STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Plaintiff,

Case No. 23-001234-CE
Hon. Timothy P. Connors

v.

WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,

Defendants.

BODMAN PLC
By: Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
Sinéad G. Redmond (P85718)
6th Floor at Ford Field
1901 St. Antoine St.
Detroit, Michigan 48226
(313) 259-7777
ndupes@bodmanlaw.com
sgabis@bodmanlaw.com
sredmond@bodmanlaw.com
Attorneys for Plaintiff

ANN ARBOR CHARTER TOWNSHIP'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff Ann Arbor Charter Township (the "Township") moves the Court for a temporary restraining order without hearing and preliminary injunction. The Township seeks a temporary restraining order (i) enjoining Defendants from operating their mining operation in violation of the Township Zoning Ordinance, Defendants' Conditional Use Permit, and the Development Agreement between the Township and Defendants, and (ii) to show cause why a preliminary injunction should not issue continuing the temporary restraining order until the Court can adjudicate the merits of the Township's claims.

In accordance with MCR 3.310, the Township certifies that its counsel has notified counsel for Defendants of this motion by email. The Township respectfully submits that temporary and preliminary injunctive relief is appropriate because Defendants are operating outside the scope of their Conditional Use Permit and otherwise in violation of Township ordinances, resulting in a nuisance per se. Injunctive relief is appropriate to abate a nuisance per se, without the need to demonstrate irreparable harm.

Nonetheless, the Township will suffer immediate and irreparable harm absent entry of a temporary restraining order because Defendants are intentionally engaging in mining practices that have lowered the water table in the Township, causing at least 11 residential wells to run dry, and the operations are adversely impacting Township surface water resources. Defendants have made clear that they have no intention of ceasing or modifying these practices, which places additional residential wells and natural resources at risk. Defendants have offered no assurances that further harm will not occur and have conceded that additional wells may be impacted at any time.

WHEREFORE, for the reasons stated above and in the attached brief, the Township respectfully requests that the Court enter the temporary restraining order attached as Exhibit 1 and set this matter for hearing on the Township's motion for a preliminary injunction.

Respectfully submitted,

BODMAN PLC

By: */s/ Nathan D. Dupes*

Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
Sinéad G. Redmond (P85718)
6th Floor at Ford Field
1901 St. Antoine St.
Detroit, Michigan 48226
(313) 259-7777
ndupes@bodmanlaw.com
sgabis@bodmanlaw.com
sredmond@bodmanlaw.com
Attorneys for Plaintiff

Dated: September 29, 2023

ANN ARBOR CHARTER TOWNSHIP'S BRIEF IN SUPPORT OF *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Ann Arbor Charter Township (the "Township") brings the instant Motion to enjoin the Defendants from continuing the sand and gravel mining operations at their property (known as the "Vella Pit") in violation of their Conditional Use Permit, Development Agreement, Township Zoning Ordinance, as well as the Michigan Environmental Protection Act, MCL 324.1701 *et seq.* ("MEPA"). Defendants' operations have deprived the Township's residents of their preexisting, reliable potable water supply, and have significantly impacted other natural resources, including wetlands and a lake. If allowed to continue unchecked, Defendants' operations threaten additional damage to the Township's groundwater and other natural resources.

Although the Vella Pit has been in operation for approximately 60 years, Defendants took ownership in 2020. Verified Complaint, ¶¶ 14, 16. That year, the Township granted Defendants permission to mine under a Conditional Use Permit, Development Agreement, and other ancillary documents, after repeated assurances from Defendants that the Township's groundwater resources would not be affected. *Id*. at ¶¶ 19, 20, 25-27. Defendants represented in their permit application submissions to the Township that mining would occur using a "closed loop" system that keeps all groundwater onsite. *Id*. at ¶ 19. But after securing their permit from the Township, Defendants began using a system that pumps and discharges approximately 2 million gallons of groundwater per day off-site, in violation of multiple provisions of the Conditional Use Permit, Development Agreement, as well as the Township Zoning Ordinance. *Id*. at ¶ 34.

Because Defendants are operating outside the scope of their Conditional Use Permit and in violation of the Township Zoning Ordinance, the Court is authorized to issue temporary and preliminary injunctive relief to abate the resulting nuisance; the Township need not show nuisance

in fact or that immediate, irreparable injury will result. But, as detailed below, the Township also meets the traditional standards for injunctive relief because irreparable harm to water resources will occur in the absence of an injunction. The terms of the documents governing Defendants' operations are clear, and Defendants have no viable defenses against the Township's claims. Indeed, Defendants have conceded the underlying facts supporting the Township's requested relief. The harm that Defendants have thrust upon the Township and its residents eclipses the harm Defendants would suffer under the injunction the Township seeks. Defendants should not be heard to complain over an injunction that simply requires them to adhere to the Development Agreement that they signed and the lawfully issued Conditional Use Permit that they procured. The public interest in ensuring that Township ordinances are enforced to protect the Township residents and ensure a safe supply of water is paramount.

For these reasons, the Court should issue a temporary restraining order (i) enjoining Defendants from operating their mining operation in violation of the Township Zoning Ordinance, the Conditional Use Permit, and the Development Agreement, and (ii) to show cause why a preliminary injunction should not issue continuing the temporary restraining order until the Court can adjudicate the merits of the Township's claims.

II. FACTS

A. Defendants' mining operation and Conditional Use Permit.

In 2020, Defendants purchased an existing gravel mining operation located on 142 acres of real property commonly known as 4984 Earhart Road, Ann Arbor, or the "Vella Pit." *Id*. at ¶¶ 10-16. The Vella Pit is adjacent to several residences, and close to Spiritus Sanctus Academy, a Catholic school for children from Pre-K through 8th Grade, and the Dominican Sisters of Mary Mother of the Eucharist, home to approximately 100 Dominican Sisters. *Id*. at ¶ 36. These

properties depend on reliable on-site, potable wells for their drinking water supply. *Id*.

Prior to Defendants' purchase, the Vella Pit had been in use as a mine for approximately 60 years. *Id*. at ¶¶ 13-14. The prior operations did not significantly impact the surrounding properties, the water table, or the neighboring natural resources, and the Township did not receive complaints concerning the prior operations. *Id*. at ¶ 15.

In February 2020, Defendants applied for a Conditional Use Permit for Mineral Mining under Sections 74-136 and 74-592 of the Township Zoning Ordinance. *Id*. at ¶ 17. Throughout the application process, Defendants repeatedly represented that the mine would not affect groundwater, because the mining operation would be a "closed loop," where water used to wash the gravel would be returned to the existing on-site pond. **Exhibit 2**, CUP Application[1]; Verified Complaint, ¶¶ 19-20. In particular, Defendants' application stated that "[t]he mine operation does not include groundwater pumping to facilitate dewatering." *Id*., p. 21. Defendants' representations were flatly untrue.

At a public hearing on Defendants' application, held on May 4, 2020, Defendants' Vice President, Rob Wilson, told the Township that "water should be used in the same way as the existing operation, and would be contained on site. **There should be zero impact to water quality and/or water level**." **Exhibit 3**, Meeting Minutes from May 4, 2020 Planning Commission Meeting; emphasis added. That representation was false, too.

In the same vein, the Site Plan for Defendants' operations did not depict an outfall through which Defendants would ultimately discharge groundwater off-site. **Exhibit 2**; Verified Complaint, ¶ 21. Defendants have since admitted that they failed to disclose the true nature of their

[1] The Township has removed voluminous and/or duplicative attachments to its exhibits to this motion for the Court's convenience. All exhibits are attached in full to the Complaint.

operations on the Site Plan, with Mr. Wilson stating that the discharge pipe was "not really a site plan issue in [his] mind." **Exhibit 4**, Partial Transcript of August 21, 2023 Board Meeting, p. 48.

The Township ultimately approved the CUP on July 20, 2020, contingent on a finding (based on Defendants' representations) that the mining operation "will be compatible with the natural environment," and "will not be detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or the public welfare." **Exhibit 5**, Board Resolution. The final CUP included a list of twenty conditions, including requirements that Defendants (i) not revise or modify the Site Plan without prior written notice to and approval by the Township; (ii) comply with all comments, conditions, and recommendations set forth in the resolution and consultant comments/reports; (iii) comply with all applicable laws and ordinances; (iv) establish and submit a plan to the Township ensuring any planned lakes will not impact the water levels of surrounding wells and wetlands, and (v) comply with all state and federal requirements for mineral mining. See *Id*. Defendants and the Township also entered into a Development Agreement, which requires, among other things, that the project proceed "in a manner consistent with the Final Site Plan, the Resolutions, and other resolutions and permits issued by the Township." **Exhibit 6**, Development Agreement at ¶ 9. With these approvals and agreements in place, Defendants were authorized to begin mining in accordance with their CUP, Final Site Plan, and the requirements of the Township Zoning Ordinance.

B. Defendants begin mining using a process not authorized by the CUP, resulting in severe impacts to the Township and its residents.

After the CUP was issued and unbeknownst to the Township, Defendants applied for a permit from the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") allowing them to discharge millions of gallons of water per day off-site through an outfall pipe, none of which was disclosed in Defendants' application materials. Verified Complaint at ¶ 30.

The Township first learned of the potential CUP violations and the impact of Defendants' unauthorized activities at its May 15, 2023 Board meeting, when a resident informed the Board that her residential well had gone dry, suggesting that the water table may have dropped. *Id*. at ¶ 35. The Board quickly began discussing the circumstances with Defendants and pursued a vigorous independent investigation. *Id*. at ¶ 39. During the following weeks, the Board learned that Defendants were not mining in a "closed loop" operation, as they had initially represented. Instead, Defendants were (and are) pumping approximately 2 million gallons of groundwater per day and using a water discharge pipe that releases water and sediment into the adjacent wetlands and an unnamed tributary of Fleming Creek. *Id*. at ¶ 35. These activities were not depicted on their Final Site Plan or described in the CUP submissions or in any communication with the Township during the CUP approval process. *Id*. at ¶ 78.

By August 2023, the situation had become dire. More than 10 residents had informed the Township that their wells had gone dry. *Id*. at ¶ 52. And in response to the Township's request for further information, Defendants admitted that further dewatering would occur and additional well impacts were possible. **Exhibit 7**, Defendants' Response Letter. Defendants also conceded that their original modeling for the project was based on a faulty assumption: while the original model assumed the aquifer was an "unconfined aquifer," in actuality the aquifer is a "leaky confined aquifer," which recharges more slowly. *Id*. Finally, Defendants admitted that they had not explored alternative mining methods which could be less disruptive because they believed such methods would be impractical at the site. *Id*. In short, Defendants took the remarkable position that, although they were aware that their operations were based on faulty information and were inconsistent with their Site Plan and CUP submissions, resulting in the impairment of water resources and neighboring property rights, Defendants had no intention of altering their conduct

because they would not make as much money.

At its August 21, 2023 Board meeting, the Township provided Defendants an opportunity to address the dewatering crisis, including an opportunity to present their long-awaited and promised hydrogeological study. Verified Complaint at ¶ 43-49. Numerous representatives from Defendants spoke at the meeting and answered questions from the Township trustees and the Township's hydrogeological expert, Dr. Steven Wright, including Rob Wilson (Defendants' Vice President), Defendants' attorney, and Defendants' technical consultants. *Id*. The "hydrogeological analysis" Defendants presented at the meeting lacked detail, did not offer any definitive conclusions and was admittedly incomplete. *Id*. at ¶ 44. It did little to reassure the Township that the situation would improve.

The Township also learned that Defendants operations were in violation of state environmental law. On September 14, 2023, EGLE issued a violation notice for several violations concerning (i) sediment discharge into an unnamed tributary stream, Fleming Creek, Massey Lake, and adjacent wetlands, (ii) inadequate soil erosion and sedimentation controls, (iii) construction/enlargement of a waterbody within 500 feet of a stream without a permit, and (iv) creation of a lake without a permit, all in violation of several provisions of the Natural Resources and Environmental Protection Act, MCL 324.101 *et. seq*. **Exhibit 8**, EGLE Violation Notice. The Township also learned that, on September 13, 2023, Defendants retracted a water withdrawal permit application they had submitted to EGLE, which would have allowed Defendants to withdraw up to 4.8 million gallons per day, because EGLE told them that the application would be denied. Verified Complaint at ¶ 61-63.

Additional impacts from Defendants' operations continue to arise; the Township continues to hear from residents whose use and enjoyment of their property have been severely comprised by Defendants. See, e.g., **Exhibit 9**, Affidavit of Tanya Whelan; **Exhibit 10**, Affidavit of John Darish.

III. ARGUMENT

A. The Township is entitled to an injunction because Defendants are in violation of the Township Zoning Ordinance.

Motions for injunctive relief to remedy zoning ordinance violations are unique; a showing of irreparable and immediate harm to the Township is not required before the complained-of activity may be enjoined. A violation of the zoning ordinance is a nuisance per se and Section 407 of the Michigan Zoning Enabling Act ("MZEA") (MCL 125.3407) eliminates the necessity that the Township establish a nuisance in fact or irreparable harm before being entitled to relief. *See Independence Township v Skibowski*, 136 Mich App 178, 185-186; 355 NW2d 903 (1984) (citing *Bruggeman v Minster*, 42 Mich App 177; 201 NW2d 344 (1972); *Indian Village Ass'n v Shreve*, 52 Mich App 35, 38-39; 216 NW2d 447 (1974); *see also High v Cascade Hills Country Club*, 173 Mich App 622, 629; 434 NW2d 199 (1988).

Defendants' CUP Application materials and Final Site Plan, which were the basis for the Township's approval, represented that Defendants' operations would be a closed-loop system such that no water would be discharged off-site. Verified Complaint at ¶ 19-22. Defendants have admitted that their operations are not a closed-loop system and that no off-site outfall is depicted on their Final Site Plan. **Exhibit 4**, p. 48; **Exhibit 7**. Section 74-136 of the Township Zoning Ordinance and Condition 3 of the CUP require that an approved conditional use permit and site plan shall remain unchanged except with the Township's approval. Section 74-6 of the Township Zoning Ordinance provides that the expansion or change to an existing conditional use shall

require a new conditional use permit. Defendants' never sought, and the Township never granted, approval to alter the CUP or Final Site Plan, so their operations are in violation of Township Zoning Ordinance. Michigan law provides that a court "shall order the nuisance abated." MCL 125.3407 (emphasis added).

B. Standards for injunctive relief.

In deciding whether to issue an injunction, a court typically considers whether the movant demonstrates: (i) a substantial likelihood of success on the merits of its claims; (ii) a substantial threat of immediate and irreparable harm that cannot be compensated by money damages; (iii) that greater injury will result from denial of the injunction than from its being granted; and (iv) that an injunction will serve the public interest. *See, e.g., Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984). "It is important to note that the four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied." *In re Eagle-Picher Industries, Inc.*, 963 F2d 855, 859 (CA 6, 1992). "These factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *Id.* The Court need not make specific findings as to all four factors if fewer factors are dispositive of the issue. *See, e.g., Jimdi Inc v Twin Bay Docks and Products Inc*, 501 F Supp 2d 993, 1001 (ED Mich, 2007).

C. The Township is entitled to a TRO and preliminary injunction under the traditional preliminary injunction factors.

i. The Township will be irreparably harmed unless injunctive relief is granted.

Although the Township need not demonstrate irreparable harm, as explained above, the Township *will*, in fact, be irreparably harmed if the Court does not issue an injunction ordering Defendants to immediately cease mining in violation of the Conditional Use Permit, Development Agreement, Township Zoning Ordinance, and MEPA. "Whether an injury to property or rights is irreparable depends in each case upon the nature of the right or property. An injury to be irreparable need not be such as to render its repair physically impossible; but it is irreparable when it cannot be adequately compensated in damages, or when there exists no certain pecuniary standard for the measurement of damages due to the nature of the right or property injured." *Ainsworth v Munoskong Hunting & Fishing Club*, 153 Mich 185, 191; 116 NW 992 (1908); see also, *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998) (irreparable harm means "non-compensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty.").

Here, the harms caused by Defendants' operations cannot be measured against any pecuniary standard. The Michigan Constitution provides for the ultimate protection of the natural resources of this State. The constitutional mandate provides:

> The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Const 1964, art. 4, § 52. One of the methods chosen by the Legislature resides in the MZEA, and provides such protections. Section 201 vests the Township with the authority to adopt a zoning

ordinance to regulate uses of land within its jurisdiction to ensure the responsible and efficient use of natural resources to meet the needs of the state's citizens. MCL 125.3201(1). Specifically, Section 201 provides:

> (1) A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures *to meet the needs of the state's citizens for food, fiber, energy, and other natural resources*, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, *to facilitate adequate and efficient provision for* transportation systems, sewage disposal, *water*, energy, education, recreation, and other public service and facility requirements, *and to promote public health, safety, and welfare*.

MCL 125.3201(1) (emphasis added). The Michigan Supreme Court has recognized zoning as a reasonable exercise of a municipality's police power that "**not only protects the integrity of a community's current structure**, but also plans and controls a community's future development." *Kyser v Kasson Twp.*, 486 Mich 514, 520; 786 NW2d 543 (2010)[2] (citing *Austin v Older*, 283 Mich 667, 674-675; 278 NW 727 (1938)); emphasis added. As explained below, Defendants' clear violations of the Township's Zoning Ordinance, the CUP and Development Agreement completely undermined the Township's duty to enforce its ordinances for the protection of the Township's current structure, the efficient provision of natural resources for its residents, the protection of the natural resources within its jurisdiction, and the public health, safety and welfare. The inability of the Township to fulfil its obligations to its residents in this regard is simply impossible to measure or repair with money damages.

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[2] *Kyser* was abrogated on other grounds by the legislative enactment of Act 113 of 2011. While Act 113 abrogated *Kyser* to legislatively establish the no very serious consequences test confirmed in *Silva v Ada Township*, 416 Mich 153; 330 NW2d 663 (1982), the principle for which *Kyser* is cited herein has long been recognized and remains intact.

By operating beyond the scope of the approved CUP and Final Site Plan, Defendants have deprived the Township of its ability to fulfil its duty to the public health, safety and welfare in reviewing and approving applications for conditional uses within its jurisdiction. The Township and its consultants spent numerous hours considering Defendants' CUP application and supporting materials, which were full of misrepresentations. Verified Complaint at ¶ 17. Had Defendants disclosed the true nature of their operations during the permitting process, the Township would have had the opportunity to complete its necessary due diligence on behalf of the public. For instance, the Township would have been able to conduct further investigation into whether Defendants' intent to withdraw and discharge water off-site would impact the water table and potable water supply. The Township could have required additional studies or other information from Defendants, imposed additional conditions in the CUP to protect the water table and the residential potable water supply, or denied the CUP application altogether. Such important governmental duties on behalf of the Township's citizens are impossible to quantify and interfering with a municipality's ability to undertake those duties is irreparable.

Additionally, Defendants' impact on the water table and other natural resources cannot be adequately compensated in money damages. Although Defendants apparently have paid for or reimbursed some (but not all) of residents' costs to lower their pumps or replace their wells, this is hardly sufficient, as explained below.

First, the Township Zoning Ordinance governing Defendants' operations prohibits them from adversely impacting neighboring property uses or altering surface and subsurface drainage patterns, and requires the operations to be compatible with the natural environment and existing and future land uses (see, e.g., Sections 74-136, 74-592). It cannot be disputed that Defendants' mining operations violate these standards given that those operations have placed such a valuable

resource as the residential potable water supply at risk. A resident should not be required to endure the stress and anxiety of losing their water source, paying for bottled water until a new well is installed, or having their property disrupted by the installation of a new well. **Exhibit 9**, Affidavit of Tanya Whelan. Municipal water service is not available in this location, and will not be in the foreseeable future, if ever. *Id.*; Verified Complaint at ¶ 51. Township residents must rely upon this aquifer for their potable water requirements, and it is the Township's duty and concern to exercise its powers to ensure this resource is protected for the needs of its residents.

Second, Michigan water law recognizes that natural water uses, such as residential wells, trump commercial water uses, such as Defendants' dewatering operation. *Mich Citizens for Water Conservation v Nestle Waters North America, Inc,* 269 Mich App 25, 71-72; 709 NW2d 174 (2005). The Township also has stated a claim against Defendants under MEPA, which authorizes the Court to grant temporary and permanent equitable relief "required to protect the air, water, and other natural resources or the public trust in these resources from pollution, impairment, or destruction." MCL 324.1704.

