

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP 19-131-021

SLOAN GRAVEL MINE

FOURTH ELECTION DISTRICT

DATE HEARD: NOVEMBER 18, 2021

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: December 16, 2021

Pleadings

Edward & Kathleen Sloan (the “Applicant”) seek conditional use approval (CUAP # 19-131-021), of Comprehensive Zoning Ordinance (“CZO”) § 51.3, Use Type 82, “Extractive Industry” within the Rural Preservation District (“RPD”)

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County (“County”), on September 24, 2021, and October 1, 2021. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the St. Mary’s County Department of Land Use and Growth Management (“LUGM”). The agenda was also posted on the County’s website on October 6, 2021. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that the Applicant has complied with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on November 18, 2021 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicant.

The Property and the Site

The Applicant owns a property of approximately 150.69 acres (the “Property”) at 26901 Morganza Turner Road, Mechanicsville, Maryland. The Subject Property is located in the RPD

and is identified on Tax Map 13, Grid 17, Parcel 112, Farmstead 1 part of Heard's Purchase

The Conditional Use Requested

The Applicant seeks a conditional use pursuant to St. Mary's Comprehensive Zoning Ordinance ("CZO"), for a gravel mine pursuant to § 51.3, Use Type 82, "Extractive Industry."

The St. Mary's County Comprehensive Zoning Ordinance

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

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

The Evidence Submitted at the Hearing by LUGM

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

- The Property consists of 150.69 acres according to the Maryland Department of Assessments and Taxation and is proposing a mining area of 18.8 ac to be completed in three phases. The Property contains a single-family dwelling and agricultural outbuildings according to the site plan submitted in support of this conditional use request. Ex. 2, Att. 2.
- The Applicant is requesting a Conditional Use approval for a gravel mine, use type 82, Extractive Industry. Industry is defined by the CZO as the "Removal of natural materials from the surface or subsurface of the earth for sale or further processing. This classification includes sand and gravel mining and mineral extraction." The mine has a proposed longevity of fifteen years operational status and has the option of renewing of the MDE mining permit.
- The Applicant will be approved by the State of Maryland's Department of

Environment, per Title 26, Subtitle 21, Chapter 01 of the Code of Maryland Regulations (“COMAR”), to have an approved Mining and Reclamation Plan, permit, and license to operate a surface mine. COMAR Title 26, Subtitle 21, Chapter 01 also regulates setback and haul road requirements.

- The surface mine site will be accessed by an existing 20-foot-wide gravel road which extends to Morganza Turner Road. According to the Applicant’s Adequate Public Facilities Report, submitted to the Department of Public Works and Transportation and located on Sheet 1 of the site plan, there are currently 3 users/lots/farmsteads of the private right-of-way. Ex. 2, Att. 2. The Applicant anticipates the following for Morganza Turner Road and the intersections of Morganza Turner Road and MD Rt 5 & 235:
 - 125 average daily truck trips,
 - 20 truck trips during peak hours,
 - Each impacted right-of-way originated at a LOS A1 and will remain a LOS A,¹ and
 - Each impacted road has a lane width of 20’ with a grass shoulder.
- The Department of Land Use and Growth Management reviewed the proposed project during the October 2019 TEC cycle. Comments are attached as Ex. 2, Att. 3. DPW&T, Metcom, Health Department, MSHA and the Soil Conservation District have approved the site plan. Approvals are still pending for LUGM

¹ Level of Service A as defined by the St. Mary’s County Comprehensive Zoning Ordinance: LOS A represents free flow. Individual users are virtually unaffected by the presence of others in the traffic stream. Freedom to select desired speeds and to maneuver within the traffic stream is extremely high. The general level of comfort and convenience provided to the motorist, passenger, or pedestrian is excellent.

(Conditional Use approval required) and SMECO. The Soil Conservation District has approved a Sediment and Erosion Control plan prior to the issuing of the existing Mining Permit and license which is issued by Maryland Department Environment for surface mine operations in the State of Maryland.

- Pursuant to CZO § 25.9, “Limitations on Conditional Use Approval,” “Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period.”
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter of Intent;
 - #2: Minor Site Plan;
 - #3: TEC Comments;
 - #4: Land Use Map;
 - #5: Location Map; and
 - #6: Zoning Map.

Applicant’s Testimony and Exhibits

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

- The Applicant is willing to have a condition to reduce the number of daily trips from 125 round trips.
- Phase 1 would last 3 to 4 years.
- The property is in the RPD, and § 31.1 of CZO describes that the RPD is to foster

mineral extraction uses. Furthermore, Section 30.4.1.a, base rural districts are to encourage mining.

