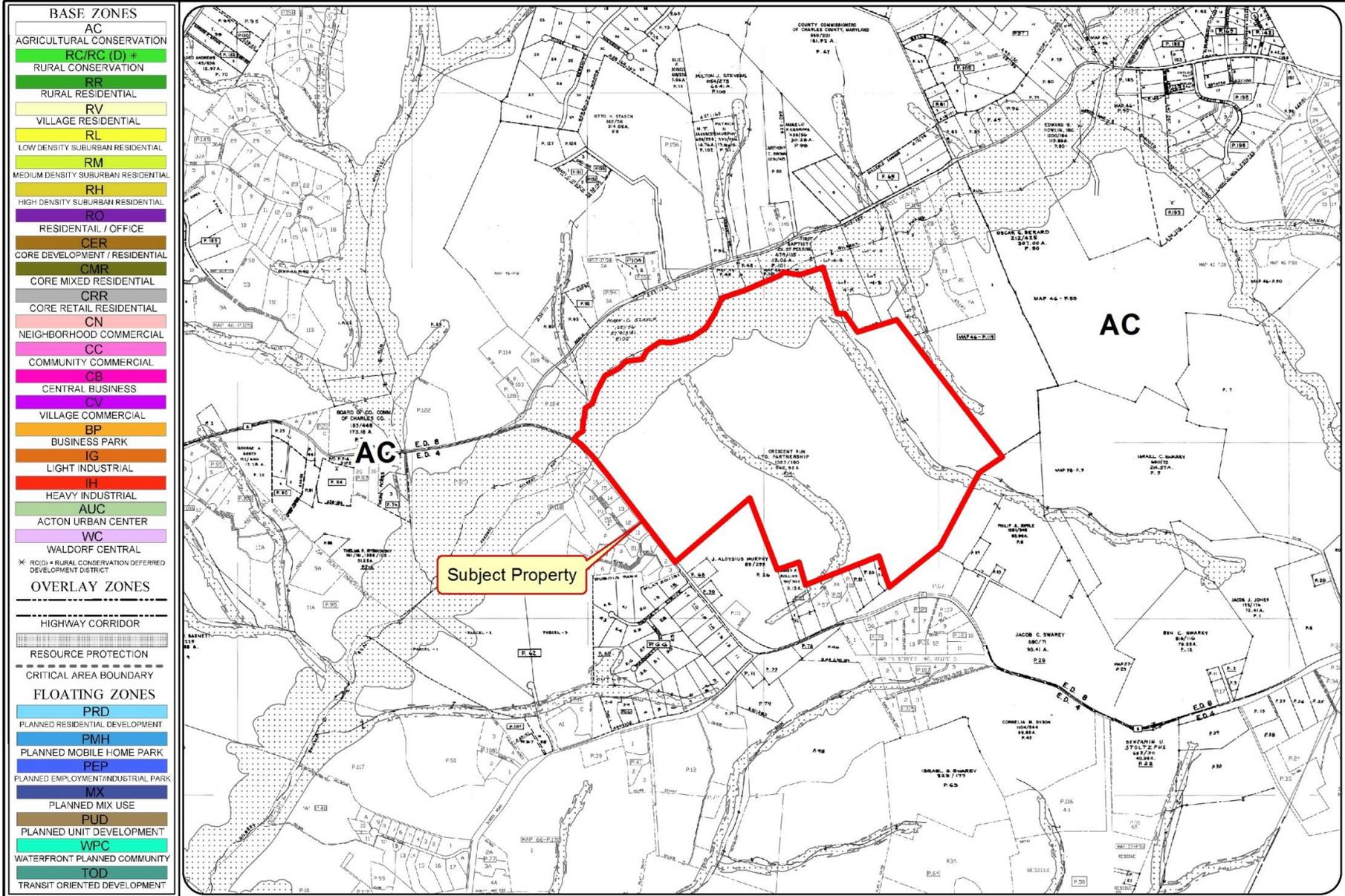
Location Map



Aerial Map



Zoning Map



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| <p>0 1,750 3,500 7,000 Feet</p> | | <p>SCALE</p> <p>DRAWN BY:</p> <p>CHECKED BY:</p> | <p>CHARLES COUNTY GOVERNMENT Department of Planning and Growth Management</p> <p>200 Baltimore St PO BOX 2350 La Plata, MD 20646 (301)645-0627</p> | <p>DATE DEC, 2012</p> | <p>HOWLIN CONCRETE</p> <p>BOA 704</p> <p>ZONING MAP</p> <p>CHARLES COUNTY, MD</p> |
|--|--|--|--|---------------------------|--|

Information contained on this drawing is for graphical purposes only and is not meant to be used for engineering purposes.

Special Exception Site Plan



Photos Taken On-Site On November 16, 2012



Photo #1 – Entrance of haul road facing Route 6



Photo #2 – Stream bed where haul road crosses stream



Photo #3 –
Reclaimed area



Photo #4 –
Reclaimed area



Photo #5 –
Reclaimed area



Photo #6 – Existing
mining



Photo #7 – Existing mining



Photo #8 – Haul road/
Existing mining



Photo #9 – Haul road/
Existing mining



Photo #10 – Haul
road/ Existing mining



Photo #11 – Haul road/ Existing mining



Photo #12 – Stockpile



Photo #13 –
Reclaimed area
adjacent to haul road



Photo #14 – Silt
fence along haul road
through future mining
phases.