Third, Defendants cannot guarantee that the corrective actions taken to address impacts to their water supply will remain adequate in the future. To the contrary, residents already have experienced recurring problems after the initial corrective action failed to address the problem. For example, resident Tanya Whelan first lowered her well pump when her water went dry around the holidays in 2022. **Exhibit 9** at ¶¶ 6-8. A few months later, her well went dry again, requiring the installation of a replacement well, which she and her family were finally able to use just days ago. *Id*. at ¶¶ 10-11. And as further impacts occur, the only option to replace residents' water supplies may be to install replacement wells in a deeper aquifer which is known to contain higher concentrations of toxic arsenic, which removes beneficial minerals and requires expensive

treatment systems. Verified Complaint at ¶¶ 54-56.

Fourth, the corrective actions the residents or Defendants have taken are not a true replacement for what has been lost. For example, Ms. Whelan and her family had to use bottle water for 7 months due to Defendants' impact on her well. **Exhibit 9**, ¶ 12. Because the replacement pump and well are located at lower depths, Ms. Whelan now has greater ongoing maintenance costs to address the higher concentrations of minerals at the lower depths. *Id.* at ¶ 9.

Perhaps most importantly, Defendants have been unable to assure the Township that the problem has been contained and resolved. Defendants admitted that their original modeling for their operations was flawed and the hydrogeological analysis they are performing to address those flaws is far from complete. See generally **Exhibits 4 and 7**. Defendants also have conceded that their analysis may show that additional impacts will occur and that replacement wells may need to be installed in the deeper aquifer where arsenic is a concern. **Exhibit 4**, p. 31, 35.[3] In the meantime, the Township continues to receive reports of additional adverse impacts Defendants' operations have caused. Ms. Whelan's family only was able to start using their replacement well days ago. **Exhibit 9**, ¶ 11. Another resident, John Darish, recently had his well tested due to reports he was hearing from neighbors, only to find that his water level had dropped precipitously by more than 25 feet. **Exhibit 10**, Affidavit of John Darish, ¶¶ 5-7. Because the new water level was dangerously close to his pump, he paid to have his pump lowered just weeks ago. *Id.* at ¶ 8. It is simply unacceptable to allow Defendants to play a guessing game with residents' source of potable water and the Township's natural resources, waiting for the next severe impact to occur, while they

[3] Mr. Wilson suggested at the August 21, 2023 Board meeting that Defendants could establish an escrow agreement with the Township to fund treatment systems for wells installed in the deeper aquifer. **Exhibit 4**, p. 35. This suggestion unreasonably places the burden on the Township to administer and maintain residential well replacements.

continue to operate undeterred for their own financial benefit.[4]

ii. The Township is highly likely to succeed on the merits of its claims.

The Township has alleged that Defendants have violated the CUP, unlawfully expanded the conditional use granted by the CUP, and breached the Development Agreement by implementing a mining process that includes water withdrawal and discharge onto the neighboring wetlands.

Defendants have no plausible defenses to these claims. They did not seek a modification to the CUP, or any other approval from the Township to modify the system of mining to discharge water offsite and did not notify the Township when it began this practice. In fact, Defendants' sole excuse is that they believed it was "not really a site plan issue" (**Exhibit 4**, p. 48), yet the Zoning Ordinance required Defendants to include in the site plan "[l]ocation and nature of structures and stationary equipment to be located on the site during mining operations." Township Zoning Ordinance Section 74-592(c)(10)(f). The text of the Township's Zoning Ordinance, CUP, Development Agreement, and other ancillary documents governing the Vella Pit operations are clear: Defendants were required to obtain Township consent if they wished to change or expand their mining operations beyond what was approved. Township Zoning Ordinance Section 74-6. Defendants' mining processes that involve water withdrawal and off-site discharge are not an approved activity and violate numerous provisions of the Township Zoning Ordinance, including

[4] For purposes of this brief, the Township focuses primarily on the water table impacts. But it also should be noted that Defendants' operations have caused numerous additional adverse impacts. Residents have complained regarding Defendants' trucks, which have operated outside of permitted hours and caused excessive noise, vibration, and dust. **Exhibits 9 and 10**. Also, EGLE's Violation Notice, which apparently remains unresolved, states that Defendants' operations have violated numerous provisions of state environmental law, resulting in adverse impacts to wetlands, streams, and lake. **Exhibit 8**.

the following:

- Section 74-136(2) requires a conditional use to be compatible with the natural environment and existing and future land uses in the vicinity.
- Section 74-136(5) requires that a conditional use not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.
- Section 74-592(c)(7) prohibits mining operations from altering the drainage pattern of surface or subsurface waters on adjacent property.
- Section 74-592(c)(10)(f) requires the site plan to include "location and nature of structures and stationary equipment to be located on site during mining operations."
- Section 74-592(c)(10)(m) requires that the site plan must have a certified statement by an engineer concerning the expected impact on the water table and water supply wells in the vicinity of the site.
- Section 74-175 requires that a preliminary site plan must identify any on-site or adjacent natural features, including wetlands, it must provide a Natural Resources Impact Statement and must also provide a site analysis describing the site's relationship to natural features.
- Section 74-594 generally prohibits any use that creates any "dangerous, injurious, noxious, or otherwise objectionable element or condition so as to adversely affect the surrounding area or adjoining premises."

The Court must enforce the Township's Zoning Ordinance and the plain language of the documents governing Defendants' use of the Vella Pit and issue an injunction because Defendants' own admissions demonstrate the Township is likely to prevail on its claims.

iii. The balance of hardships weighs in the Township's favor.

The balance of hardships weighs clearly in the Township's favor. As noted above, the harm to the Township if relief is not granted is significant and long-lasting. On the other hand, injunctive relief would only require Defendants to come into compliance with the CUP, Development Agreement, and other ancillary documents to which they are a party. In short, injunctive relief would simply require Defendants to follow requirements and conditions to which they already have agreed. See, e.g., *Superior Consulting Co, Inc v Walling*, 851 F Supp 839, 848 (ED Mich 1994) (the balance of the harms weighed in favor of issuing an injunction because the injunction sought by the plaintiff only prevented the defendant "from violating his freely entered contractual obligations....").

iv. Public interest supports granting the Township relief.

Given the environmental and municipal interests at stake, public policy strongly favors the issuance of a temporary restraining order and preliminary injunctive relief for the Township. The impact suffered by the Township and its residents is already severe: as discussed above, this area of the Township is not served by a municipal water supply, and residents are reliant on their wells for safe, potable water. As set forth above, the public has an interest in ensuring that the Township can enforce its ordinances to protect its residents' health, safety, and welfare.

IV. CONCLUSION.

Because the Court is authorized to enter an injunction to abate a nuisance resulting from a violation of the Township Zoning Ordinance, and because all four factors supporting a temporary restraining order/preliminary injunction weigh in the Township's favor, the Court should enter an order (i) enjoining defendants from operating their mining operation in violation of the Township Zoning Ordinance, defendants' Conditional Use Permit, and the Development Agreement and (ii)

to show cause why a preliminary injunction should not issue continuing the temporary restraining order until the Court can adjudicate the merits of the Township's claims.

Respectfully submitted,

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Dated: September 29, 2023

EXHIBIT 1

STATE OF MICHIGAN
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Plaintiff,

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Attorneys for Plaintiff

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan

on _____

PRESENT: Hon. _____
Circuit Court Judge

This matter comes before the Court on Plaintiff Ann Arbor Charter Township's (the "Township") Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") and the Court having found that:

A. Injunctive relief is appropriate to abate a nuisance per se.

B. The Township will be irreparably injured unless a temporary restraining order is granted enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement;

C. The Township is likely to prevail on the merits of its claims;

D. A temporary restraining order enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement will not unjustly injure Defendants.

E. The public interest will be served by enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Township's motion is granted.

IT IS FURTHER ORDERED that:

1. Defendants, and those acting as agents or in concert with Defendants, are immediately temporarily restrained and enjoined from operating their mining operation.

2. The Township may immediately enter the Vella Pit to ensure operations have ceased and, if operations have not ceased, the Township may tag and padlock the Vella Pit against entry by any person or entity.

3. This Court has considered the requirements of MCR 3.310(D) and has determined that security is not required for entry of this Order.

4. Defendants shall appear before the court on _____, at _____ and show

cause why the Court should not issue a Preliminary Injunction.

5. Unless extended at said hearing or by further order of this Court, the provisions of this Order which temporarily restrain Defendants shall automatically expire at 5:00 pm on the date set above for hearing or at such other date and time to which said hearing may be adjourned by order of this Court.

6. The Township shall serve this Order, its Motion, the accompanying brief and exhibits, and its Verified Complaint upon representatives of Defendants by email and overnight courier within 48 hours of issuance of this Order.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Timothy P. Connors
Washtenaw County Circuit Court Judge

EXHIBIT 2

APPLICATION FOR CONDITIONAL USE PERMIT

(Chapter 74, Article II, Division 3)

Ann Arbor Charter Township
3792 Pontiac Trail, Ann Arbor, MI 48105
Phone: 734-663-3418 Fax: 734-663-6678
www.aatwp.org

RECEIVED
FEB 11 2020
Ann Arbor Township

Fee 1900.00

Date Received 2-11-2020

File Number CUP - 01-20

Describe Proposed Project Sand and Gravel Excavation/Processing

Project Address 4984 Earhart Road Ann Arbor, MI 48105

Property I.D. I 09-01-200-002 **Parcel Size** 140.4 Acres

Applicant:

AMC-WSG, LLC		6966 Fisher Road		
Name		Address		
810-327-2548		Jeddo	MI	48032
Phone	Fax	City	State	Zip
rwilson@midmichiganmaterials.com		Robert W. Wilson		2-10-2020
Email		Signature		Date

Owner:

Thomas Vella		4984 Earhart Road		
Name		Address		
734-368-5612		Ann Arbor	MI	48105
Phone	Fax	City	State	Zip
		Thomas Vella		2-10-2020
Email		Signature		Date

REQUIRED INFORMATION

- Applicant's name, address, telephone number
- Names and addresses of ALL owners of record and proof of ownership
- If the applicant is not the fee-simple owner, then a signed authorization for the application must be provided by the owner
- Legal description, address and tax parcel number of property
- Scaled and accurate survey drawing, correlated with the legal description showing all existing buildings, drives and other Improvements
- Detailed description of the proposed use
- A site plan, containing the information required of a preliminary site plan and including evidence showing that the proposed use meets all required standards as follows:
  - Will be harmonious, and in accordance with the objectives, intent, and purposes of this chapter.
  - Will be compatible with the natural environment and existing and future land uses in the vicinity.
  - Will be compatible with the master plan.
  - Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways and structures, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for any such services.
  - Will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.
  - Will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

Conditional Use Permit Application and Site Plan

AMC-WSG, LLC

Ann Arbor Township, Washtenaw County, Michigan

The Conditional Use Permit Application ("Application") and Site Plan for Ajax Materials Corporation - Washtenaw Sand and Gravel, LLC (AMC-WSG, LLC/"Applicant") for the property at 4984 Earhart Road (the "Site") was prepared for the Ann Arbor Charter Township in accordance with the following:

- Ann Arbor Township Ordinance, Chapter 74, Zoning;
- Ann Arbor Township Ordinance, Chapter 26, Environment;
- Ann Arbor Township Land Development Standards, Chapter 18 (the "Standards").

The Application narrative and referenced Site Plan provide the information required by the Ordinance and the Standards.

It is important to recognize that the proposed mining operation and property that are subject of the Application and Site Plan will be essentially the same as the existing mining operation. There are no material changes proposed to the mining property, mining boundaries or mining processes.

"DIVISION 3. - CONDITIONAL USE PERMITS

Sec. 74-133. - Application and fee.

(a) Information required for a conditional use permit application."

"(1) Application for a conditional use permit shall be made by filing an application form with the required information and paying the required fee with the Township Clerk. The fee shall be set by resolution of the Township Board."

The Township Application For Conditional Use Permit and check to cover the fees was submitted to the Township on February 10, 2020.

"(2) For any conditional use that is also subject to site plan review pursuant to chapter 74, article II, division 4, section 74-172, the applicant shall submit, concurrent with the conditional use permit application, all information required for preliminary site plan review (or a combined preliminary and final site plan at the applicant's election), together with any additional information required by this chapter for such proposed conditional use. The applicant is encouraged to request a pre-application conference pursuant to section 74-172 (b) prior to submitting a conditional use permit application and preliminary site plan application to obtain informal feedback and comments from the Township on the feasibility of the proposed conditional use permit."

A pre-application meeting to address the conditional use permit and Site Plan review was conducted on February 6, 2020.

"(3) For any conditional use that also requires site plan approval, the conditional use permit application shall be processed concurrently with the site plan application, and the public hearing described below shall not be set until both applications are complete and all fees paid, together with any additional information required by this chapter for such proposed conditional use, as all such

information is necessary or advisable for the Planning Commission to adequately review and analyze the proposed conditional use. Any Planning Commission recommendation of approval of the conditional use permit shall be subject to approval of the site plan for the project and final Township Board approval of such conditional use permit."

GZA prepared a Final Site Plan, herein referred to as "The Plan" or "The Site Plan", in accordance with Chapter 74 Zoning, Chapter 26 Environment and Chapter 18 of the Ann Arbor Township Land Development Standards - Natural Features Standards.

"(b) Notification requirements. The Planning Commission shall establish a date for a public hearing on an application for a conditional use permit after confirming that the applicant has provided all information and paid all fees required by this chapter, including the information required by section 74-133 (a)(3) above.

(1) A notice of the public hearing shall be published and mailed in the manner prescribed in section 74-61."

Understood.

"(2) A sign shall be posted on the property proposed for a conditional use in the manner described in section 74-61(g)."

Understood.

"Sec. 74-136. - Required standards and findings.

The Planning Commission and the Township Board shall review the particular circumstances and facts of each proposed use in terms of the following standards and required findings, and with respect to any additional standards set forth in article V of this chapter, supplemental regulations. The Planning Commission shall find and record adequate data, information, and evidence showing that the proposed use meets all required standards as follows: "

We address the six standards presented below. Chapter 74 does not include an article V, supplemental regulations.

"(1) Will be harmonious, and in accordance with the objectives, intent, and purposes of this chapter".

We assume harmonious to imply that the Application was prepared in a manner that is agreeable and balanced with Chapter 74. To demonstrate harmony with Chapter 74, we prepared the application using Chapter 74 as the foundation to be certain not to miss any Articles, Sections or requirements.

Chapter 74 does not outline specific objectives. To demonstrate our commitment to our interpretation of the objectives, we used Chapter 74 as the foundation of the Application addressing each applicable article, section and requirement.

The intent of Chapter 74 is defined in Section 74-1. The proposed use is consistent with the current use and past use for several decades. So, without a doubt, the proposed use is a wise and economical use of the land. Being consistent with decades of use, the proposed use will preserve and not negatively impact property values, will have no changes in the conservation of natural resources, will not cause overcrowding in the use of land, not cause increased congestion of population and transportation systems, and will not over-use public facilities.

Compliance with Chapter 74 provides reasonable restrictions and regulations for the proposed land uses and promote the health, safety and general welfare of the residents of the Township.

The purpose of Chapter 74 is not specifically defined, but we believe that the purpose and intent are similar, and the Application was prepared to meet what we believe the Township intended to accomplish with the Ordinance.

"(2) Will be compatible with the natural environment and existing and future land uses in the vicinity".

The proposed use is consistent with decades of use for sand and gravel mining and processing. Time has shown that the past use is compatible with the natural environment and existing land uses in the vicinity, and the future use will be similar as demonstrated in this Application.

"(3) Will be compatible with the master plan".

The Ann Arbor Township 2015 Master Plan does not acknowledge the need for construction aggregate or the presence of the existing mine despite decades of aggregate production in the Township for local roads and construction projects. The proposed use will be consistent with past use and hopefully remain as unnoticed and compatible with the goals of the Master Plan.

"(4) Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways and structures, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for any such services".

The proposed use will be served adequately by the same essential public facilities and services, such as highways, streets, police and fire protection, drainage ways, structures, and refuse disposal as it is currently.

"(5) Will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare".

The proposed use will be essentially the same as the past decades of use and will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.

"(6) Will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community".

The proposed use will be essentially the same as the past decades of use and will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

"DIVISION 4. - SITE PLAN REVIEW

Sec. 74-171. - Authority.

The Planning Commission shall review site plans as required in this article.

Sec. 74-172. - General procedures for submission and review of site plans."

"(a) Buildings, structures and uses requiring site plan review. The following buildings, structures and uses require site plan review:"

Items (1) through (6) are not applicable to the proposed use.

"(7) In recreation-conservation and agriculture districts, any permitted principal building and structures except (a) single-family residences with a floor area of 5,000 square feet or less, and (b) farm buildings and structures".

The Site is zoned as recreation-conservation and the requirements of Division 4 Article 7 – Zoning are addressed in the contents of this Application.

Items (8) through (14) are not applicable to the proposed use.

"(15) Any structure or use for which site plan review is otherwise required by this chapter."

The requirements of Division 4 Article 7 – Zoning are addressed in the contents of this Application.

"(b) Prohibited actions. No person may begin grading, removal of trees or other vegetation, land filling, or construction of buildings, structures or improvements for any project that requires site plan approval until a final site plan is approved and the other requirements of this article (such as an executed development agreement and deposit of performance guarantee) are met".

It is the Applicant's intent to acquire the property upon receipt of a CUP and approved Site Plan; therefore, it is expected that mineral extracting operations will continue through the application and review process as they generally have for decades.

"(c) Who may apply. Any person with a legal interest in the property may apply for site plan review. If the applicant is not the fee simple owner of all land covered by the project, the application also shall include the written consent of each fee simple owner. The applicant shall provide a current title commitment of the property showing all owners and parties in interest".

Appendix A provides the current title commitment and/or ownership information.

"(d) Site plan stages. The procedure for processing site plans includes three stages:

(1) Pre-application conference (optional). The applicant may request a pre-application conference. The conference is encouraged, but is not mandatory. During this conceptual review phase, the applicant presents a generalized site plan showing the overall concept of the project. Such matters as use, density, compatibility with development in the area and the effect of the project on Township services will be discussed during this phase. The applicant schedules the conference through the Township Supervisor. Conference attendees will include the applicant and the applicant's consultants, the Township consultants, one or more representatives from the Planning Commission, and representatives of other Township departments as appropriate".

A pre-application meeting was held at the Town Hall on February 6, 2020. We did not provide a generalized site plan rather relied upon the general understanding of everyone in attendance of the existing site conditions as an historical sand and gravel mining operation and recognition that the Site Plan to be submitted will primarily depict existing conditions and a proposed mine reclamation plan.

"(2) Preliminary site plan review. At this phase, the applicant submits a preliminary site plan meeting the requirements of this article. The requirements for a preliminary site plan are less detailed than for a final site plan".

As discussed at the pre-application meeting, a Preliminary Site Plan will not be submitted due to time constraints on property acquisition closing.

"(3) Final site plan review. Following approval of the preliminary site plan, the applicant submits a final site plan meeting the requirements of this article".

Understood.

"The applicant or a representative must be present at each scheduled review, or the application will be tabled for a maximum of two consecutive meetings due to lack of representation, after which the site plan will be dismissed and a new application required".

Understood

"(e) Combining preliminary and final site plans. An applicant may, at the applicant's discretion and risk, combine a preliminary and final site plan in one application for approval if the project will not be developed in phases. However, the Planning Commission shall have the authority, in its sole discretion, to require submittal of a preliminary site plan separate from a final site plan, when the complexity or size of the project warrants".

As discussed at the pre-application meeting, we are combining the Preliminary and Final Site Plans.

"Sec. 74-173. - Applications; determination that an application is complete; Planning Commission action.

(a) Application. An applicant may apply for preliminary or final site plan approval by filing with the Township Clerk, at least 20 calendar days prior to the next Planning Commission meeting, a completed application form, the required fees, and 17 copies of all information required by this article. Five (5) of the submittal copies shall include full size (24 × 36 inches) drawings and twelve (12) of the copies shall include reduced (11 × 17 inches) drawings. In addition to the required paper copies, an electronic version of the site plan submittal (including all supporting materials) shall be provided in a format acceptable to the Township"

Sixteen (16) copies of the Final Site Plan are included in the Application with drawings provided on 11 x 17 inch paper. In addition, 4 copies of the Final Site Plan are submitted on 24 x 36 inch plots.

"Sec. 74-174. - General requirements for all site plans.

(a) Format and information required. All site plans shall be prepared in the following format and contain the following information:

(1) Plans shall be prepared by a professional engineer, architect, planner, landscape architect, or land surveyor registered in the State of Michigan, whose seal shall be affixed to the first sheet".

Understood.