- This received full TEC approval, and there will be two inspections by the state per year.
- Nothing about this property makes this any different than others in the RPD. You have to mine where the material is, and the RPD encourages mining.
- All roads meet county standards, and there were no recommendations from County or state agencies that the project should not be approved.
- The route was designed to spend as little time on Morganza Turner Road and to reduce the impacts to the roads. The loaded trucks will be on that road for approximately one mile before entering MD Route 235.
- There have been no dump truck related accidents that caused personal injury or serious property damage during mining operations.
- Section 5.1.2 of the Comprehensive Plan recognizes mining as a source of important economic activity.
- The Sloan operation will also comply with any federal or state bald eagle regulations.
- Barry Vukmer testified
 - The Applicant received Health Department approval April 13, 2020, LUGM approval April 8, 2020, DPW&T approval April 6, 2020, and SCD approval on December 29, 2020. They are awaiting MDE mining approval pending the Board's decision.
 - The nearest part of the mine to Morganza Turner Road is 149 feet. It is

approximately 359 feet and 377 feet to the nearest houses to the south.

- A portion of trees that exist now will be cleared for the mine.
 - He also provided pictures of reclaimed mines.
 - Given the concerns voiced by the public concerning screening, the Applicant proposes a condition whereby they would plant 108 Leland Cyprus in the buffer to assist with dust and to screen the mine from view from the road. The trees will be on the eastern side of the site. When planted, they will be 3 feet tall and will grow 2–3 feet per year and were chosen because they are the fastest growing.
 - They are also willing to plant 5 or 6 foot trees to begin.
 - The operation will begin in the back of the site, and after 3-4 years of Phase 1, the trees should be of sufficient height to further screen other parts of the site from view.
 - The treatment of the haul road will be built up with gravel and asphalt pavement, and it is approximately 120 feet. The existing entrance is R-20 and will continued to be use.
 - After the berm, there will be a standard Sloan Construction entrance at the haul road, and this was approved by SCD, which should take care of impact mud at the entrance.
- Mark Keeley testified as to the following:
 - He is a Project Manager at Traffic Concepts, has 48 years of experience in transportation engineering. He has been with Traffic Concepts for 15 years. He is certified with the American Institute of Certified Planners and the

Institute of Traffic Engineers.

- Exhibit 4, Attachment 2 demonstrates the clockwise route for a loaded haul and an empty return, neither of which requires a left run onto MD Route 5 from Morganza Turner Road. Moreover, the roads that will provide the routes the trucks will take are adequate. The majority of roads are state roads, and Busy Corner Road and Morganza Turner Road are county roads, of which there are no restrictions on either road.
- The proposed schedule is 7:30 am to 5:00 pm on weekdays, and 8:00 am to 12:00 pm on weekdays.
- 125 trips are proposed, of which 20 will be during peak hour—7:00 am–9:00 am, and 4:00 pm–6:00 pm.
- Morganza Turner Road has an average of 2,000 daily trips, and the Applicant is proposing adding an additional 125 trips.
- The stopping sight distance of Morganza Turner Road is 40 miles per hour. They performed a sight distance test at a design speed of 50 miles per hour. Pursuant to the American Association of State Highway Officials, a stopping sight distance of 425 feet is required, and the intersection sight distance for a vehicle turning left from a stopped position is 550 feet. The sight distance analysis revealed is in excess of 600 feet looking both ways on Morganza Turner Road, which is more than adequate for a dump truck. *See Ex. 4, Att. 3.*
- Only grades would affect stopping sight distance; there is no additional length added to consider the type of vehicles.

- Jon Mayer of Traffic Concepts testified as to the following:
 - He has been with Traffic Concepts for 6 months but worked 30 years beforehand with Anne Arundel County, the majority of which was in traffic engineering and development review, after which he worked for two years with MSHA.
 - They did not perform a sight distance analysis on the flashing indicators for Three Notch Trail, though the trail was examined “extensively,” which revealed that the trail has significant advance warning signs and has a flashing warning sign that are activated by the users.
- Curtis Grice of Sloan Materials testified:
 - The width of the dump trucks is 8 feet or less.
 - Mr. Sloan does not own any five-axle super dump trucks, and none will be operating in the gravel pit. There will be no tandem dump trucks.
 - The number of daily trips will be a maximum 125 round trips.
 - The dust generated by gravel pits is the same dust generated from farmers in their fields or by driving on a gravel road. Sloan will mitigate the dust with water distributed from a tank truck.
 - The federal Mine Safety & Health Administration will inspect the mine twice a year. At times, samples of the air will be taken to determine if the air is contaminated. MSHA has conducted such samples on Sloan mines before but has found no cause for concern in the amount or content of dust that mine personnel are breathing. Ex. 4, Att. 1.
 - The majority of the material taken from the mine will be taken to the Sloan

wash plant in Loveville. There will be no processing on the site. There is no blasting or crushing on site either.

- The anticipated life of the mine is 10–12 years.
- There are no other gravel deposits on site that are of value to be mined.
- Phase 1 will take 3–4 years.

Decision

County Requirements for Granting Conditional Uses

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

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
6. Adequate measures have been or will be taken to provide ingress and egress following

- a design that minimizes traffic congestion in the public streets;
7. The proposed conditional use is not contrary to the goals, objectives, and policies of the St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
 8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Conclusions

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

First, the Site is in the RPD, the proposed conditional use, Use Type # 82, "Extractive Industry," complies with the standards of the RPD because the proposed conditional use is permitted as a conditional use in this zoning district pursuant to CZO Schedule 50.4 Use Type # 82. Further, pursuant to CZO § 31.1, the RPD is intended to foster agricultural, forestry, mineral resource extraction, and aquacultural uses and protect the land base necessary to support these activities." Emphasis added. Use Type # 82, Extractive Industry, with a total affected area of more than 5 acres, can only be approved as a conditional use by the Board of Appeals.

Second, the gravel mine operation is subject to numerous County, State, and Federal regulations intended to assure the public's health, safety, and welfare. Additionally, DPW&T, Metcom, Health Department, MSHA and the SCD have approved the site plan have approved the site plan. Although the public expressed its concerns over traffic, DPW&T did not require a Traffic Impact Study, and MSHA has no comment due to no direct access onto a State Highway. Moreover, to combat traffic concerns, this Board is requiring the following condition as part of its

approval: “Maximum three hundred (300) round trips per week, capped at maximum (80) per day.”

Third, the current uses on adjoining properties are residential and agricultural. The proposed gravel mine is buffered by existing forest and land in agricultural use on neighboring properties. Although the mine it is proposed to be approximately 237 feet to the nearest adjacent residence, mining will begin in the back of the site and this Board is mandating that a minimum of 6-foot Leyland Cypress shall be planted, maintained, replaced as necessary and shown on Exhibit 4, Attachment 5A.

Fourth, given the rural residential character of the area, the gravel mine is expected to operate and become an integral part of the rural landscape, like so many others located within the RPD. Finally, although there are adjoining residential properties, the Board is convinced that its condition, as well as the operational intents of the Applicant, will ensure limited disturbance to these properties.

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

Sixth, the existing point of ingress and egress is an existing gravel road with direct access onto Morganza Turner Road.

Seventh, the proposed Site comports with § 4.4.vi of the Comprehensive Plan, pertaining to rural preservation goals, objectives, and policies. Specifically, the Comprehensive Plan policy is to “[p]romote use of best management practices in resource-based activities to minimize contamination of surface and groundwater and adverse effects on plants, fish and wildlife resources, and other environmentally sensitive areas.” Moreover, the condition imposed by this

Board will ensure that negative impacts on surrounding properties are eliminated.

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

ORDER

PURSUANT to the application of the Edward & Kathleen Sloan requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for Use Type 82, "Extractive Industry" within the Rural Preservation District; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicant is granted a conditional use to allow a gravel mine, Use Type 82, "Extractive Industry" within the Rural Preservation District with the following conditions:

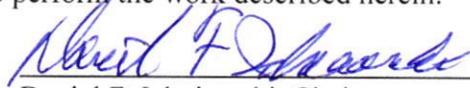
- 100 Foot Buffer around mining area as shown on Exhibit 4, Attachment 5A
- Water Trucks on site to keep dust down
- Hours of operation: Mondays through Fridays 7:30 am – 5:00 pm; Saturdays 8:00 am – 12:00 pm for Maintenance Only; Sundays – Closed
- No burning on site
- Pave the first one hundred twenty (120) feet of the access road, then SCE after berm
- No processing of gravel on site
- No retail sales on site
- Maximum three hundred (300) round trips per week, capped at maximum (80) per day

- Comply with all other federal, state, and local agency regulations.
- Minimum six (6) foot Leyland Cypress to be planted, maintained, replaced as necessary and shown on Exhibit 4, Attachment 5A.

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

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

Date: DEC 16, 2021


Daniel F. Ichniowski, Chairman

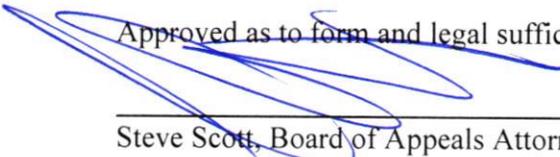
Those voting to grant the Conditional Use:

Mr. Ichniowski, Mr. Miedzinski, and Mr. Richardson

Those voting to deny the Conditional Use:

Mr. Bradley and Ms. Delahay

Approved as to form and legal sufficiency:



Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

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

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

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