"(2) Each sheet in a set of plans shall show:

a. The name and general description of the property;

b. All revision dates;

c. The scale;

d. A north arrow, which shall be displayed on the right side of the sheet (and each sheet shall be oriented so that north is either up or to the left;

e. The title of each sheet; and

f. The name, address, and telephone number of the person or firm that prepared the sheet."

Items a through f are included on each sheet of the Site Plan.

"(3) Each sheet in a set shall be numbered consecutively and shall have proper match lines or other keys to provide reasonable continuity and orientation".

Understood

"(4) The first sheet in each set shall be the cover sheet and shall include a sheet index. At a minimum, the cover sheet shall show:

a. The name and address of the applicant and each record property owner;

b. The name and addresses of all adjacent property owners;

c. The legal description of the property;

d. The tax identification number;

e. The address of the site;

f. Lot dimensions and bearings;

g. Zoning classification and existing land use of the property and adjacent properties;

h. zoning data, including:

1. Required setbacks;

2. Minimum lot area;

3. Lot width;

4. Building height;

5. ground floor and total floor area to be constructed;

6. Proposed total ground floor coverage (ground floor area divided by net lot area);

7. Proposed total floor area ratio (total floor area divided by net lot area).

i. The date of the plan and all revision dates;

j. The project name (lower right corner);

k. Any existing or proposed deed restrictions and easements;

l. The Township identifying number for the project in the lower right corner once it has been assigned; and

m. A vicinity map showing the general location of the site in relation to the nearest cross street (or section corner for a metes and bounds parcel)."

Items a through m are included on the cover sheet of the Site Plan labeled Figure 1. A Township identifying number will be provided by the Township.

"(5) All plans shall be of a scale not greater than one inch equals 20 feet and not less than one inch equals 200 feet, and of such accuracy and clarity that the Planning Commission can readily interpret the plan."

Understood.

"(6) All plans shall show a high resolution aerial photo of the site."

Understood.

"(7) No applied shading shall be used that obscures any lettering or other graphical information."

Understood.

"(8) If a site is to be developed in two or more phases, all plans shall show the entire property in the development, its proposed layout, and the location of each phase."

A phased development is not proposed for the Site.

Sec. 74-175. - Requirements for preliminary site plans.

"(a) Information required. In addition to the information required for all site plans, a preliminary site plan shall provide the following information:

(1) Physical features.

a. The shape, size and location of existing and proposed development on the site, including buildings, parking areas and service drives, loading zones and the location of existing and proposed public streets serving the property".

Figure 2 depicts the existing conditions of the Site , including the operational layout, processing area (screening, washing, stockpiles,) maintenance and office.

"b. For residential projects, the number and types of dwelling units and density".

Not Applicable.

"c. For non-residential projects, the number of buildings".

A pole barn maintenance building and office trailer are shown on Figure 2.

"d. The location, width, and purpose of existing easements".

The existing easements are shown on Figure 2.

"e. The location of: (1) any drain tile that serves the property, whether located on or off the property that is the subject of the site plan; and (2) any drain tile on the property that serves other properties. If the applicant determines that no drain tile exists on the property, the applicant will provide a written statement to the Planning Commission representing that the applicant has made a good faith investigation into the existence of drain tile on the property, and that there is no evidence to indicate the presence of any drain tile on the property".

To investigate the potential for drain tiles at or surrounding the Site, GZA compiled publicly available historic and current USGS quadrangles and historical and current aerial photography. Review of historical aerial photographs from the following years did not indicate the presence of drain tiles: 1940, 1960, 1966, 1979, 1984, 1987, 1990, 1998, 1999, 2002, 2005, 2007, 2008, 2010, and 2015.

Our assessment of drains, including county drains and county drain right-of-way data on the Washtenaw County GIS Map Viewer do not have a record of drain tiles on Site.

In addition to our survey of publicly available data, GZA corresponded with the current owner, Mr. Tom Vella. Mr. Vella reported that he had no knowledge of, nor any installation, of drain tiles at the Site nor the surrounding fields during his ownership from 1957 to Present. A GZA Senior Water Resources Engineer evaluated the surface water drainage and noted drainage patterns in the two agricultural fields is primarily to the north and likely due to overland flow and not accommodated by drain tiles. We believe it is unlikely there are drain tiles occupying the southwest farming field or the fields to the south of the property line.

"f. An area-wide stormwater drainage map showing existing and proposed drainage courses and stormwater basins that are on-site or affect the site. This map shall provide contours shown at five-foot intervals, and a stormwater management plan consistent with the Township's stormwater management ordinance".

A Site-specific Stormwater Management Plan is included in Appendix B. The Plan was developed in accordance with Article 8 – Stormwater Management, and applicable County, State and Federal regulation.

"g. A sanitary sewer service area map showing service areas on-site or upstream. This map shall provide contours".

The Site is not serviced by sanitary sewer.

"h. A general proposed utility layout for sanitary sewer, water, and stormwater systems, including estimated locations for proposed wells, septic tanks, drain fields, and other proposed underground tanks".

Sanitary sewer systems are not existing or proposed. Water is suppled from a potable water supply well. Because the Site in internally drained, there are no proposed stormwater management systems. Figure 2 shows the existing location of the septic drain field.

"i. The total proposed stormwater impact surface area and percentage of proposed stormwater impact surface area to total gross area. Stormwater impact surface is that surface, including stormwater basins (at the designed capacity elevation), which has a runoff coefficient in excess of 0.3 as defined by the WCWRC".

The active and reclaimed mine will be internally drained.

"j. The location of any proposed trash storage areas and screening. If no outdoor trash storage is intended, the plan shall so state".

See Figure 2.

*"k. A written preliminary review **from** the Washtenaw County Water Resources Commissioner indicating the project's conformance to WCWRC standards regardless of whether or not the project is within the jurisdiction of the WCWRC".*

Correspondence from the Washtenaw County Water Resources Commissioner is in Appendix C.

*"l. A written preliminary technical review **from** the Washtenaw County Road Commission indicating the project's conformance to WCRC standards."*

Correspondence from the Washtenaw County Road Commissioner is in Appendix D.

"m. If the project is located within the Fleming Creek watershed, a written review from the Fleming Creek Advisory Council, or any successor entity ("FCAC"), related to the impact of the project on the watershed and any recommended design modifications or management strategies to better protect water resources. The Planning Commission may waive this requirement or defer consideration of the FCAC review to the final site plan review if the FCAC does not provide a written response within 45 days after the applicant submits its written request to the FCAC for review".

Correspondence from the Fleming Creek Advisory Council is in Appendix E.

"(2) Natural features.

a. The existing topography and proposed grading, at one foot contour intervals"

See Figure 2 for existing topography.

See Figure 5 for proposed grading and Reclamation Plan.

"b. Off-site elevations within approximately 100 feet of each property line not bordered by a public street to assist in determining proper grading and drainage".

Figure 2 includes the elevations within approximately 100 feet of the property boundary.

"c. Soils information, for sites utilizing on-site septic tanks and drain fields".

Soil information is shown on Figure 2.

"d. The location and extent of soils that are unbuildable in their natural state because of organic content or water table level, based on the Washtenaw County Soil Survey".

Organic soils and shallow water table have not been identified within the area proposed for mining, but both exist in in areas mapped as wetlands.

"e. The location and size of open areas and recreation areas".

Not applicable.

"f. The location and type of natural features on or adjacent to the site, including wetlands, watercourses, 100-year floodplains, woodlands, landmark trees, steep slopes, endangered species habitat as identified by the Michigan Department of Natural Resources, and groundwater recharge areas. Fence rows and individual trees of six-inch or larger caliper shall be shown in and within 25 feet of any area proposed to be affected. When natural features exist on-site or adjacent to the site, the applicant shall provide a Natural Features Impact Statement including the following elements, as described in the Township's Land Development Standards or Natural Features Ordinance:"

See Figure 2 for location of natural features. The elements of a Natural Features Impact Statement are provided in the following subsections.

"1. A site inventory map showing all natural features and any proposed loss of, or impact on, natural features. This map must clearly show the locations and types of existing natural features both on the site and those within a region 100 feet beyond the site boundaries including edges of woodlands and wetlands, buffer areas, watercourse streambanks, pond ordinary high water marks, floodways, floodplains, areas of hydric soils, highly permeable soils, groundwater recharge areas, steep slopes, landmark trees and a written description of the quality, character and health of the natural features."

See Figure 2 for location of wetlands and forested areas.

"2. A natural features protection plan. This plan must delineate natural features to be retained on the site or excluded from development, limits of soil disturbance, and protective measures such as barrier fencing, restrictions on traffic and storage of materials under trees, and soil erosion control measures. If applicable, the plan will include information on sustaining the natural features to be retained on the site."

The wetland area on the northern portion of the Site as shown on Figure 2 will not be accessed during mining. The wetland boundaries are obvious and if determined to be necessary will be flagged, staked or otherwise clearly marked to prevent entry before mining in the vicinity.

There are approximately 14 acres of forested areas on the property in the mine plan areas that contain aggregate resources. No other natural features that require a protection plan.

"3. An alternatives analysis. This analysis displays and discusses the alternatives, approaches and designs that were considered in arriving at the design proposed to minimize disturbance to natural features on the site. The analysis will include a written

justification of the degree of disturbance to natural features and basis for the mitigation proposed."

An alternatives analysis was not considered. The property was intended for mining aggregate for decades and is being acquired for the same purpose. As the only active mining operation in the Township, an alternatives analysis would not identify a more suitable location for an aggregate mine in the Township.

"4. A mitigation plan. If disturbance of natural features is authorized by applicable ordinances and approvals, a mitigation plan concerning replacement of disturbed natural features shall be submitted."

A mitigation plan specifically to address natural features is not applicable. However, a mine reclamation plan was prepared as depicted on Figure 3 and 4 to show how the property will be restored following mining.

"g. A written site analysis, supported by graphics, that evaluates the design and development potential of the site, to identify the nature and the effect of the design and development on the existing conditions of the site, and to determine the site's relationship to neighboring properties as well as physical and natural features in the area. The analysis shall show a correlation of the principal characteristics of the developed site that will affect the layout and future use of the property. The site analysis will show what natural features will remain and what natural features will be removed. The analysis shall also indicate the method used in the field to mark trees to be removed and trees to be preserved."

The Site is an active mining operation that has partially developed or mined on approximately 50% of the property and approximately 75% of the planned mining area. An applicable analysis is the comparison of the Existing Conditions shown on Figure 2 to the proposed conditions shown on the Reclamation Plan as Figure 3 and 4.

"(3) Other information. The Planning Commission may require the applicant to submit such other information, such as a traffic study, as the Commission determines is necessary for proper review of the preliminary site plan".

The Applicant discussed the existing and proposed mining and highway use with the Washtenaw County Road Commissioner. The preliminary technical review from the Washtenaw County Road Commission (WCRC) indicating the project's conformance to WCRC standards is contained in Appendix D.

Sec. 74-176. - Requirements for final site plans.

"(a) Phased projects. If a project is being developed in phases, a separate final site plan must be submitted for each phase."

The continuous use of mineral extraction will not be a phased development.

"(b) Information required. In addition to the information required for a preliminary site plan, a final site plan shall include the following information:

(1) Physical features

a. *Location and overall dimensions of existing structures and drives within 200 feet of common property lines and identification of existing improvements to remain and to be removed."*

See Figure 2.

"b. Surface type and width of streets adjacent to the site, and the surface elevation of any existing street at the intersection of each proposed driveway or other street."

See Figure 2 for existing roads and driveways.

"c. Proposed buildings or other structures including dimensions, distance between buildings, finished floor elevations, basement elevations, grade line elevations, and an indication if buildings are proposed as walkouts or view-outs."

See Figure 2 for existing buildings and structures. No additional buildings or structures are proposed.

"d. Proposed drives or streets, including: names; right-of-way or easement width; surface type and width, including typical cross sections; surface elevations; location and type of curbs, where proposed; expansion of existing street rights-of-way; length and width of turning lanes, where permitted; and curve radii."

No new drives or streets are proposed.

"e. Proposed building and address numbers, including the locations, typical copy, and dimensions. "

No new building or address numbers are proposed.

"f. Proposed parking areas, including: the number and size of spaces with supporting calculations; location of each space; type of surface, including typical cross sections; aisle width; angle of spaces; and location of wheel stops or curbs, when applicable."

Existing parking areas are shown on Figure 2.

"g. Proposed loading areas, including the dimensions, surface type, and typical cross sections."

Not applicable.

"h. Proposed sidewalks and pedestrian paths, including width, surface type, and typical cross sections."

Not applicable

"i. Proposed fences or screens, including height, type, typical details, elevations, and sections."

A perimeter fence will be installed in general accordance with the details shown on Figure 5.

"j. Proposed outdoor trash storage, including dimensions and typical details of the enclosure. If no outdoor trash storage is intended, the plan shall so state."

See Figure 2

"k. Proposed central mailboxes, if applicable, or a notation that individual boxes will be used."

The existing mailbox is located near the Site entrance on the west side of Earhart Road.

"l. Proposed identification and advertising signs, including dimensions, area, height, illumination, and typical copy."

A sign will be located approximately where shown on Figure 2 as generally described on Figure 5.

"m. Proposed traffic control signs, specifying typical and intended purpose."

None proposed.

"n. Proposed retaining walls, including dimensions, materials of wall and fill, typical vertical sections, and design calculations."

None proposed.

"o. Proposed outside lights and street lights, if applicable, including type, height, intensity, direction, and typical details."

The location of existing outside lights are shown on Figure #. No changes are proposed to the lights and any new lights if determined to be necessary for safety reasons will be installed where needed.

"p. Information concerning the existing utilities serving the site, including: the location, size, inverts, fire hydrants, gatewells, manholes, and catchbasins; locations and elevations of ditches, culverts, and bridges adjacent to the site; location of utility poles and lines; and location and size of natural gas lines and appurtenances."

The location of electric utility poles and lines are shown on Figure 2. There are no fire hydrants, gatewells, manholes, catchbasins, ditches, culverts, or bridges on or adjacent to the Site.

"q. Information concerning the proposed utilities for the project, including the following (profile illustrations should be included with plan views on the same sheet):

"1. Proposed water system, including: size, material and type of lines; location of fire hydrants and valves; profiles; location of meter room; water meter schematic; and fire riser schematic."

The existing private water supply well is shown on Figure 2. No public utilities are proposed.

"2. Proposed sanitary sewer system, including: size, material and type of lines; inverts; location of manholes; profiles; and design basis."

The location of the private septic system is shown on Figure 2. No sanitary sewer system is proposed for the Site.

"3. Utility structure schedules (tables) for sanitary sewer, storm sewer and water mains."

Not applicable.

"4. Groundwater information for the site with supporting evidence, including site specific soils information."

The U.S. Department of Agriculture *Web Soil Survey* maps ten soil types including: gravel pit, Wawasee loam, Boyer loamy sand, Houghton muck disintegration moraine, and Gilford sandy loam. The well record for the potable well on the Site identifies gravel and stones from 0 to 51 feet below ground surface (bgs), gray clay from 51 to 206 feet bgs, and gravel from 206 to 212 feet bgs. Groundwater is estimated at 890 elevation above mean seal level.

"5. A hydro-geological study if groundwater information (including the high groundwater table) warrants further investigation, as determined by Township consultants."

Further investigation of groundwater is not anticipated.

"6. Proposed electrical, telephone, and gas services; new utility poles, if applicable; underground lines and surface equipment; and size of natural gas lines and appurtenances."

None proposed.

"7. The location of proposed wells, septic tanks, drain fields, and other proposed underground tanks."

See Figure 2 for location of existing water supply well and septic system.

"r. A storm drainage narrative clearly and concisely describing the intended method of designing the storm drainage systems, including: drainage areas, existing and proposed; retention basin and discharge concepts; storm sewer and ditch design criteria, compliance with Washtenaw County Water Resources Commissioner development criteria; and downstream capacity limitations. The narrative should include all the appropriate associated computations and shall be in compliance with the Township's stormwater management ordinance. The narrative should be prepared on standard 8½ by 11 inch sheets that are dated, numbered, and titled. Maps of similar size portraying the concepts involved should also be included."

Not applicable. The Site is internally drained. Stormwater naturally drains or is diverted to the mine pits. Storm sewers are not needed or used on the Site.

"s. Proposed storm drainage system, including: dimensions and calculations of stormwater retention areas; location, size, calculations, and material type of storm sewers; location and centerline elevations of swales or ditches; inverts; location of manholes and catch basins; direction of flow; drainage patterns; profiles of sewers, retention basins, culverts, swales, and ditches; and design basis. The plan shall also include a stormwater maintenance plan, complete with annual tasks and anticipated costs."

Not applicable. The Site is internally drained. Stormwater naturally drains or is diverted to the mine pits.

"t. A written review from the office of the Washtenaw County Water Resources Commissioner ("WCWRC") indicating the project's conformance to WCWRC standards regardless of whether or not the project is within the jurisdiction of the WCWRC."

A written response from the WCWRC office is in Appendix C.

"(2) Natural features"

"a. Two USGS-based benchmarks on the site."

There are no USGS benchmarks on the Site.

"b. Proposed open space and recreation areas, including, use, size, and proposed improvements."

Not applicable.

"c. A proposed landscape plan meeting the requirements of section 74-586."

Existing conditions are shown on Figure 2. A landscape plan for the Site was not prepared.

"d. A soil erosion control plan."

Because the Site is internally drained, a soil erosion control plan was not prepared.

"e. A completed State/County Environmental Permits Checklist for Non-Residential projects as attached in Appendix A of the Land Development Standards. These permits must include all MDEQ wetland permits and any necessary endangered species approvals."

It was confirmed at the February 6, 2020 pre-application meeting that the requested checklist does not exist.

"(3) *Other requirements."*

"a. When applicable, the applicant shall provide evidence of approval by the following agencies:

1. MDEQ.

2. Washtenaw County Road Commission.

3. Washtenaw County Health Department.

4. Michigan Department of Transportation."

Correspondence from the Washtenaw County Road Commission is contained in Appendix D. Evidence of approval from the other agencies is not anticipated and was not requested.

"b. If warranted by the nature of the project and proposed stormwater system, the Planning Commission shall require that a drainage district be established for the entire project giving the Washtenaw County Water Resources Commission ultimate responsibility for the stormwater system."

Not applicable.

"c. When applicable, the Planning Commission shall require evidence of City of Ann Arbor review of proposed utilities."

Not applicable.

"d. The Planning Commission may request other information for proper review of a site plan and a determination on the standards for review, in view of the nature of the project."

Other information was not requested.

"(c) Standards for review. In reviewing the final site plan, the Planning Commission shall consider the following standards:

(1) All required information is provided."

(2) The plan substantially conforms to the approved preliminary site plan and continues to meet the standards for preliminary site plan approval.

(3) The plan, including all engineering drawings, meets Township requirements for fire and police protection, water supply, sewage disposal or treatment, storm drainage, and other public facilities and services.

(4) The drainage plan for the project is adequate to handle anticipated storm water runoff and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

(5) Outside lighting will not adversely affect adjacent or neighboring properties, or traffic on adjacent streets.

(6) Outdoor storage of garbage and refuse is contained, screened from view, and located so as not to be a nuisance to the project or neighboring properties.

(7) The proposed grading or filling will not destroy the character of the project or the surrounding area and will not adversely affect the adjacent or neighboring properties.

(8) The parking layout will not adversely affect the flow of traffic within the project or to and from the adjacent streets.

(9) The plan meets the standards of other government agencies, when applicable, and the approval of these agencies has been obtained.

(10)The plan provides for the proper expansion of existing public streets serving the project, when applicable."

Understood. The Site Plans were prepared to meet the standards summarized above.

"Sec. 74-177. - Development agreement.

After final site plan approval the applicant shall enter into a development agreement with the Township in a form provided by the Township. No building permits will be issued for the project nor will any earth change or construction activity be permitted at the site until execution of a development agreement. The development agreement shall incorporate the standards, findings and conditions for approval of the final site plan and shall provide for deposit of a performance guarantee as described in section 74-178. Final approval of the development agreement shall occur upon signature of the agreement by the Township Supervisor after (i) the Township attorney, staff and consultants confirm incorporation of all standards, findings and conditions for approval, (ii) deposit of the performance guaranty and (iii) signature of the agreement by an authorized representative of the owner of the project and, if different, the developer of the project."

The applicability of this section was discussed at the February 6, 2020 pre-application meeting where it was determined that if a development agreement is required that such an agreement would be reasonably negotiated.

"Sec. 74-178. - Performance guarantee.

(a) The applicant shall provide to the Township Clerk irrevocable bank letters of credit, cash deposits, or other security acceptable to the Township Board after a final site plan is approved. No building permits will be issued for the project nor will any earth change or construction activity be permitted at the site until the applicant provides the performance guarantee. The guarantee shall cover site improvements as defined in section 74-176(e) shown on the approved final site plan for all or any portion of the site plan for which the permit is issued."

Financial assurance is addressed in Sec. 74-592 below.

"Sec. 74-182. - Fees.

Fees for the review of site plans and inspections as required by this article shall be established and may be amended by resolution of the Township Board."

Understood.

"ARTICLE V. - SUPPLEMENTARY DISTRICT REGULATIONS

Sec. 74-592. - Mineral mining.

(a) Conditional use permit standards. Mineral mining shall require a conditional use permit, as described in section 74-131. The Township Board shall grant a conditional use permit if it finds that no very serious consequences would result from the operation of the mineral mining activity.

If it is demonstrated that a very serious consequence to the Township would occur, the Township Board shall not grant a conditional use permit. In accordance with MCL 125.3205, Section (5), the following factors shall be considered in making that determination:

(1) The relationship of extraction and associated activities with existing land uses.

(2) The impact on existing land uses in the vicinity of the property.

(3) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property.

(4) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

(5) The impact on other identifiable health, safety, and welfare interests in the local unit of government.

(6) The overall public interest in the extraction of the specific natural resources on the property."

Mining operations on the property have been ongoing for several decades and no material changes are proposed. Township Supervisor confirmed during the February 6, 2020 pre-application meeting that he was not aware of complaints from citizens associated with the mining operation during his 18-year tenure on the Town Board.

History has demonstrated that no very serious consequences have resulted from past and should not result from the continued operation of the mineral mining activity.

"(b) Market information. The applicant shall submit a report prepared by a geologist or other experts with credentials satisfactory to the Township Board to demonstrate compliance with MCL 125.3205, Sections (3) and (4), that the natural resources to be extracted shall be considered valuable, and the applicant can receive revenue and reasonably expect to profit from the proposed mineral mining operation. The applicant shall also provide documentation to demonstrate that there is a need for the natural resources to be mined by either the applicant or in the market served by the applicant."

Recognizing that the mining operation that is the subject of the Application is an ongoing operation for several decades, and AMC is investing to continue the operation, the need is demonstrated, and no additional study should be required. However, a market study was performed and is included in Appendix F.

"(c) Conditions for mineral mining. Mineral mining operations shall be subject to the following conditions:

(1) There shall be not more than one entranceway from a public road to such lot for each 660 feet of front lot line. Such entrance shall be located not less than 500 feet from an intersection of two or more public roads."

The existing entranceway from Earhart Road is the only entranceway that will be used for the Operation.

"(2) Such operations shall be permitted only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 7:00 a.m. and 12:00 noon on Saturday. Operations shall not be permitted on Sunday or legal holidays, except by special permit from the Planning Commission."

Understood.

"(3) On such site no digging, stockpiling, excavating or equipment storage and repair shall take "place closer than 100 feet from any lot line, and 300 feet from an existing residential zoning district. Stockpiles of stripped topsoil shall be seeded with grass or other plant materials and shall be prevented from eroding onto other properties."

Understood.

"(4) On such lot all roads, driveways, parking lots, and loading and unloading areas within 100 feet of any lot line shall be paved or treated in an environmentally-sensitive manner so as to limit the nuisance caused by windborne dust on adjoining lots and public roads."

Understood. Water will be used to control dust on unpaved surfaces or routinely travelled surfaces may be improved with asphalt millings.

"(5) Each operator shall be held responsible for all public roads upon which trucks haul materials from the mineral mines to keep those roads in a driveable condition at least equal to that which existed prior to the beginning of mineral mining operations; and to keep the roads dust

free and to clean any and all spillage of material and dirt, rock, mud, and any other debris carried onto the roads by these trucks or other equipment."

Truck traffic is planned to use Earhart Road, traveling south towards Plymouth Road. Discussions are ongoing with the WCRC to maintain and/or improve Earhart road to accommodate the mining operation.

"(6) Any noise, odors, smoke, fumes, or dust generated on such lot by any digging, excavating, loading, or processing operation and borne or able to be borne by the wind shall be confined within the lines of such lot as much as possible so as not to cause a nuisance or hazard on any adjoining lot or public road."

Earthmoving equipment that is used at a mining operation has undergone continuous improvements through the past decades; noise, odor, smoke, and fumes from heavy equipment is minimized due to these upgrades and would likely be improved from the current operations. Dust is managed through control measures such as applying water in active mining haul routes and stockpile areas.

"(7) Such removal shall not be conducted so as to:

a. *Cause the pollution by any material of any surface or subsurface watercourse or body outside of the lines of the lot on which such use shall be located, or of any existing body of water located within the premises."*

On-going operations do not pose a risk to surface watercourses or water bodies within or outside of the property lines.

"b. Cause or threaten to cause the erosion by water of any land outside of such lot or of any land on such lot so that earth materials are carried outside of the lines of such lot."

On-going operations do not pose a risk of erosion off on adjacent properties.

"c. Alter the drainage pattern of surface or subsurface waters on adjacent property. In the event that such removal shall cease to be conducted, it shall be the continuing responsibility of the owner and the operator thereof to assure that no erosion or alteration of drainage patterns shall take place after the date of the cessation of operation as specified in this paragraph."

Activities at the Site will not alter drainage patterns at the surface or subsurface waters in adjacent properties. The reclamation plan shown on Figure 4 depicts how the Site conditions following cessation of mining.

"(8) All fixed equipment and machinery shall be located at least 100 feet from any lot line and 500 feet from any existing residential zoning district. In the event the zoning classification of any land within 500 feet of such equipment or machinery shall be changed to a residential classification subsequent to the operation of such equipment or machinery, the operation of such equipment or machinery may continue henceforth but in no case less than 100 feet from any lot line adjacent to such residential district. A fence of not less than six feet in height shall be erected around the periphery of the area being excavated. Fences shall be adequate to prevent trespass."

Fixed equipment and machinery will be located at least 100 feet from any lot line and 500 feet from any existing residential zoning district. A fence will be installed around the mining operation as detailed on Figure 5.

"(9) All areas within a mineral mine shall be rehabilitated progressively as they are worked out or abandoned to a condition of being entirely lacking in hazards, inconspicuous, and blended with the general surrounding ground form so as to appear natural."

The conceptual mining and reclamation sequence is shown on Figure 3 and the conceptual final Reclamation Plan is shown on Figure 4.

"(10) The applicant shall submit a plan for the use of the property during mining operations at the time of application for the permit. The plan shall provide the following information:

a. Boundary lines of the property; dimensions and bearings of the property lines, correlated with the legal description;"

See Figure 2.

"b. Aerial photo, showing property and adjacent areas, location and outline of wooded areas, streams, marshes, and other natural features;"

See Figure 2.

"c. Existing site improvements such as buildings, drives, wells, and drain fields;"

See Figure 2.

"d. Existing topography at contour intervals of two feet;"

See Figure 2.

"e. Extent of future mining areas and depth thereof;"

See Figure 2 and Figure 3 for conceptual mining phases. The maximum depth will be approximately elevation 830 feet.

"f. Location and nature of structures and stationary equipment to be located on the site during mining operations;"

See Figure 2.

"g. Location and description of soil types;"

See Figure 2.

"h. An estimate of the kind and amount of material to be withdrawn from the site and the expected termination date of mining operations;"

Aggregate material will not differ from what was historically mined: coarse to fine sand with varying amounts of gravel and silt. The anticipated life of the mine is approximately 25 to 30 years, depending on market conditions.

"i. Description of all operations to be conducted on the premises, such as, but not limited to, digging, sorting, and washing operations, and the type, size, and nature of equipment to be used with each operation;"

Overburden, non-targeted material considered not economically viable, overlays the desirable material. Overburden is removed with excavators and articulating haul trucks to be placed as reclamation material or, if desired, sold. Material (e.g. ore) is excavated with an extended boom excavator and/or a front-end loader. Following excavation, the ore is transported to a hopper, a type of vessel that aids in channeling unconsolidated material towards a conveyor belt. Conveyor systems are varying lengths and widths depending on the specific needs during the life of mine; material conveyed is screened through various large sieves. Screened fine aggregate is washed of clay and silt, and sorted through a secondary screening process. Screened and/or washed material is stockpiled based on grain size. Front-end loaders scoop and load articulating haul trucks or an over-the-road haul truck.

"j. Location and width of drives, sight distances; land widenings on public roads at intersections of same with drives;"

No change is proposed to the interior or exterior roads.

"k. Tree areas and other natural features to be retained;"

Wetlands shown on Figure 2 are not part of the current mine plan.

"l. Description of pollution and erosion control measures;"

During operations, use of modern, maintained machinery and vehicles meeting applicable emissions performance standard will be utilized. Use of dust abatement techniques, such as water, and moderating operations during adverse weather conditions on unpaved and unvegetated surface will reduce potential airborne dust.

Fuel and maintenance chemical storage, like those stored in an automotive repair shop, will be enclosed to minimize potential to impact the environment. Use of recycled wash water and reclaimed surface water will minimize withdrawal and consumption of groundwater.

"m. Certified statement by a qualified engineer, with supporting data and analyses, concerning expected impact on the water table and water supply wells in the vicinity of the site; and"

The mine operation does not include groundwater pumping to facilitate dewatering. The operation pumps water from existing mine pits to use in the washing operation, but that water is returned to the pond in a closed loop system with no resulting net loss of groundwater from the property.

GZA considered the use of groundwater to meet the needs of the proposed mine and evaluate the impact on groundwater quantity in the mine area. Review of local geology and groundwater use in the area of the mine identify one primary source of groundwater for potable use, that is from vertically extensive sand and gravel deposits logged locally to depths of at least 2,000 feet.

The sand and gravel aquifer is expected to be have the capacity to provide the required water needs of the proposed mine with minimal impact on the groundwater table surface. Note that all water supply wells have some impact on the groundwater

table, but use must be managed to not have a negative impact on neighbors and ecological resources.

Based on the estimated hydraulic conductivity range for the sand and gravel aquifer, the drawdown ¼-mile from a well pumping 100 to 200 gallons per minute (gpm) is expected to be less than 10 feet. That degree of drawdown is not expected to adversely impact neighboring wells. More importantly, the pond that has been used for wash water source for at least 20 years is located about ¼ mile from two residential properties, without apparent water well issues.

"n. Map showing truck routes to and from the site."

The existing truck haul route within the Township is Earhart Road south to Plymouth. Road.

"(11) The applicant shall file a plan for restoring the site to a safe, attractive, and usable condition. The plan shall be filed with the application for the conditional use permit and shall provide the following information:

a. Boundary lines of the property, dimensions and bearings of the property lines, correlated with the legal description;

b. Location and extent of all-natural features to be retained during mining operations;"

c. Contour lines at intervals of two feet of the proposed restored surface, clearly showing connection to existing undisturbed contour lines;

d. Schedule and areas of progressive rehabilitation;

e. Proposed ground cover and other plantings to stabilize the soil surface and to beautify the restored area;

f. Sketch plan of the proposed use of the site when restored; and

g. Description of methods and materials to be used in restoring the site."

A reclamation plan is provided as Figure 4.

"(12) The applicant shall provide the following:"

a. Security deposits, in the form and amounts recommended by the Planning Commission and approved by the Township Board, to guarantee restoration of the site and to cover the costs of the Township Engineer in certifying conformance."

A financial assurance cost estimate is contained in Appendix G.

"b. A security deposit when required by the Planning Commission, to maintain and replace public roads traversed by trucks associated with the mining operation. The security shall be deposited with the County Road Commission in the form and amount required by the Road Commission."

We do not anticipate that a security deposit will be required.

"c. A date for completing the mineral mining operation, such date to be based upon the estimated volume of material to be extracted and an average annual extraction rate. The

conditional use permit shall not be issued for a period to exceed five years. Any extension of operations beyond that date shall require a new conditional use permit, which shall be applied for and processed as provided in this chapter upon proof by the applicant that restoration of the site has begun."

As discussed at the February 6, 2020 pre-application meeting this condition is a challenge but we understand.

"(13) Travel routes for trucks entering and leaving the site shall be shown on a map of the Township at the time of application for the conditional use permit. Such routes, except arterial streets or their equivalents, shall not pass through residential areas."

The existing truck haul route within the Township is Earhart Road south to Plymouth. Road.

"(14) Only equipment owned or leased by the operator of the mineral mining operation and used in the operation of the mineral mine shall be stored overnight or for longer periods anywhere on the premises. Storage of any other equipment on the premises shall be prohibited."

Understood.

"(15) Potable water supply and sanitary sewage disposal systems shall be approved by the Washtenaw County Health Department before a conditional use permit shall be issued."

Existing potable water supply well and septic system will be utilized. No new water supply or septic systems are proposed.

"(16) Concrete, cement, or asphalt production shall not be allowed as part of a mineral mining operation unless located in a district which allows such use."

Understood.

"(17) The applicant shall demonstrate compliance with all of the provisions of section 74-594 Performance Standards of the Township Zoning Code."

Understood.

"Sec. 74-594. - Performance standards.

No lot, building, or structure in any district shall be used in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable element or condition so as to adversely affect the surrounding area or adjoining premises. Uses in all districts shall comply with the following performance standards:

(1) Fire hazard.

a. Does not constitute a fire hazard per se;

b. Complies with the fire Prevention Code (MCL 29.1 et seq.) and the rules and regulations promulgated thereunder by all authorized agencies, State and local;

c. Is protected by adequate and proper fire suppression and firefighting equipment;

d. Provides isolated and approved storage for all flammable, explosive and corrosive materials and substances."

Upon AMC-WSG, LLC control of operations, compliance with existing fire codes and standards will be confirmed and upgraded where required.

"(2) Water pollution. Conforms to the applicable laws of the State, (i.e., Natural Resources and Environmental Protection Act (MCL 324.101 et seq.)) and rules and regulations promulgated thereunder by all authorized agencies, State and local."

The proposed operation will comply with the applicable laws.

"(3) Air pollution.

a. Conforms to the applicable laws of the State (i.e., Natural Resources and Environmental Protection Act (MCL 324.101 et seq.).

b. Does not emit or cause fumes, gas, mist, odor, smoke, vapor, dust, including road or other earth dust, or any combination thereof in excess of minimum standards established under the authority of the laws of the State, or in such volume as to create a public nuisance."

The proposed operation will comply with the applicable laws.

"(4) Noise abatement.

a. Is provided with noise abatement materials and equipment;

b. Will not generate unpleasant and objectionable noise greater in volume or intensity than the average of traffic noises at exterior property lines."

Upon AMC-WSG, LLC control of operations, the noise levels will be measured and noise abatement measure taken as necessary to meet this standard.

"(5) Vibrations. No vibrations shall be permitted which are discernible without instruments on any adjoining lot or property."

Vibration causing equipment, other than mobile equipment, is not proposed for use at the mining operation.

"(6) Glare. No direct or reflected glare shall be permitted which is visible from any property, or from any public street, road, or highway."

Understood. We are under the impression that this is not an ongoing concern at the property and will be complied with by AMC-WSG, LLC.

"(7) Radioactive hazards. Any use or operation which involves the use, possession, or transportation of any form of radioactive materials or substances is expressly prohibited unless the use is in conformity to specifications, regulations, and standards promulgated by the Atomic Energy Commission of the United States and by the State Department of Public Health."

Understood but not considered applicable.

"(8) Electrical disturbances. Manufacturing and processing machinery, other equipment and domestic appliances using electrical power which generates radio frequency interferences at levels in excess of those approved by the Federal Communications commission are prohibited."

Understood but not considered applicable.

"(9) Erosion. No erosion, by either wind or water, shall be permitted which will carry objectionable substances onto neighboring properties, lakes, ponds, rivers, or streams. Any use of land shall be in accordance with the provisions of Part 91 of the Natural Resources Act (MCL 324.9101 et seq.)."

The Site is internally drained so erosion onto neighboring properties is not feasible.

"Sec. 74-595. - Setbacks on arterial roads.

(a) No building or structure shall be located less than a distance equal to the sum of 60 feet and the required minimum front yard of the district in which located, from the existing right-of-way centerline of any of the following roads:"

Understood

ARTICLE VII. - NATURAL FEATURES SETBACK AND STEEP SLOPE USE PROTECTION[8]

"Sec. 74-683. - Natural feature setback.

(a) *Regulation.* A natural feature setback shall be maintained in relation to all areas defined in this article as being a natural feature, unless and to the extent, it is determined to be in the public interest not to maintain such setback, in accordance with the standards set forth in this article.

The Michigan Department for Environment, Great Lakes and Energy (EGLE) Wetlands Map Viewer identifies scrub/shrub wetlands and scrub/shrub mix on the northern portion of the Site beyond past and planned mining as shown on Figure #. It is the intent of the planned mining to maintain the natural feature setback in accordance with the standards and provisions in subsection (d) of this section.

"Sec. 74-684. - Steep slope protection.

(a) Regulation. Protective measures shall be implemented in relation to all areas defined in this article as being a steep slope, unless and to the extent, it is determined to be in the public interest not to implement such protective measures, in accordance with the standards set forth in this article."

Steep slopes, as defined in this section, do not exist and are not proposed to be developed.

"Sec. 74-685. - Natural feature setback or steep slope use permit.

(a) Authorization. Under certain conditions defined in this section, a natural features setback and/or steep slope use permit may be authorized by the Planning Commission to allow limited construction, activity, use, or operations within the natural feature setback or steep slope area."

A natural features setback and/or steep slope use permit will not be pursued.

EXHIBIT 3

ANN ARBOR CHARTER TOWNSHIP
PLANNING COMMISSION MEETING MINUTES
VIA VIDEO/CONFERENCE CALL
MAY 4, 2020

In accordance with Governor Whitmer's Stay Home, Stay Safe, Save Lives Executive Order, which temporarily authorizes remote participation in public meetings and hearings due to the COVID-19 pandemic, this meeting was held with remote participation, including public participation, via ZOOM video/conference call, as outlined on the Township website and posted per Open Meetings requirements.

I. ROLL CALL

Chair Kotila called the Ann Arbor Charter Township Planning Commission meeting to order at 7:30 pm on May 4, 2020.

Present:	John Allison, David Gidley, Lee Gorman, Peter Kotila, Karen Mendelson, Kristine Olsson, Linda Young
Absent:	None
Also Present:	Township Attorneys Alexandra Dieck and Sarah Williams, Township Planner Sally Elmiger, Planning Consultant Richard Carlisle, Township Engineer Eric Humesky, Building Official and Zoning Administrator Peter Pace, Township Clerk Rena Basch, Deputy Treasurer and Building and Planning Assistant Joanne Collins Matthew MacDonell, Director of Engineering, Washtenaw County Road Commission; Mark McCulloch, Project Engineer, Washtenaw County Road Commission

II. CITIZEN PARTICIPATION

No one had signed up for citizen participation.

III. APPROVAL OF MINUTES

A. April 13, 2020 Draft Ann Arbor Charter Township Planning Commission Meeting Minutes

MOTION by Gorman, support by Gidley, to approve the April 13 2020 Planning Commission Meeting minutes with the following correction:

- Page 6, 1st paragraph, 2nd line, 1st word: ~~City's~~ *Township*

Roll call vote: Ayes – Gorman, Kotila, Gidley, Olsson, Mendelson, Allison, Young. Nays – None.

Motion carried 7-0.

IV. COMMUNICATIONS

A. April 20, 2020 Draft Ann Arbor Charter Township Board of Trustees Meeting Minutes

Trustee Allison reported on the April 20, 2020 Board of Trustees meeting, the draft minutes of which were included in the Commissioners' packets.

V. PUBLIC HEARING

A. CUP-01-20 Ajax Materials Corporation – Washtenaw Sand and Gravel, LLC (AMC-WSG, LLC) 4984 Earhart Road, Parcel 1-09-001-200-002. Applicant is applying for a Conditional Use Permit for mining operations.

Chair Kotila explained that the public hearing would proceed as follows:

1. Presentation
2. Consultant comments / Planning Commission Comments
3. Public Comments
4. Public Hearing Closed
5. Planning Commission Discussion / Action

Robert Wilson, Vice President, Mid Michigan Materials/AMC-WSG, 6966 Fisher Road, Jeddo, MI was present on behalf of this application for a Conditional Use Permit for Washtenaw Sand and Gravel, LLC (AMC-WSG, LLC), at 4984 Earhart Road. Michael DeVasto, Leslie Nelson, and Mark Krumenacher, GZA GeoEnvironmental, Inc., 17975 West Sarah Lane, Suite 100, Brookfield WI, were also present.

Mr. Wilson said that AMC-WSG, working with Mid Michigan Materials, was interested in purchasing Washtenaw Sand and Gravel. Currently Mid Michigan Materials operated primarily in Michigan's Thumb Area, with two larger sand and gravel operations and one basic sand pit in that area.

Utilizing a PowerPoint presentation showing the submitted site plan documents, Mr. DeVasto walked the Commission through the existing operations at Washtenaw Sand and Gravel. Mr. DeVasto pointed out the previously/partially mined areas, processing area, agricultural/woodland areas, and the wetlands and water course which were outside the mining area. A truck haul road led from the entrance on Earhart Road to the processing area, which was located at the northeast portion of the overall mining area.

Mr. DeVasto showed a conceptual phased operation plan that would maintain and expand the existing use. The phased plan demonstrated the life of the mining operation over the next 20-30 years, moving over time to progressively mine areas labeled alphabetically A through H, from the southeast corner of the site (A), to the southwest corner of the site, and then north of the haul route from the northwest portion of the mining area to the north central portion (H).

Two conceptual reclamation plans were shown. Option A showed a proposed reclamation plan with three bodies of water, with the haul road dividing the two southern lakes from the northern one. The processing area would be reclaimed to provide flat ground for residential development. Other gentle slopes (4:1) throughout the site would be used for planting wildflowers and prairie grasses, or agricultural use.

Option B showed a single large lake over the majority of the mined property, with the haul road moved to the north side of the lake, leaving the processing area to still be reclaimed for residential use, and gentle slopes south of the large lake to be used for planting wildflowers and prairie grasses, or agricultural uses.

Mr. Wilson concluded their presentation by saying they were seeking to mine the property responsibly just as had been done by the Vella family for the last 60 years. They would upgrade equipment and technology use on the site.

Planner Review

Referring to her February 27, 2020/revised April 6, 2020/ revised April 27, 2020 review, Township Planner Elmiger said that the applicants had provided additional site plan information as requested. Regarding the required 100-foot buffer in the southeast corner, while there was some vegetation along the southern boundary including some deciduous vegetation, there was a single family home that abutted that property that needed better screening. Even though it would be some years before the mining operation reached the single family home, evergreen trees should be planted within the next 1-2 years to provide a mature buffer when that happened.

Regarding the mineral mining conditional use, the planning review included a number of questions regarding traffic, including how Earhart Road was going to be used and how the traffic along the road would change as a result of this use. Outstanding issues included:

- Applicant to confirm WCRC requirements for Class B roads regarding maximum annual tonnage of truck loads and average number of trips per day; and confirm how "average" is calculated.
- Applicant to obtain records on average number of trucks of current operation from WCRC.
- Applicant to supply formula used to determine that the estimated maximum number of trucks per day is 20 trucks (and 25-30 trucks during "peak" season); and describe what is meant by "peak" season.
- Applicant to describe the restoration completed on example sites.
- Applicant to explain if vibrations are an issue at their other sites, and if they anticipate any issues with vibrations for this site's neighboring properties.

Regarding the conditional land use, the following conditions to any approving motion were suggested:

1. Within one (1) year of receiving the CUP, evergreen trees be planted within the 100-foot buffer adjacent to the existing single-family home parcel to the south of the gravel pit so that the buffer can become established and provide a sufficient year-round screen by the time mining reaches this area.
2. Include operating hours as a condition in any CUP resolution.
3. Limit re-use of this property to wildlife habitat and residential uses; as agriculture on the proposed steep slopes could cause soil erosion.
4. The CUP be based on the multi-lake restoration plan (Sheet 4A).
5. Use of the Bio-Retention Plant List (in Section VIII of the Washtenaw County Water Resources Commissioner's Rules & Design Standards) for a native 25-foot buffer around the lakes, except in locations used for boat launches or beaches.
6. All equipment not used in the operation be removed from the site.
7. No concrete, cement, and asphalt production be allowed as part of a mineral mining operation.

Engineering Review

Referring to his April 30, 2020 review, Township Engineer Humesky listed outstanding issues as follows:

- The applicant needed to show during which phase the proposed northwestern stormwater diversion berm would be constructed, and provide proposed grades to show how water would be directed back to the active mining area.

- The applicant should show the restoration plan for the southeast portion of the site, since that would be done in the near future. The applicant had indicated that they intended to restore that portion during the first year and wished to defer showing the restoration plan.
- Information should be provided as to how the Washtenaw County Road Commission was tracking the amount of trucking and truck weights, and when a haul route permit was required.
- Next submittal should include a full plan set.
- The Washtenaw County Road Commission had provided a haul route permit review in correspondence dated February 10, 2020, with a follow-up clarifying letter dated April 20, 2020, as summarized in the review letter. In general, there are no restrictions on number of trips per day and tonnage per year if all truck loads are less than or equal to those permitted by the Michigan Vehicle Code. A haul route permit is required when an applicant wishes to haul loads greater than those permitted by the MVC.
- The Fleming Creek Advisory Council provided review comments in correspondence dated March 2, 2020.
- A Township Soil Erosion and Sedimentation Control Permit will be required for this site.
- With each re-submittal, the preparer shall provide a written summary of revisions made to the plans.

Building Department Review

Building Official and Zoning Administrator Peter Pace asked the time frame for the entire progression shown on the mining and reclamation schematics. Mr. Wilson said they had structured their plan for a 20 year operation, although this was an approximation.

Building Official and Zoning Administrator Peter Pace reiterated that any unused equipment not applicable to mining should be removed from the site.

Road Commission comments

Matthew MacDonell, Director of Engineering, Washtenaw County Road Commission, said in terms of haul route issues, there was no criteria for the number of trips or amount of material hauled. The most important criteria involved the haul vehicles themselves, including the amount of weight hauled and the configuration of the individual vehicles, and whether those vehicles could legally travel on a normal county road.

Attorney comments

Township Attorney Dieck reviewed legal requirements of the CUP, including a formal development agreement, and potentially two security deposits: one regarding the reclamation plan, and one placed with the Road Commission (if requested by the Planning Commission). The CUP would expire in five years and require a new application at that time.

Chair Kotila opened the meeting for Commission questions and discussion.

Commissioner Allison asked about the standard/balance between an economically available resource and serious consequences to public safety, health and welfare, as provided by State guidelines for mining operations.

Planning Consultant Carlisle explained that a negative decision based on public safety, health and welfare would require a finding by the Township that there is compelling evidence that the mining operation would impair traffic conditions, provide a negative impact on surrounding land use, provide a negative impact on air quality from dust or noise, and/or have a negative impact on water resources. A Township decision based on those criteria would need empirical evidence for each criteria. While

jurisdiction of the roads fell under the Road Commission, the other criteria fell under Township jurisdiction.

Commissioner Allison asked if Planning Consultant Carlisle could provide a threshold that would show serious impact to the roads. Planning Consultant Carlisle said he could not provide this without study. The Road Commission would ultimately have to make that determination based on the number of trips and weight of vehicles.

In response to questions from the Commission, the applicants gave the following information:

- Under the reclamation scenarios, the deepest part of the lakes would be about 25 feet.
- The crushing operation, which would occur perhaps two times a year, would need to meet dust and noise nuisance criteria along with any other nuisance criteria in the ordinance. There would be no blasting or vibrations.
- Typically, top soil scraped off for the mining operation would be stockpiled and/or spread on the site during the ongoing reclamation effort.

In response to questions from the Commission, Mr. MacDonell and Mr. McCulloch from the Washtenaw County Road Commission gave the following information:

- The 250,000 tons per year was merely what was put on the haul route application. From the Road Commission's standpoint, there was no actual tonnage standard. Under the law there were two types of load routes: 1) a normal route, which allowed smaller loads and smaller truck configurations, and 2) a designated route which allowed for more tonnage per axle and a larger vehicle.
- Earhart Road along the frontage of the gravel operation is currently a normal route. The applicant would need to apply for Earhart to be a designated haul route if they wanted to upgrade the trucks being used to haul materials.
- The Road Commission could not monitor or enforce the number of trucks per day or the tonnage coming out of the facility. All the Road Commission could enforce was the configuration of the vehicles in terms of length and width, and also what material they were hauling in terms of weight. This was described on the Road Commission's *Truck Operators' Map*, which showed which roads were normal and which were designated, and what the limits were for length and weight on each road, given a specific truck's axle configuration.
- An example of a vehicle that would require a designated road would be a gravel train, which had two double trailers.
- There was not a single weight number that could be used for tonnage on the axle. Measurements had to do with spacing and width of wheels, for instance.
- Currently the Road Commission employed two weighmasters, whose primary duties included inspecting permitted work in rights-of-way. As a secondary part of their duties, the weighmasters did limited commercial vehicle enforcement based on the Michigan Vehicle Code. Enforcement was mainly complaint-driven, although the weighmasters would also enforce if they themselves saw a truck that should not be on a particular road. The Commission did not monitor the number of trucks on the road, but rather whether individual trucks were legal, based on the roads being used.
- The Washtenaw County Sheriff's office also did limited commercial vehicle enforcement.
- A sand and gravel operation would not be held responsible for trucks violating the MVC, if those trucks were not owned by that operation. If a truck was illegally loaded or configured, a citation would be issued to the truck owner/driver
- If Mid Michigan were to apply for a haul route permit, the permit would cover any truck coming in and out of the facility in terms of being allowed a longer truck and heavier loads.
- Ultimately Mid Michigan would make a business decision, based on limits shown on the Truck

Operator's Map, if they wanted their customers to haul more material with bigger trucks. In that case, they would need a permit for Earhart Road to be a designated road.

- A Class A road and a designated route are synonymous terms. If Earhart became a designated road it would need to be paved. Typically a paved road would have 11-foot lanes, with a combination 4-6 foot gravel shoulder. Paving would require adequate drainage, and enough width for ditching and proper slopes.
- All County roadways were 66 feet wide per statute, with approximately 33 feet from the section line on each side.
- The Road Commission had a public engagement process for larger projects such as any potential paving of Earhart Road.
- The Road Commission looked to individual communities for implementation of non-motorized plans. During a road improvement project such as paving, if the community wanted to broaden the scope of the project to include a non-motorized plan such as sidewalks, etc., the community would bear that cost.
- In terms of the existing situation at Washtenaw Sand and Gravel, the Road Commission would defer to the Township regarding pedestrian safety.

Commissioner Allison thought if Earhart Road was changed to a Class A route, there would be a significant environmental impact in terms of tree removal. Mr. MacDonell agreed that this was the case.

Seeing that Commission discussion had ended, Chair Kotila opened the public hearing.

Paul Berry, 5225 Earhart Road, had five concerns:

1. Currently trucks scattered in all directions, including traveling north on Earhart Road to Joy Road. Was the intention under the proposed plan for all trucks to go south on Earhart toward Plymouth Road?
2. On the reclamation plan there was about a 90-foot differential from the southwest corner to the northeast corner of the site, showing an excavation depth of 60 feet on approximately 72 acres. Mid Michigan/Ajax seemed to be underestimating the increase in operations that would occur. Could the truck traffic be monitored on a trimester basis in order to understand what the actual truck traffic would be?
3. Would the 7-foot fence be built early in this process, and how secure would the site be? There had been activities on the site, ranging from hunting to police target practice. Would these activities still be allowed?
4. The wetlands on the site provided a habitat for the Eastern Massasauga Rattlesnake, an endangered species.
5. Figure 3A showed a proposed scale facility and parking area immediately inside the entrance area off Earhart Road. Why was this facility being constructed right at the entranceway?

Mr. Wilson explained that trucks would predominantly go south toward Plymouth Road. Northbound Earhart north of Joy Road was a no-thru truck route. Mid Michigan would not be driving the trucks, but they would work with the Township and inform vendors and customers that they should be traveling south on Earhart. All truckers would need to follow the rules of the roads that they used.

Regarding the amount of materials mined during the 20 year plan as presented this evening, Mr. Wilson pointed out that not every single ton of removed material would be salable product. There was a significant amount of overburden that would be used in the reclamation effort.

The 7-foot fence would be constructed as soon as possible per the conditions of the CUP. Mid Michigan would partner with the community to allow appropriate activities on the site, as long as they could also comply with the Mine Safety and Health Administration regulations. Mid Michigan was very aware of the wetlands on the site.

Regarding the weigh house at the property entrance, the scale would be an addition to the site, and would provide a place for trucks to get weighed as they enter and leave the site. The weigh facility would be set back appropriately and would not be an eyesore.

Michael Nicklowitz, 4460 Earhart Road, said his house was the home directly to the south of the Property as mentioned earlier in the meeting. He had lived there 16 years and had no problems with the existing sand and gravel operation. He was concerned that the proposed plan showed expansion into what was basically his side yard, and supported the addition of evergreen trees to the 100-foot buffer, as suggested by Township Planner Elmiger. He wondered how issues of noise, dust and water quality would be addressed.

Mr. Wilson said that he did not think Mr. Nicklowitz would see any significant impact on his property. Mid Michigan was not doing anything different than the current operation in this area. Upgrading equipment and technology would actually be a benefit in terms of noise and other impact. There would be no blasting on the site. They would plant evergreen trees as suggested. Water would also be used in the same way as the existing operation, and would be contained on site. There should be zero impact to water quality and/or water level.

Mr. Krumenacher further explained the process of using water on the site, which would be continuously recycled, with no chemicals added to the ground water.

Joaquin Nuno-Whelan, 4014 Earhart Road, was concerned regarding road safety and the impact of future road changes on the quality of life of residents. Horseback riders, runners including cross country teams, pedestrians, etc., all used Earhart Road. The current gravel operation was careful regarding truck speeds on Earhart. The proposed operation, with trucks owned by people who did not live or work in the area, would change that dynamic and Mr. Nuno-Whelan was concerned about the increase in trucks per day, especially during peak hours. Would there be an increase in speeds? What were the hours of operation? Also, if the road was improved to a Class A road in the future, would the speed limit change? Commuter traffic used Earhart Road, especially during rush hour or if the highway had issues at other times. What did success look like to the Township? In order to maintain quality of life, could the road be posted at 35 mph, and could a non-motorized plan be included for all different types of non-motorized traffic?

Mr. Wilson explained that many factors impacted this industry, including weather as well as unexpected events such as the current pandemic. His best guess would be a truck volume of 40-50 trucks per day, based on 85% volume at 250,000 tons over 35 weeks of peak season. The current owners were seeing approximately 30-40 trucks per day. Hours of operation would be 7am to 6pm Monday through Friday, and 7am to 12pm on Saturday, which were the hours allowed per ordinance.

Mr. MacDonell said that currently Earhart Road was an unposted gravel road, with a prima facia speed limit of 55 mph, per law. Speeds for a paved road would be posted based on a speed study approved by the Michigan State Police, but the speed limit was unlikely to go up. The road could not be posted at 35 mph.

John Petz: Domino's Farms Office Park, 24 Frank Lloyd Drive, said that for 35 years Domino's Farms

had owned land bordering this site, and had not experienced any issues with Washtenaw Sand and Gravel, who had been a good neighbor and an asset to the community. Domino's Farms felt the operation of a sand and gravel pit was the best use of the property at this time. They were excited by the reclamation plan, particularly for the area in the southeast corner, as well as the overall long-term reclamation plan.

Chair Kotila read a letter in support of the CUP application from William Burlingame, 4004 E. Joy.

Seeing that no other public indicated that they wished to speak, Chair Kotila closed the public hearing and brought the matter back to the Commission for further discussion and possible action.

The Commission discussed process. The applicants had asked for a CUP recommendation, along with a preliminary and final site plan approval. If the Commission needed to make a decision on the final site plan, a recommendation could not be made to the Board until the final site plan was approved. The Commission did not believe they had enough information to approve the final site plan at this point. Questions remained, including whether the tree ordinance applied to the area outside the buffer, for instance.

Commissioner Mendelson felt the impact of the proposed use on pedestrian and traffic safety would be too harmful to go forward with the use. The Commission was charged with looking at pedestrian and vehicle safety, even if the Road Commission had jurisdiction over this particular road. The Road Commission had made it clear that they were not interested in pedestrian traffic, but relied on the Township for review of this issue. The current owners did not have a lot of trucks, and they were not large trucks. If the current owners had only mined out a relatively small area in the last 50-60 years, and Mid Michigan intended to mine out the entire site in next 20 years, there would be a huge increase in volume and truck traffic. Mid Michigan would not be using their own trucks – there would only be customer trucks that might not slow down on Earhart Road. Also, commuter traffic grew impatient with slow moving truck traffic, and passed trucks when they could not clearly see oncoming traffic. There was also a dust problem on Earhart, which increased traffic would only make worse. Based on the plans for how quickly the site would be mined out compared to what had been mined out in the past, the increased truck traffic would be more than the road could bear.

Commissioner Allison agreed with Commissioner Mendelson. Increased traffic was a big concern. If Mid Michigan was mining two or three times current capacity, the trucks would also need to be much larger.

Commissioner Allison asked what the largest trucks would be on site. Mr. Wilson said they would serve the largest trucks that were legal. He would work with the Road Commission to make sure they were in compliance with road standards. His calculations regarding trip numbers were based on what he felt were realistic estimates of the hauling that would be done on site.

Commissioner Allison asked if Mid Michigan could load 12 trucks per hour of single product, if multiple products were being loaded could 24 trucks per hour be loaded? Mr. Wilson said the number of trucks per hour related to the capacity of a front-end loader to load the trucks. In theory two loaders could load twice as much, but that was not Mid Michigan's business model.

Commissioner Gidley thought a condition of approval should require Mid Michigan to keep detailed records of weight, volume, type of material, and number of trucks using the site, so that in five years when the CUP re-application was necessary, there would be data for review and comparison. Mr. Wilson said that would done.

In response to a question from Commissioner Mendelson, Mr. Wilson explained that the scale operation at the front of the site was different than the loading operation. Loading would take place in the processing area shown on the site plan.

Commissioner Allison asked if the applicants intended to petition for a Class A Road in the next 1-3 years. Mr. Wilson said he hoped to do that, although that decision would be based on ongoing market conditions.

Commissioner Allison pointed out that the Commission was charged with considering pedestrian and traffic safety. In order to petition for a Class A Road, Mid Michigan would be acknowledging that they would be serving larger, heavier trucks, with more trucks per day.

Chair Kotila recognized Thomas Vella, current owner of Washtenaw Sand and Gravel.

Mr. Vella said that his family had owned Washtenaw Sand and Gravel for over 60 years. He still drove one of the trucks on occasion, and while there were pedestrians on Earhart Road from time to time, he had never experienced a problem with pedestrians there. Trucks did not go fast on that road because of the stop sign at Domino's Farms – typically the trucks only got up to 25 – 35 mph before having to stop at that intersection. He felt truck drivers were very sensitive to pedestrians, and tonight's conversation might be a bit of an overreaction regarding the danger of trucks on Earhart.

Commissioner Allison asked the current hours of operation. Mr. Vella said they operated between 7am to 5pm Monday through Friday, and 7:30am to noon on Saturday.

Commissioner Allison asked the consultants if the plans were detailed enough for the reclamation that would occur during the 5-year term of the requested CUP. Township Engineer Humesky said that the reclamation plan should show grading, along with planting and stabilization plans. Township Planner Elmiger added that the applicants showed a plant mix identified by the Water Resources Commission Office for the 25 foot buffer around the water feature. The only other thing she would like to see was how the rest of the area would be planted, established, and maintained, and how the applicants were going to deal with the 100-foot buffer in the southeast corner where there was currently a road. The applicants should provide a list of plant species, density of the plantings including trees, and a time frame as to when the planting would be complete.

Mr. Krumenacher explained that active mining was occurring in the southeast buffer area. The road would be removed, and the area within the 100 foot buffer would be reclaimed within the first year.

Township Engineer Humesky said the applicants should provide a plan as to what that reclamation would look like. Mr. Krumenacher thought they had submitted that information in the detailed topographic plan. They had not proposed trees for that area, and were not planning on planting any trees other than the evergreens along the southern property line.

Discussion followed as to whether or not trees were required as part of the 100-foot buffer. Mr. Krumenacher pointed out that part of the 100-foot buffer would stay as agricultural use, and planting trees there would be counter to the farming effort. Also, he did not believe the ordinance required trees in the buffer area.

Commissioner Allison asked the intent of the diversion berm on the northwest side of the property, where it appeared water would flow around the berm rather than be contained. Mr. Krumenacher explained that a portion of the northwest area was going to be mined, as shown on the aerial photographs. They were not constructing a berm; rather they were changing the grade in order to prevent

stormwater from flowing to the north until such time as the mine was developed in that area, when the water would flow into the mined area and not into the wetlands.

Township Engineer Humesky said that did not seem to be what the contour drawings were showing, and asked the applicants to speak with him regarding this issue after the meeting.

Commissioner Allison said that he continued to have concerns about the increased traffic on Earhart Road, based on at least a doubling of activity on the site, with higher volumes of trucks and larger trucks being used that would eventually lead to a Class A Road designation. He suggested putting a limit on the amount to be excavated or a limit on the number and size of the trucks that could access the site.

Commissioner Gorman said that while she understood the concerns about traffic, she felt the additional traffic volume overall was not significant enough to warrant putting limits on the operation.

It was pointed out in discussion that Township Planner Elmiger had addressed traffic on page 10 of her review. Washtenaw County Traffic Counts in May 2019 showed the average daily traffic on Earhart Road just to the north of M-14 as 570 vehicles northbound and 610 vehicles southbound. Her review concluded that adding 20 trips each way to those numbers did not appear to offer a significant impact.

Commissioner Allison said he was not concerned so much with traffic numbers as he was with large trucks that were not Mid Michigan trucks using a narrow dirt road that was also used by non-motorized traffic.

Chair Kotila said the Planning Commission needed to consider the CUP, as well as the preliminary and final site plan. Based on the Planner's review of the criteria for the CUP, he felt he could support the requested conditional use permit.

Chair Kotila did not feel the increased number of trips per day was significant enough, nor did pedestrian safety seem to be negatively impacted enough, to deny this project. However, as the Master Plan was being reviewed, perhaps this would be an opportunity to install bike and pedestrian lanes at this location.

Regarding the site plan, there were a number of issues that were not resolved in the drawings submitted this evening. While this might be the result of the limited time between the last special meeting and this meeting, and the fact that only revised pages were submitted, a full corrected site plan packet did need to be submitted. Outstanding issues included:

- Clarification regarding the purpose and construction of the northwestern stormwater diversion berm.
- Whether or not screening including trees will be provided in the 100-foot buffer at the southeastern portion of the site
- How screening is defined in terms of the buffer.

Chair Kotila said he would support (1) drafting a resolution, and (2) postponing making site plan decisions until updated drawings were received, especially as the applicants had asked for preliminary and final site plan approval.

Commissioners Gidley, Gorman, Young and Olsson indicated their support of the direction just outlined by Chair Kotila. Commissioner Allison said until traffic was limited in some way he would not be able to support a motion to draft a resolution regarding findings and a recommendation for this CUP.

MOTION by Gorman, support by Olsson, that the Planning Commission direct the Township Attorney to draft a resolution regarding this CUP request, and further that the Commission postpone the issue of site plan approval until the June meeting, when the Commission will review both the CUP request/resolution. and preliminary and final site plan approval as requested by the applicant, in order to give the applicant time to fully update the site plan submission.

Commissioner Mendelson indicated she would vote against the motion for reasons she had stated earlier.

Roll call vote: Ayes – Gidley, Young, Olsson, Gorman, Kotila. Nays – Allison, Mendelson.

Motion carried 5-2.

VI. NEW BUSINESS

None.

VII. OLD BUSINESS

None.

VIII. ITEMS FOR DISCUSSION

None.

IX. INFORMATIONAL ITEMS

A. Master Plan Update

Township Planner Elmiger explained that the Planning Enabling Act requires that a community review its Master Plan every five years. The Township's current Master Plan was adopted in March 2015, with a partial amendment in May 2018. It was now time to review the entire document, and make any needed changes.

Township Planner Elmiger overviewed a proposed Master Plan review schedule that had been included in the Commissioners' packets, with kick off to occur in May 2020, and completion of the Master Plan review with implementation of changes scheduled for summer 2021.

X. PUBLIC COMMENT

None.

XI. ADJOURNMENT

MOTION by Gorman, support by Young, to adjourn the meeting at 10:21 pm.

Roll call vote: Ayes – Kotila, Young, Mendelson, Olsson, Allison, Gorman, Gidley; Nays – None.

Motion carried 7-0.

EXHIBIT 4

ANN ARBOR CHARTER TOWNSHIP

WASHTENAW COUNTY, MICHIGAN

TRANSCRIPT OF EXCERPT OF THE

ANN ARBOR CHARTER TOWNSHIP BOARD OF TRUSTEES MEETING

HELD ON AUGUST 21, 2023

KNOWN AS "GMT20230821-231427_Recording. M4a"

EXCERPT FILE LENGTH: 01:45:23 (1 Hour, 45 Minutes)

TRANSCRIBED BY: Michael T. Lesich, CER - 8982
Certified Electronic Recorder
15201 Fairview Drive
Fraser, Michigan 48026

(586) 216-2588

I N D E X

August 21,2023

Ann Arbor Township, Michigan

(REPORTER'S NOTE: "Inaudible” means a word or words were not heard well enough to be able to discern a proper interpretation either because of shuffling of papers, or the speaker did not amplify loud enough or was not picked up by a microphone.)

* * *

DIANE O'CONNELL: There's Kris.

Okay, so we can get started if you'd like to get your seats. None.

We'll move into our next item. This is Mid Michigan Materials. Their Vella Pit presentation of their hydrogeologic report, as was mentioned a little earlier by one of the citizens. There's a couple of different things that are happening with this particular site.

The one is the EGLE surface water withdrawal permit for 4. 8 million gallons a day, and that is an EGLE permit. That's a State of Michigan permit and that's the one that they will make the decision on sometime in the next few weeks.

There's also, along with other things with the state, there's NPDES, the Diischarge Division of Water Resources that has been out looking at Massey Lake and water levels and turbidity in Massey Lake.

But a different area is the township and the township requested nineteen I believe, additional items of information that we were going to use as we continue looking at this issue and the Conditional Use Permit. And one of those was the hydrogeologic study, which they have completed and they're going to go over that study tonight. So we're going to start though with the attorney.

KEN VERMEULEN: My name is Ken Vermeulen. I'm with the Honigman Law Firm out of Detroit, my Grand Rapids office. Before we get to the hydrogeologic report, I do want to just address a couple of either misstatements or misunderstandings and some of the public comments. Just to make sure that while I understand that there are some very well-founded concerns and criticisms, that some of the statements made tonight. I think were probably just based on misunderstandings.

The first one relates to arsenic. Arsenic is naturally occurring. It exists all over southeastern Michigan and particularly here in Washtenaw County. Virtually every aquifer, particularly those in the shale

bedrock below this area have elevated levels of arsenic.

Some arsenic, okay, well maybe I'm wrong, but I bet if you have your well tested, you'll find out that there are detectable concentrations of arsenic in most of the groundwater in this area.

Most of it's below 10 parts per billion, which is the federal drinking water standard. But many of you, we took a small survey and it seemed like the majority of folks in this area have RO systems to treat the existing arsenic that's already in the aquifer. Okay, so there is accusations that somehow this mine is poisoning the residents of Washtenaw County and that is simply untrue.

There is nothing about what the mine is doing that is causing any of this arsenic contamination. This is naturally--

Unknown: (unintelligble)

KEN VERMEULEN: --we can prove it--and we will--

DIANE O'CONNELL: Please stop interrupting this speaker.

KEN VERMEULEN: Okay. The arsenic is naturally occurring. It is usually below 10 parts per billion. One of the ten wells that has been repaired or replaced did have initially, arsenic levels slightly above ten parts per billion, which is why a treatment system is put

in place. Since then, however, she has had her water retested and it is now below the ten part per billion federal criteria.

So while the lower aquifer does have slightly elevated levels of arsenic, not all of them are above the federal drinking water standard, and what is there can be treated. So that one point of clarification on arsenic.

The second point of clarification has to do with what it is that Mid Michigan Materials is requesting from EGLE.

I'll say upfront, we have a disagreement with EGLE over what the law requires, but we're not looking to challenge that right now. We're willing to apply for a permit.

The law is very clear in Michigan that you do not need a water withdrawal permit for withdrawals of up to two million gallons per day. Right now, Mid Michigan Materials is withdrawing about 1. 8 to 1. 9 million gallons per day, below the 2 million gallon per day threshold.

EGLE takes the position that if you increase your capacity to withdraw above 2 million gallons, you need a permit for that.

To use an analogy someone else used earlier tonight I thought was sort of spot on. That's like getting a

ticket for having a car that's capable of going 150 miles an hour, even if you never go above the speed limit.

In our case, we are not currently withdrawing over 2 million gallons per day. We have no intention of withdrawing more than 2 million gallons per day, but we have a big pump, a pump that can move 4. 8 million gallons per day.

As a result, EGLE says we need a permit for the pump capacity, even though we're never going to use that capacity. So that is why you--I heard a fair number of comments that it's ridiculous that MMM's says it's not going to increase its withdrawal. Why would it apply for a permit? That's the reason.

What they're withdrawing right now is what it will take to keep the aquifer at the elevation that allows them to mine the sand and gravel that they want to get at.

DIANE O'CONNELL: There is no need to pump any more water than that. We don't want to pump any more water than that. We're not requesting to pump any more water than that.

But we have a pump that's capable of pumping more than that. So EGLE has required us to apply for a permit and rather than fight 'em about it, we've done so.

UNKNOWN: (unintelligble)

KEN VERMEULEN: Happy to do that.

And then the third thing is just to remember what the timeline is here. I heard several different comments tonight about impacts from the mine that predate MMM's involvement. The pumping that started here was started in April of 2022.

So any wells that went dry in February of 2022 were certainly not the result of anything that the Mid Michigan Materials has done.

Any impacts to nearby lakes that they've been observing for six years is certainly not the result of anything that Mid Michigan Materials has done.

While we certainly are interested in the comments that have been made about turbidity in the lake and whether that is caused by any of our discharges, we're absolutely looking into that. And we were talking with EGLE about that. EGLE's coming out to do an investigation and a site inspection in the next few weeks and we were working with them to identify what the sources of that are.

But as you know, for example, we are required to have weekly soil erosion inspections of all of our berms, and it's done by the township's engineer and those inspections have not shown any problems.

But again, that's something we're going to look into

and we're willing to. But the accusations that these longstanding impacts are somehow the result of Mid Michigan Materials is simply a little bit of over aggression, I'm afraid.

Now with that--that clarification, I will sit down and introduce the Vice President for Mid Michigan Materials, Rob Wilson.

DIANE O'CONNELL: Thank you.

ROB WILSON: Thank you. Thank you Board of Trustees for allowing me to come and speak to you tonight.

I want to move through my portion quickly and get to the meat and potatoes of the hydrogeological findings to give you time to absorb that. But I wanted to briefly over--if you could go to the next slide please. Thank you.

So my role here first will be to overview the timeline, the action items we've taken, and as I say, I'll turn it over to our hydrogeological, our engineering firm, Haley and Aldrich. They'll go through where we are, where we're going, and what steps we're going to take. And then I will wrap it up with our plan going forward. Next slide.

UNKNOWN: Sorry.

ROB WILSON: I'm just going to do this. So Mid

Michigan Materials, while it's newer to the Ann Arbor area, is not a new company. We've been in business for 61 years. I am fourth generation family business. So this business has been run by a member of my family for 61 years. The Vella Pit that we now refer to it as previously Washtenaw Sand and Gravel, has been in business for 67 years.

When our company sought to expand several years ago, we identified Washtenaw County and the Ann Arbor area as an area we would like to invest in, and that was the reason that we sought to operate here. Upon receiving the Conditional Use Permit in 2020, we evaluated the site further, decided on which type of plant that we had highlighted that we would do in our Conditional Use Permit application.

ROB WILSON: Purchased the plant, looked at the process, evaluated several different options, and ultimately have the operation that you see today. A little bit in some of the pictures that you see here tell a little bit about what, and it's been mentioned tonight, what our business does and we're often tied to road building and that is a very big part of what we do.

Obviously the I-275 project is a hallmark project for our location, but we also sell to places like block plants. If you're building a home, if you're building a

McDonald's, if you're building a path, if you're redoing your driveway, whether it comes from our facility or another one, aggregate supplies those types of projects. So that's just some of the type of work that we do.

Why dewatering? I know that's a big question for everyone. That was a process that we evaluated once again in that sort of first year or so of evaluating our new plant and how we're going to continue to go through the mining effectively.

Honestly, this is a method that my family has used for over 30 years and very successfully never have. We experienced issues like this. But we didn't take that for granted. We contracted an environmental engineering firm to evaluate this site.

Unfortunately, some of the information has proven to not be accurate and we find ourselves in this position, but it was not something we took lightly. It was not something that we certainly anticipated happening, and we did ask the tough questions.

But we are returning the water to the Fleming Creek watershed. Since finding out about it, and I'll go into that in just a little bit here, but we have either repaired or replaced nine of the ten wells that we are-- or paid for--that we are aware of. We are in the process of reaching out to the 10th resident.

A couple of those we are not yet certain as part of the study that are a result of our activities, but just as we did in April before we could conclude anything, we've decided to do our best to be a good neighbor. So we are trying to make those residents whole. A couple of them have been mentioned tonight and we've been able to reach them and we are waiting on one more.

Ken just highlighted so I won't go into too much detail on why we applied for the permit. But in our initial dialogue in April with EGLE, we went back and forth and decided to go ahead and apply for the permit that as they laid it out, and I think that's my word being twisted a little bit with compliance, that's we have a difference of opinion.

But we're applying for the permit that they ask us to apply for.

Again, I'll say it early, I'll say it often. We have no plans of increasing water flow. Our plant, our setup is all the way it needs to be. This is simply because of the permit we were asked to apply for, and how those are interpreted per state law. Next slide please.

Okay. Quickly on the timeline or the actions taken, again, this pit has been in business for 67 years.

We bought it in 2020, received the Conditional Use Permit, spent the next couple of years modernizing the

process, some of which I just described to you. Things like our plant is--because it is state of the art it is quieter. I have had several residents make that comment to me at some of our community appreciation days. We spent that time period fine tuning, balancing, and obviously we have some work to do there still.

In April of 2023 is when we first learned. I know that some folks are saying that they had issues prior to that. We first became aware of it. I first became aware of it on April 7th, 2023. I contacted that night hydro--our environmental firm who will speak here, and we immediately sprung into action to institute a hydrogeological study. To try to see if our activities were causing this, and then what things needed to be done, what is the sustainability of it, and what is the longevity of it.

We did have to replace a couple of wells in early April or late April rather. The first of those wells went down to the deeper aquifer and initially it showed that the levels of arsenic were in excess of ten parts per billion as Ken just highlighted.

We very recently learned at the owner's request, for some retesting. The untreated water is now below 10 parts per billion. That is, it's important to note, the only well that we have paid for or drilled that is in the

lower aquifer.

The rest of them we have been able to keep in the upper aquifer at the resident's request. And I would also like to thank those residents that I've worked with that have returned my phone calls or that we've had to come out to your house to evaluate these. They have been extraordinarily professional and kind to me, and I really appreciate that. I just wanted to add that.

And then in one of those cases then we did have to play for a treatment system, because at the time it showed that there were levels of arsenic in excess of 10 parts per billion, which we did.

We'll get into how we would address that going forward if it were to continue to be an issue. But as I said, our team will come up here and kind of explain to you our upper aquifer goals.

In May we did submit the application for the water withdrawal permit, which also highlighted tonight would give EGLE some increased oversight over--because it was an actual permit, so it would give them oversight over us.

That should give some folks a little peace of mind. And then again, this will be highlighted in the next portion, but in the fall upcoming, and I had hoped that it would've happened today, but we learned that the

driller that we had contracted, is not capable of performing the work we need.

We're installing monitoring wells on our site as far as the first phase, but that is not something that like a Cribley Well Drilling or an Ann Arbor Well Drilling--a traditional well driller--can do.

I'm told it needs to be an environmental well driller. We found some dates in September. The best we have is October, but we're really working on that. I want those answers sooner rather than later. So I will keep the township apprised of when we're able to successfully do that.

And then the other leg of that will be as we look for areas outlying, and the need for monitoring wells off of our site, we will contact those homeowners and also keep the township apprised and see if they would be amenable to letting us come on their site.

With that, I will turn it over to the next slide will show we're going to Haley & Aldrich. So I'll ask JP, our hydrogeologist, to come up and at this time you could switch to his presentation please.

DIANE O'CONNELL: So JP, right before you introduce yourself, would you be open to taking any questions?

JP BRANDENBURG: Yes.

DIANE O'CONNELL: While we're going through it. We did receive it today, but there may be some questions that people have as they looked at it.

JP BRANDENBURG: Yeah. If I could proceed with the presentation, I can take questions at the end.

DIANE O'CONNELL: Oh, at the end. Okay. Thank you.

JP BRANDENBURG: And this is actually going to be a two-parter. My colleague Leslie Nelson from Haley & Aldrich is also here. So we might want to let her speak before we do the questions. But I'll remain on the stage and they can go to the appropriate person. Okay.

Well thank you very much for the opportunity to speak here. And I'm not, I don't think we're on my presentation yet. If you could put that in presentation mode please. There we go. Thank you. Next slide. Okay.

My name is JP Brandenberg. I have a PhD from University of Michigan. Go Blue. I have some other credentials up there also, but I think most importantly, I'm also a community member here. I live just down the road in Chelsea. I live in an area where there's a lot of new gravel pits going in, and I have a lot of the same interests as the folks in this audience and seeing the people who operate these gravel pits be good custodians

of natural resources.

I started working on this particular project in April of this year when Rob first learned of well issues in the neighborhood. He asked me, JP, do you think it's possible that this is related to what's going on at the pit?

I took the data, I studied it and I said, yes, I believe it may be possible. And his first concern was how do we get the water back onto the people who are affected? And I worked with a lot of clients, and I have never gotten that response before. So Rob deserves to be commended to his commitment to looking out for his community. Next slide please.

Okay, so I'm going to start with Vella Pit itself and the operations that are going on here. There's a lot of talk earlier tonight, and a lot of very interesting points were raised. Too bad, some of the folks aren't still here.

But the first thing I want to do is give you a peek into what's actually going on within envelop pit itself. So this is a diagram that shows how water flows in the pit.

Number one on the figure there marks the main excavation. That's where gravel and sand are actively being mined with equipment.

Number two on there is a reservoir and that reservoir water is pumped from the pit into that reservoir. And some of that water, there's two more big pumps in that reservoir, and they supply the wash plant. And the wash plant is what takes the sand and gravel and separates it into the various fractions that are needed. You know, rocks or gravel or sand, whichever particular aggregate is being supplied.

I have a picture of the pump in the main pit on the right here. It floats on a barge, it's a turbine pump and that just lifts water up from the pit into basin number two.

Now between basin number two and basin number three, there is a culvert, and it's gravity fed. And any water that isn't used by the wash plant passes through that culvert into number three.

Number three provides some extra capacity for settling. So any fine grain material that's suspended in the water, it has a chance to settle out before it reaches four on the figure there, which is the NPDES-permitted outlet--outfall that goes to the wetlands.

Now the wash plan itself uses quite a bit of water and that water is returned to pond number five on the site there, which is another clarifying pond. The suspended fines that are left in the water at that point

are allowed to settle out before it flows through a culvert again by gravity back into the main pit. So there's a lot of recirculation of the water on the site. The only water leaving the site is the excess. So whatever the wash plant isn't using, if that final clarifying basin starts to fill up, that flows by gravity down to the wetlands.

So that's the overview of what's going on in the pit. Next, please.

So I want to take a few steps back now and talk just about groundwater. This is going to be--is just a textbook figure. It's going to be very familiar to some of you, perhaps new to others. I dunno.

We're talking about groundwater in this case and what that water is is it's the water that exists in the pore spaces between the mineral grains that make up the soil. And this area it tends to be glacial deposits, and there's an imaginary surface.

If you could click the button in there. Next please. Oh, go back. We went one too far. Sorry. We went--that's forward. Can you click the back arrow please?

DIANE O'CONNELL: Go back. Jared, can you go back?

JP BRANDENBURG: One more? There we go. Okay,

great. Thanks. All right.

So this surface, this imaginary surface is called the water table. And what it is is that any of the soil above the water table has a little bit of air in the pore space. Below the water table it's completely saturated. And that position of that water table fluctuates naturally and it fluctuates as a result of things like pumping.

And it's going to come back in a couple of slides, but I just wanted to introduce this with this boring old textbook figure to get everyone on the same page with the terminology here. Okay, now next slide.

So this is actually my well out in Chelsea. I think probably you know--if you're a very interested citizen scientist, you might know quite a bit about your well. Some folks might not give it a lot of thought except that it's an annoying thing that you try not to hit when you're mowing your lawn.

You can see I've done a bad job of that here, but I did pop the cap off so I can show you what's underneath.

I don't recommend doing that because those wires have 220 volts in them typically, and you don't want to be poking around in there.

There's really not a whole lot to see. The well itself at the ground surface is a four inch piece of PVC

pipe just like you buy at Home Depot or wherever with that aluminum cap on it. And that bar that's going down in the middle of that, that doesn't really actually do anything. It's just a handle that attaches to the top of the pump. Next slide.

So this is what your system looks like. And because we're in Michigan, quite a bit of it is underground and we want to keep it buried below the frost line because it would freeze otherwise in the winter and you'd have to deal with broken pipes outdoors. So we use something called a pitless adapter. Next, please.

So the well itself is that piece of PVC that you see, it was drilled, installed, and at the bottom of it there's a section that's slotted that's called the well screen. Very often now it's just PVC with slots in it. Some older wells use the stainless steel screen. Both are pretty much equally good.

And if you click again, that's the pump and the pump, probably well over 90% of us use submersible pumps at this point. This is the most common setup you're going to find around here.

The pump itself, it's a metal cylinder, it's got some wires coming out of it. Its job is to lift the water up that's flowing in through the screen, through that varied pipe into your basement to a pressure vessel.

And the important point I want to make about all this, I've noted the water table on there for your well to work correctly, that pump should be positioned above the screen but below the water table.

So the things that you can control are the position of your pump. The water table's going to fluctuate for natural reasons or other reasons, but you can't do anything about where the screen is that's cemented and when the well is put together and that doesn't change.

So anyway, you've probably seen, if you have a basement, you've seen the pressure tank. It's just a tank with a diaphragm in it with compressed air above the diaphragm.

That's why you have pressure at all your faucets and everything. And then that's almost immediately followed by a water treatment system. And the technology for home water treatment has gotten just exponentially better over the last 20 years.

It used to be your options were like a physical filter and a water softener, and that was about it. Now we have things like reverse osmosis, which used to be like totally cutting edge technology that's available for home use and that's just kind of a one-stop shop for water filtration. Next slide.

This is a figure from a book by Peter Driscoll.

It's about designing wells. This is from the chapter about what type of screen to you use and where to put your screen. And there's a quote there, you can read it if you want, but the sense that this diagram is trying to convey is that when you put a well in this section shows an aquifer, those hash lines at the bottom are a clay aquitard, something that prevents the flow of water underneath the aquifer to make the well as durable as possible. You want to put that screen as far down in the aquifer as you can. The pump doesn't have to go that deep. The pump just has to be below the water table but above the screen.

And unfortunately, I don't know why this was the case starting in about the 1970s through the 1990s, the temptation in a lot of Michigan was to put in wells that look more like B. They just hit the water table, went a little bit further.

Okay, well that works good enough and that's fine if the water table never changes, but it doesn't really give you any insurance if the water table fluctuates in the surface. So what we're dealing with right now is the wells that have gone dry, the ones that are constructed like C, that was able to be remedied by lowering the pump, by putting in that skinny piece of PVC pipe. You put a longer one in, put the pump down farther, it's

fine.

But if the well was too--installed too shallow to begin with, you can only move the pump down to the level of the screen and no further and those wells have to be re-drilled.

Next slide please. So that gets into the question I said, well, you kind of need to know ahead of time if you're going to be designing a well, where to put that screen. That gets into the question of what does the geology look like? And in Michigan, a lot of people have the impression that it's--especially if you're from the west part of the state, well it's just a tank of sand.

Well, but that's not true in southeast Michigan. This is a publication from the USGS fully available online. It goes county by county, and the state talks about groundwater resources and they note that in Washtenaw County, the good water is in the glacial aquifers. That's the sediments that were left behind by the glaciers, and the drinking water comes out of the coarse grain sands and gravels, and those kinds of deposits are notoriously difficult to correlate even well to well. I think anyone who's worked in this part of the state and the environmental field is very familiar with this problem.

Specifically to the area that we're in. Now, the

aquifer material itself exists in what this publication called small lenses. I have some pictures to show you that a little bit here. But it's not big continuous layers that go over vast horizontal distances. It's confined to little small bodies of sand and gravel.

Next slide. So this is the actual meat of that. This is a cross section. We put a few of these together when we first heard about the problem in April and said, well that--wow, that was surprising. So what I've shown here is a geologic cross section that starts in Vella Pit to the north and heads down to the south towards Warren Street--or Warren Road.

The darker kind of olive color on there is clay. This is a very, very clay rich environment. The yellows and the oranges are sand and gravel. That's what's actively being mined in Vella Pit. And you can see that some of the wells are screened. The screen is notated with the little hashes on there. It's screened all the way to the bottom of that upper aquifer. Some were not. And I don't think that was by any choice. I think that's just a field call that the drillers had to make when they put the well in.

So some of the wells could be fixed by lowering the pumps, some needed new wells. And then you can see that down below there's another lens of sand and gravel.

We refer to that as the lower aquifer, although the extent of these is not really known at this time.

Next, please, the effect of lowering the that one head. Well that's okay. We'll work off this slide.

So if you take that cross section in a slightly different direction, the point of this is that you reach the end of that lens. So it doesn't continue just on and on and on for infinity. It has an ending point. That's one of the reasons that this aquifer has responded in such an extreme way to the pumping in the pit.

If you click just once to advance. The effect of lowering the water level in Vella Pit--it isn't to dry up the aquifer, but it does take the water level and put it near the screens in some of those wells.

And so in that case, those wells have to be drilled. And most, I think there's only been one we've had so far where there wasn't any aquifer left in that upper zone.

We were able to move it to the bottom of that aquifer and now there's ten or twenty feet of water above it and we don't expect that there's going to be any more issue for those wells.

Next slide. So you probably got the sense from the last two figures that there's sort of a three-dimensional aspect to it and this is kind of where we put it all together with the groundwater model.

This is the footprint of the model. Currently it's going to get a little bit bigger towards the west. But you can see I put together a network of a lot of cross sections in there based on the well logs.

And if you click once more to the next slide. Those--those are those cross-sections arranged in 3D Vella Pit is the oranges in the dead center of that thing.

And that's kind of a confusing jumble. So if you click once, please.

This is the lower clay. This is probably a lacustrine clay, like an old lake bottom. It's fairly flat. This underlies that upper zone. Click once more.

This is what that upper aquifer actually looks like in three dimensions.

So you can see that in some places it's not even presence at all. While in others it's quite continuous. This sort of long sinuous ridge-like feature is kind of a typical glacial feature.

And then if you click once more, that has all been buried by another layer of clay. So that upper clay kind of limits the recharge in this area to the places where you can see the aquifer daylighting.

Next slide. And so what we've done with that is to use that to build out a numerical model of the actual

aquifer. This is an animated gif here.

The colors are the elevation of water in that upper aquifer, the brighter colors, higher elevation, darker colors, lower elevation.

So you can see that over time the water level is falling throughout the aquifer as a result of dewatering in the pit. It doesn't happen instantly because a lot of water is held in the aquifer by capillary forces and it takes time for that to drain down.

That's called aquifer storage and that's a difficult parameter to assess. And one of the things that will help us understand that better is the monitoring wells that we're going to be installing in the near future here.

I'm going to turn this over now to Leslie to talk a little bit more about next steps and a little bit more about that lower aquifer.

LESLIE NELSON: You can keep it on that presentation. Just go to the next slide.

Hi, I'm Leslie Nelson. I'm with Haley & Aldrich. I'm an environmental engineer with about 25 years of experience working in Michigan on these types of projects.

And I'm also a mom of those two cute kids and those two cute dogs. Next slide please.

You can't really read that. Okay, so this first slide I want to talk about what we're going to do next on the hydrogeology study. I'm trying to talk to both of you at the same time so that you can both hear me. So the first thing, sorry, I'm sorry.

The first thing that we are trying to do is install monitoring wells. As some of the previous speakers alluded to, this is the busiest time of year for drillers. And so we are trying to get on the calendar.

We have some in the calendar, but we're hoping to get them moved sooner. And the first thing we'll do is put those on Mid Michigan's site because A, that's the closest to where the pumping is happening, and also because we control that property. So we don't need permission. Obviously Rob's going to give us permission to put wells on his property.

Additionally, we are hoping to put monitoring wells on some properties outside of the pit, as especially in the direction to the southwest where we're seeing concerns in people's wells.

In order to do that, we obviously would have to get permission from the landowner. And so that's something that we will be seeking. But that would give us more consistent data on the aquifer, both on the site, and beyond the site.

And so once those wells are installed, we will be putting transducers in so that we can have continuous data so that we're not just relying on what happens in somebody's residential well, but we can see what's happening.

We can use that information to tweak the model that JP did and then we can try and forecast if there's going to be a problem with someone's well, and try and head that off before they are affected.

So that's the goal. That's the goal of this. Obviously we want to do the hydrogeology study, but the purpose is to be able to protect your wells and be able to address a problem before it happens, so that you don't run out of water and feel that panicky feeling.

That's what we don't want. Nobody wants you to feel that way.

So next slide. So if you haven't experienced this, I just wanted to kind of talk through what the process is.

If we are alerted or if Rob is alerted of a situation where there's a concern with a, well, the first thing that we're going to ask to do is to have one of the well drilling companies come out to your house and measure your water level, where your pump is set, and if possible understand where your screen is.

We do have logs on EGLE's website, but not everybody's well is on there. So we are trying to get as much information as we can, but that's going to be the first step.

And then based on that information, as JP talked about, if your pump is up here and the bottom of your screen is down here, then the first step is, and the easiest step is to lower your pump and that will be-- hopefully solve the problem.

The second step if that's not possible, is that we would install a new well in the shell deeper into the upper aquifer.

And then the third step would be to go into that lower aquifer as Ken mentioned. And as Rob mentioned, we've only put one well into the lower aquifer at this point. But there is some naturally occurring arsenic.

We've kind of already talked through that, but I want to just mention it a little bit more. If you can go to the next slide please.

So this is a figure from US geological study that talks about the arsenic in wells in this part of Michigan. You can see Washtenaw County is down at the bottom.

So it is something that everyone--or that is common in this area. As one of the speakers earlier mentioned,

it's because of the cold water shale. That is the bedrock here. That is where the arsenic is coming from.

So that's a naturally occurring thing that we can't control that it's there. All we can control is what we do about it when we encounter it. Next slide please.

So we've heard this mentioned as well, reverse osmosis is the preferred treatment to treat our arsenic. It does remove it without adding any chemicals. It just removes it through the membrane. There is only a drinking water standard in Michigan.

Next slide. Please --

UNKNOWN: Assume participants can't see the slides.

LESLIE NELSON: I'm so sorry. I can't--I'm not controlling it. The township does have a copy of these slides too. We provided them, so they'll be part of the record. I would assume.

RENA BASCH: They're on the website. If people are at home they can and they can't see the slides, they can open them on the website on the homepage.

LESLIE NELSON: The only thing that you wouldn't be able to see with the PDF is just the animations that JP had. It doesn't change anything about my presentation.

Regardless. The last part I was just gonna say is

that both EGLE and the World Health Organization say that skin contact with arsenic is not considered a pathway. However, reverse osmosis does remove it and you can put that at the entrance of your house, so that all your water is being treated and not just your drinking water. That was my point that I wanted to make with that.

So with that, I think that's all I have. I'm turn back to Rob if you want to switch back to the first presentation. Thank you.

ROB WILSON: If you could just advance a couple slides please. Next one. Thank you.

I'm just going to actually turn around some.

So recapping a little bit of what we talked about, and then the purpose of this is where we're going from here.

We believe this facility is essential to making Washtenaw County work, and we want to partner with everyone to make it work for all parties concerned. It's been here for 67 years. We want to see it be here for many more.

As I said, we are a fourth-generation managed company, so we run as a family company. We take these matters very personally If we find ourselves ever, we've never found ourselves in a situation like this, but when and if we find ourselves in any situation, we stand

behind what we say we're going to do and we will do that here.

We believe that we have when alerted of issues, we have thoughtfully and quickly responded to those neighbors who have reached out to us.

I'm not saying that makes up for it, but we have had a dialogue with them. We appreciate that and we work to have a quick resolution.

We have once again replaced or repaired or paid for nine wells. We are working on contacting the tenth homeowner.

Those are the ones that we are aware of. I've heard some different numbers thrown around here tonight, but those are the ones that we are aware of.

We are seeking that permit for reasons that we have already highlighted this evening. Hopefully some of you have a better understanding. Maybe whether you're a trustee or a resident, you have a little bit better understanding of why we're seeking the permit.

We did institute this hydrogeological study far before we had a dialogue going with the township, or many of the residents and or EGLE, just to try to get some better understanding of this.

Hopefully now you understand some of the measures as to why we are taking the further steps that we are taking

so that we have a accurate product. Our--the decisions that are made going forward, whether they're on our part, whether they're on the township's part or whether they're on EGLE's part, are only as good as data and information that we have. And so that's what we're trying to do.

And lastly, I know the concern on a lot of people's minds is what do we do if this study proves that some or all of us are not sustainable in the upper aquifer, that we've been able to accomplish up until this point.

We have reasons to believe that won't be the case, but if the study proves otherwise, it is our intention to come up with a agreement with the township and with EGLE that provides financial assurance so that the township would be able to hold us accountable to install these treatment systems, working with--I know there was some questions earlier about what about outside my house, or is it just at my tap?

And there's lots of different ways to custom design it. So we would work with those individual homeowners, and we would work out an agreement with the township to have additional escrow balance to provide financial assurance that we're not just saying it at a podium, but we're actually going to stand behind it.

And lastly, I've mentioned several times that this is a family business. We operate in five different

communities. We take tremendous pride in not only our organization. I particularly do because it's my family that started Mid Michigan Materials.

But we consider ourselves a member of every single community. So the fact that we find ourselves in this position and the inconvenience that we have caused, we are sincerely sorry for that.

For all of you that have endured this, and we are working towards a quick resolution. We want an accurate one. And I thank you again for those of you who have treated me with professionalism and kindness.

And I just wanted to add that--that we--it is not lost on us, the position that folks find themselves in. So again, thank you to those who made the comments tonight for listening to me and for the board of trustees for allowing our team to present. At this time, that concludes our presentation.

I would take questions or if you have questions for JP or Leslie, we can certainly--

DIANE O'CONNELL: Can you, Steve, did you have some --

STEVEN WRIGHT: Do you want me to go first?

DIANE O'CONNELL: Yeah, you go first please.

STEVEN WRIGHT: I have just a very few questions. At one point in the presentation, it talked

about installing new monitoring wells? Are there different monitoring wells that (unintelligible)

ROB WILSON: No, no, no. I think that might've just been a misspeaking. No, there are not.

JOHN ALLISON: Okay. There aren't monitoring wells, but all of those residential wells provide some degree of data--

STEVEN WRIGHT: No--

So we've got all the data from the existing wells (unintelligible)

ROB WILSON: We don't have any monitoring wells with transduced--transducers and that's what we're working towards.

STEVEN WRIGHT: Okay. One other question, just in some of the information I've been given over the last few days, there's a discharge records for, I dunno, the last few years, the last several months, a year.

And there was a discussion in there about some sense that the discharge through the NPDES outfall was measuring incorrectly in the early months of that operation. Would it be possible to share with me, the details of how the metering, was--it doesn't have to be done tonight.

ROB WILSON: Yeah, absolutely.

STEVEN WRIGHT: In a more general way. So I

can get the information that understands how the metering was being performed and--

ROB WILSON: What measures have been taken?

STEVEN WRIGHT: (Unintelligible)

ROB WILSON: Absolutely. We'd be happy to do that.

STEVEN WRIGHT: Okay. And then with regards to the numerical modeling,

UNKNOWN: Can you speak into the mic?

STEVEN WRIGHT: Sure. Okay. With regards to the numerical modeling, has there been an evaluation about what happens with--as the mining plan, proceeds--

ROB WILSON: Going to let him answer that.

STEVEN WRIGHT: Proceeds through the plant? How that will influence--

ROB WILSON: Oh, I see your point. Like as the pit moves, as they--no, but that is something that we could easily do.

STEVEN WRIGHT: Those are the main questions that I have right now.

ROB WILSON: Okay.

DIANE O'CONNELL: And if we have additional questions later, we can forward them to you. Like I said, we did receive the material a little--and received it today.

ROB WILSON: Okay, great.

DIANE O'CONNELL: Okay. All right. Other questions?

RENA BASCH: I'm curious. So are you measuring the discharge flow?

ROB WILSON: Yes.

RENA BASCH: And where is that at the position?

ROB WILSON: I dunno if you want us to pull it back up, but it's on the map that JP, it's at that MPS--NPDES outfall. That's as per the permit requirements. So there is a flow meter there where it goes into the wetlands,

RENA BASCH: But it's gravity fed. It's not a pump or anything. Correct. Okay. And why--so questions came up and if you could just address them--why the discharge flow is three as high as four MGD.

ROB WILSON: That's what you wanted to know? Yeah.

RENA BASCH: Yeah. It hasn't been that much rain.

ROB WILSON: Well, when this all came to light in April, we looked at every possible facet, and then EGLE asked us to reduce our--if our permit--our NPDES permit allowed-allows for 4 million gallons of discharge. They asked us if we could get that under 2 million.

And when we brought an independent flow meter out to calibrate ours, the guy told us from Xylem that you have to have a full pipe in order for a flow meter to work accurately.

So the whirly bird that's sitting in our flow meter is spinning at a higher rate. So we purchased a gate valve in April so we can neck down the outfall and have a full pipe where the flow meter goes through.

Because he said he couldn't even give us a reading until that took place. And what we saw is our discharge dropped precipitously because of that fact.

And so then we responded to EGLE, yes, we can get it below 2 million with actually without taking any additional measures. So that's the reason for that. And I'd be happy to share with you, put you in touch with Xylem to verify all that.

We have no problems about that. But that's how we learned about it is that they said, hey, we can't even calibrate this and yours isn't working properly either.

RENA BASCH: So--

ROB WILSON: Why we were in the confines of the permit Rena, we were--I guess getting fed false information by our own meter. But it wasn't of concern to us because we were within the permit requirements.

RENA BASCH: And the NPD, I know we're not--

we're talking about the water withdrawal permit tonight, but the NPDES permit says that you have the right to discharge 4 MGD.

ROB WILSON: Yes, correct.

RENA BASCH: Correct. But where is all that water coming from if you're not pumping, if you're pumping less than two MGD and it's not raining that much. That's what I'm trying to understand is if you were really discharging 4 million gallons a day, like where's that water coming from if you're only pumping two?

ROB WILSON: Well, that's the thing that we've learned. It's not, I mean, we have several months of data now to demonstrate that, and we would welcome outside flow. Just to clarify.

Unknown:

(uninintelligible)

KEN VERMEULEN: They never were discharging 4 million gallons a day. The meter was reading 4 million gallons, but it was spinning with a half empty pipe. So it was overreading what the actual discharge was. The measurements now are more accurate. They're measuring in that 1-7, 1-8 range. That's what's been being discharged all along.

Nothing has changed in the mining process or the amount of water that's being pumped. That's how much

water is being discharged. It's just that earlier they were getting a higher reading. So they weren't discharging 4 million, they were only discharging less than two.

And if you think about how this all works, there is storage, water storage on the site that gets recirculated. But the only water that's being--the amount of water that's being discharged is necessarily how much water is being withdrawn from the groundwater. Because if we were withdrawing more groundwater than that, something would be overflowing. If we were withdrawing less than that, it wouldn't have the water to overflow and gravity feed out the outfall. So they have to be in equilibrium. And so that outfall measurement is necessarily the amount that's being withdrawn from the groundwater, with some allowance for precipitation and evaporation. But those things usually sort of balance each other out.

JOHN ALLISON: So if I could just follow up on that. So if I understand what you're saying, your dewatering pump is about 2 million gallons per day?

KEN VERMEULEN: Of groundwater withdrawal.

JOHN ALLISON: Of withdrawal, and therefore the discharge in theory shouldn't be more than that. Correct? Correct. Does that make sense to you, professor

Wright?

STEVEN WRIGHT: I think generally--

JOHN ALLISON: I mean for me it just seemed like a factor of two error on that pump is you would know that--

ROB WILSON: Well, No, it's not the pump.

JOHN ALLISON: Not the pump. The moni--outflow metrics.

DIANE O'CONNELL: Discharge?

ROB WILSON: I would have disagreed--I would've agreed with you, John. And I'd be happy to have Professor Wright review the monitoring and contract somebody if you want to verify that.

I have no issues with that whatsoever. I would've agreed with you, John, that that was a very large overstatement. But that's something I've learned and it has been extraordinarily consistent since we installed that gate valve.

DIANE O'CONNELL: Can you share that data? Because we--thank you for the report that was shared, but it only goes through June.

KEN VERMEULEN: And then we provided the July (unintelligble) days.

DIANE O'CONNELL: Oh, I didn't. Okay, thank you. I didn't get that.

KEN VERMEULEN: July report wasn't in to us when we got (unintelligble)

DIANE O'CONNELL: Uh-huh.

But yeah, if you don't have it, Rena, we'll provide it.

RENA BASCH: Yeah that would be great.

DIANE O'CONNELL: We'll make sure John.

JOHN ALLISON: Yeah, I've got a couple of questions if I might. So I'm trying to think, historically, I've looked at some aerials and in March of 2021, it seemed like the site was operating per your plan. In May of 2022, the--what you're calling Lake One Pond One formed in the southeast site, very large about eight acres. And that's also on your NPDES or on your EGLE permit. Then by June it had grown to 10 acres-ish. And so I'm wondering, when did you first see this large lake start to form or what did you understand it to be for?

ROB WILSON: Well--there's a couple factors there. A, there was a lot of precipitation during that time. B, we breached the berm that you see between those two ponds. And so it spilled into the groundwater.

And if you look at some of those aerial photos, you'll see ground protruding up through it. So I'm not saying there wasn't water there, but the aerial image

certainly makes it look like a more significant body of water than what it was. In many cases it would've been it inches or a foot or so deep. But also that was when we were starting to commence the pumping process and there was ebbs and flows with that. So it's kind of a combination of several factors, I guess.

JOHN ALLISON: And so when did you actually apply for the EGLE discharge permit?

ROB WILSON: Summer of 21. And then there was like 180 day period and they issued it in April of 22.

JOHN ALLISON: Summer of 2021 you applied for the EGLE?

ROB WILSON: Am I right in that? Fall? It might've been fall when the application, I think we started talking about it in summer and so that--

JOHN ALLISON: Then that was approved in April. And did you make any attempt to notify the township of that?

ROB WILSON: It was all--there was a public comment period and--

JOHN ALLISON: We were not notified by you or EGLE. Did you make any attempt to notify the township?

ROB WILSON: No. We went through the channels with EGLE and I was told there's a public comment period where it was all put out as part of state law.

JOHN ALLISON: Disappointing. Then the dewatering. I heard two different dates in your report it says August, your attorney said April. When did the dewatering actually start?

ROB WILSON: April.

JOHN ALLISON: In April.

ROB WILSON: Of 22.

JOHN ALLISON: In April of 22. Because your discharge report starts in I think August. You're--

ROB WILSON: Yeah, it takes a while for the pond to fill. And so we didn't have any outfall, any discharge, but we had a permit to discharge.

JOHN ALLISON: And did you attempt to notify the township that you were doing this pumping and dewatering?

ROB WILSON: I-I--John? Our Conditional Use Permit requires us to seek appropriate permits and we did that. I mean, we reached out to, so no, I guess--

JOHN ALLISON: So you didn't consider that a major change to the Conditional Use Permit?

ROB WILSON: I felt by applying through EGLE for the appropriate permit that we were following the Conditional Use Permit. That's how I--

JOHN ALLISON: So I first learned about all this problem in April and that's when I first learned

about the NPDES permit and a month ago when, and I think that's when the board learned about this whole problem. Only a few months ago, which I guess was contemporaneous with when you learned about the well problems. You didn't notify us though, did you? About the well problems.

ROB WILSON: Diane and I had dialogues starting in May.

DIANE O'CONNELL: So yeah,

JOHN ALLISON: But I think that was initiated by Diane, wasn't it?

DIANE O'CONNELL: Yeah. So the way that we found out in April, there was some dewatering, and we found out from the health department.

JOHN ALLISON: So I'm just disappointed that if in all your neighborliness, that you didn't notify the township of these problems.

ROB WILSON: Noted.

JOHN ALLISON: But I first learned about water discharge from Andy Leber's presentation to us about a month ago. That's the first time we learned about it.

And I was stunned. I just could not imagine that you thought that was okay that you were doing that.

So I went back and carefully reviewed all of our documents. Our Conditional Use Permit documents, our

site plans, and I can find no outlet structure on any of these site plans. Am I missing something? Did you put this in a site plan somewhere?

ROB WILSON: It was not part of that. It is not really a site plan issue in my mind.

JOHN ALLISON: Of course, it is. Of course it is. So I also went back and looked at our planning commission minutes, and you may recall this. We talked a lot about stormwater, berm diversions. We took a lot.

Every planning commission meeting we talked about this stormwater diversion berms would direct all precipitation into the mine keeping all stormwater drainage on site.

Applicant will show that during the phase a proposed northwestern stormwater diversion berm would be constructed and make sure that all the water is directed back to the active mining.

We talked a lot about how Ann Arbor Township is very, very careful. We're probably a state role model at managing stormwater impacts and in particular on the wetlands in Fleming Creek.

And so we would've talked about this and so I just don't get why you think that was okay to suddenly--we were talking about stormwater, which is minuscule compared to this discharge. So I'm just at a loss to why

you think that was just okay.

ROB WILSON: Well, I think--respectfully, I think you're phrasing it that I just went out and did it. We applied for a permit with EGLE, and then--

JOHN ALLISON: EGLE does not control Ann Arbor Township's Conditional Use Permit. It's got nothing to do with us.

ROB WILSON: Okay, well then I guess we have a difference of opinion about that. Because John, I looked at the condition that requires me to com--ask EGLE for the appropriate permits and it says that we are supposed to have appropriate permits and that's how we felt it. So I wasn't ignoring the Conditional Use Permit. We thought we were complying with that condition.

JOHN ALLISON: I find that hard to believe.

ROB WILSON: I'm happy to have a discussion about that.

JOHN ALLISON: So then I went back also and looked at some of your other documents. So this is the GCA your initial application in February. The mine operation does not include groundwater pumping to facilitate dewatering. The operation pumps water from existing mine pits to use in the washing operation, and that's returned to the pond and enclosed loop system with no resulting net loss of groundwater from the property.

Please, please, please, it's not helpful. It's not helpful.

In July, no, June, the minute show Commissioner Gorham asked about neighbors concerns about aquifers. Whether their ponds and wells would be affected. Mr. Ocker explained that the mining below the water table would leave the water in place, would not dewater the site, or lower the groundwater table, would not affect the groundwater that was connected to ponds on neighboring property.

And because you are maintaining the water on site with no discharge, no dewatering, our consultant, our engineer agreed with you. This was not going to affect any wells. That was months and months of testimony from you.

And so--and then you go on to say the current owners were already mining below the water table. So apparently that was going to be just the de riguer.

So I'm just appalled, frankly, that you think these changes wouldn't be a major change to the Conditional Use Permit. So is there any way, with all this dewatering discharge, how do you think that that is consistent with our Conditional Use Permit?

ROB WILSON: That is a permit with EGLE?

JOHN ALLISON: No. I'm talking about Ann Arbor

Township's Conditional Use Permit.

ROB WILSON: Your--your Conditional Use Permit requires me to seek and obtain all appropriate permits. Businesses change, methods change. So we sought the appropriate permit.

JOHN ALLISON: We have multiple overlapping jurisdictions. EGLE has nothing to do with what I'm talking about now. I'm talking about our Conditional Use Permit.

ROB WILSON: I-well EGLE oversees discharge permits.

JOHN ALLISON: I've got some other questions, but I'll just hold off for a moment.

DIANE O'CONNELL: Okay. I have, did you have one?

RENA BASCH: Yeah. I wanted to actually go back to just understanding the operation, the pumping. Because there's no, as I understood from the previous conversation, the pump itself doesn't have a meter. Correct. So it's on a float and so I think in one of the documents it explains, it runs on a float system, so it turns on when the water level reaches a set point and runs until the water drops to the lower set point. So that it may run 24 hours a day or it may not.

Right? Can you kind of describe that range and set

point and is that, how do you then get the flow? Is it because you know the volume of the pond?

I'm just trying to understand how much you're actually pumping. If there's no meter on the pump. If it's just this float system,

ROB WILSON: It's part of the ongoing hydrogeological study first and foremost to measure that as well. But there are some, I guess I would defer to

JP, but there's a correlation between the amount being discharged and the excess water leaving the site.

As Ken just alluded to, if we were withdrawing 4 million gallons a day or 4. 8 million gallons a day, but only discharging 2 million gallons a day, where's the excess water going?

KEN VERMEULEN: So the other thing is a lot of the water that's being pumped is simply recirculating water, wash water within the system and it's pumping both into the same time. It's pumping whatever gets into the bottom of the, well, a lot of that, the majority of it in fact is water that's been actually pumped out of the upper wells through the wash plant back into the lower part of the, but some of it is groundwater.

It's the groundwater withdrawal that I believe the statute requires be limited to 2 million gallons unless you have a permit. EGLE's interpretation is no, it's the

volume of the pump. So if the pump can pump 4. 8 million gallons, you need a permit for that. Whether it is or isn't, and you don't want to be bored with all the details of how the statute came into effect.

But I can tell you that was not the intention of the water use committee about 15 years ago when that statute was put into effect.

RENA BASCH: So we (unintelligible)--

KEN VERMEULEN: But necessarily the amount of water going out, the outfall has to be the amount of water being added to this system, either via precipitation or pumping groundwater. That's the only place the water can come from.

RENA BASCH: Minus evaporation,

KEN VERMEULEN: Minus evaporation. Right. But like I said, those--that's why evaporation precipitation typically in Michigan even out, and so the measurement of the outflow is going to be pretty close to the volume of groundwater being withdrawn.

RENA BASCH: Or we need a monitoring well. Like I'm just trying to understand trying to understand how much water--

KEN VERMEULEN: I'm not sure a monitoring well will do you--

ROB WILSON: The monitoring well,

KRISTINE OLSSON: Like to just know where--how much water is--

KEN VERMEULEN: The monitor--

RENA BASCH: --water is coming out of this water table.

ROB WILSON: Going to speak to the amount of flow, the monitoring well is going to measure any additional or confirm that if there is any ground loss going on. Changes going on (uninitelligible).

DIANE O'CONNELL: Okay. We had another go ahead question.

JOHN ALLISON: I have another one. One real simple question. Are those ponds, surface ponds in there lined? Are they bottom line with clay?

KEN VERMEULEN: Not intentionally, but over time.

JOHN ALLISON: Time. Sure they get that--

KEN VERMEULEN: Soils that have settled out that they have effectively lined it.

We're more than happy to have them infiltrate back into the--

JOHN ALLISON: Sure.

KEN VERMEULEN: We'd love to--love to--

Understand.

RENA BASCH: I just had another hopefully easy

question. So the current reverse osmosis systems that most of us have on our wells.

Are they sufficient to bring arsenic levels down below the 10 parts per billion?

ROB WILSON: Yes, and while the one resident that we had wanted a treatment system that only addressed arsenic and so not a whole home.

This particular individual wanted the minerals and everything else in the water. A lot of people choose to have that for other reasons anyways, they're the ones that got the test just last week or whenever it was.

We got the results last week showing untreated water and treated water. So the untreated water showed eight parts per billion now of arsenic, the treated water shows non-detect.

DIANE O'CONNELL: That's great. And then so if people had to go into the deeper aquifer, and if--we understand that some people to the north of the pit are already in that deeper aquifer and they do not test--

ROB WILSON: --at least in excess.

DIANE O'CONNELL: They do not have arsenic. But in the event that a well needed to be replaced, and it had to go into the deeper aquifer and it had between 10 and 50 parts per billion, a regular reverse osmosis system that's simply commercially available today would

take care of it.

ROB WILSON: Correct.

DIANE O'CONNELL: And it could be on the entire water supply. So one could water their garden and water their grass--

ROB WILSON: Absolutely.

Put it in several different points in the water process depending on what that particular homeowner wants.

KEN VERMEULEN: Wants. It's just a matter of sizing. If you want an interesting reverse osmosis sideline. Reverse osmosis was developed really for Saudi Arabia to have drinking water. They take sea water run through the reverse osmosis. It takes all the salt out and what you're left with is pure clean drinking water. Another primary use now, aside from treating water that way is in the maple syrup industry. They take sap, run it through the reverse osmosis, get rid of the pure water, and what you're left with is concentrated sugar water.

The point is anything other than water doesn't make it through the filter. And so what you're left with is two streams, pure water and everything else, whether it's salt in Saudi Arabia or sugar water from maple syrup producers or in this case perhaps mineral-laden outfall

with arsenic and other minerals or whatever else would be in there, all gets filtered out through the RO system.

DIANE O'CONNELL: Thank you. Yeah, it's just the board right now. Can I just ask a quick question too? I'm curious about the size of the pump. Is there nothing in between a pump for the 2 million gallons a day?

JOHN ALLISON: Diane, can you speak up?

DIANE O'CONNELL: Between the 2 million gallons a day and the 4. 8 million? I mean if someone wanted to increase what they were taking out, do they have to go for the 4. 8 million gallons aa day pump?

ROB WILSON: That's just the name plate of the pump that we purchased before we--again, we fundamentally don't necessarily agree with their interpretation.

DIANE O'CONNELL: So you could have had a lesser capacity pump.

ROB WILSON: Within reason, but just because you're not driving the--like if you think about towing something, there's torque involved. So you may not be using it for speed. So we don't have it turned up. It's on a variable frequency drive, but you're worried about static head and various other things and it was the pump that was recommended.

KEN VERMEULEN: And remember we are pumping

more than 2 million gallons. That pump that's pumping water out of the lower basin up to the top is pumping more than 2 million gallons. It's just that the majority of it is just recirculating the wash water.

DIANE O'CONNELL: Right. Right. I get that. I just didn't know if you had to go to your application to 4. 8.

KEN VERMEULEN: So we are actually 3 or 4 million gallons, but less than half of it is groundwater. The rest is just recirculating.

DIANE O'CONNELL: Right.

JOHN ALLISON: I'm really confused now because a minute ago you used that as your metric for why you were only discharging 2 million gallons.

ROB WILSON: Because that water recirculates and so the water recirculates when the plant is running, and so if there's 2 million gallons of water withdrawal estimated because of the overflow, the other water has to go back. So there must be--has to be additional flow coming because it's running in a circle. So--

KEN VERMEULEN: Let me just put some numbers in. Hypothetically, if that lower pump we're pumping at exactly 4 million gallons. 2 million gallons, let's say hypothetically was going out the outfall, those pumps from the upper pits that are pumping water to the wash

plant are pumping the other 2 million gallons. In fact, it's more like two and a half or 3 million that they're pumping through the wash plant. One and a half or 1. 7 is going out the outfall. But those two things combined are what the lower pump has to pump up to the top.

ROB WILSON: It's running in a circle.

KEN VERMEULEN: So water is all coming out of the lower pump and it's either going out the outfall, or it's being pumped back into the plant and recirculated, but it all ends up back in the bottom.

RENA BASCH: Are those two pumps the same capacity?

KEN VERMEULEN: No. In fact, it's one pump in the bottom and two pumps at the top. Right? Two pumps at the top are pumping the water into the wash plant.

ROB WILSON: Back. They're taking the water that was pumped to them.

KEN VERMEULEN: That's in that upper pond and through the wash plant.

ROB WILSON: If you look at the diagram, JP first,--

KEN VERMEULEN: That first slide with that--

ROB WILSON: That shows--that shows the water flow--

KEN VERMEULEN: Yep

ROB WILSON: I'm happy, if you have questions, call me or whatever. I'm happy to walk you through that or--

KEN VERMEULEN: Have JP--come out--

ROB WILSON: Yeah. You can come out to the site and we'll show you.

RENA BASCH: But you're basically maintaining that--I think you quoted at one point 1. 8 to 2 million gallons per day of groundwater withdrawal is generally happening.

KEN VERMEULEN: Uh-hmm.

RENA BASCH: Right. Okay.

KEN VERMEULEN: It's whatever's being gravity fed out the outfall is necessarily the amount that's coming into the system. The rest of it's just being recirculated. The only part that's going out is whatever's being added.

It could be being added by precipitation, which is de minimis in this size of an operation, or being pumped out of the groundwater. So the outfall is really--it's--it's a loose equivalence, but it's pretty close.

RENA BASCH: I have another one.

DIANE O'CONNELL: Go ahead.

RENA BASCH: Can I keep going? Yeah, if I don't, John will keep going.

I guess switching back to the hydro geo model, and there's a reason for my question. What is the address of the ninth well? Because one of your slides said eight wells. When we had a conversation earlier this week, it was seven wells. So I'm looking for--

DIANE O'CONNELL: Seven with one request.

ROB WILSON: The eighth is the pump that was lowered. So it wasn't actually, it was repaired, not replaced. The ninth is further away and that's--

RENA BASCH: Trailwood? Okay.

DIANE O'CONNELL: And--

ROB WILSON: We reached out to them and said there's no way we're going to conclude one way or the other, but we're just going to go ahead--

RENA BASCH: So where--

ROB WILSON: and well in the near future.

JOHN ALLISON: I missed that--

RENA BASCH: --that. There's a very strong,

JOHN ALLISON: Could you clarify what well that was?

ROB WILSON: Trailwood.

RENA BASCH: Trailwood.

JOHN ALLISON: Trailwood. Okay.

RENA BASCH: Yeah. There's two wells on Trailwood.

ROB WILSON: The second resident has not returned our calls yet.

RENA BASCH: Yeah

JOHN ALLISON: So this is Bachbeiter you've talked to?

ROB WILSON: Yes.

JOHN ALLISON: And--and you've agreed to--

ROB WILSON: We have agreed to pay for their expenses while this hydrogeological study carries on.

JOHN ALLISON: When did that conversation occur?

ROB WILSON: Yesterday or today or I think they returned the call today.

JOHN ALLISON: Okay. Because my conversation with him was yesterday and he had not heard from you of that to that extent.

ROB WILSON: We had. That's not true. I'll show you text messages. We talked last week. He had absolutely heard from me. He called my office and I called him back that day.

JOHN ALLISON: kay.

RENA BASCH: Can I redirect our attention to the area south of the pit? So the eighth well is one of the, there's a cluster of seven that are all very close together. Immediately south.

ROB WILSON: The eighth is well part of that cluster.

RENA BASCH: The eigth well is--

ROB WILSON: It was lowered--

KRISTINE OLSSON: And it was lowered.

ROB WILSON: The pump was lowered.

RENA BASCH: And if so where, what I want to understand is if the hydrogeo model, it was kind of hard to see it if that actually demonstrates that, that's where we should have sadly seen the impacts in that immediate area or if the hydrogeo is predicting we're going to have impacts.

Because I mean frankly, I don't want to insult anybody, but the Trailwood is very far away from the pit and the seven or eight wells are very close to the pit.

JP BRANDENBURG: So that's right. There is a big gap in between and we've not heard of any issues in between from wells that were constructed in a similar way.

RENA BASCH: What do you mean in a similar way?

KEN VERMEULEN: In short, if Trailwood--the impact of Trailwood wells was the result of what's happening at the mine, we would've expected to see other wells between the ones closest to mine and Trailwood was having been impacted. We haven't seen that. That was

why our initial reaction was that probably isn't us because if it was, we've would have seen other impact.

But do you know?

RENA BASCH: But now there

KEN VERMEULEN: We've got a second well, which is why we said you know what, we're not going to have a scientific answer for this for some time. We'll pay for that.

RENA BASCH: And thank you--thank you for that--

KEN VERMEULEN: Well—I wouldn't frame medals. But that --

RENA BASCH: I want to know now we have a model--

KEN VERMEULEN: It still needs work.

RENA BASCH: Okay, but is it predicting?

JP BRANDENBURG: Yes, it is. And so I will tell you that the information that we have right now, the good hard data that we have to pin the model on, is if I have a record of where the plump was set in the well, and I know on what day that well went dry, that's a very good data point.

It's a very unfortunate and expensive data point, but it is usable. Right?

And that's what I'm working off of. We had a well

went dry this summer. I made some revisions to the model based on that and I scanned the area and there was another well. I called Robert up immediately and I said, "Hey Robert, I think this well is probably getting close to the pump inlet. "

And we called the owner up and they said, sure, you can do a health check. We sent a driller out and I was right. The prediction was like spot on. I was like a couple inches plus or minus. So we preemptively drilled that well before they were out of water. So that customer never actually was without water. We got to it in time.

KEN VERMEULEN: The problem is not all the well records have the depth of the pump. We know where it's screened, but unless we know where the pump is, we don't know whether there's still plenty of water there or whether they're an inch from going dry.

And occasionally we've made assumptions as to where the pump likely would've been, and those turned out not to be correct. They were screened much shallower than that. There's only--the prediction is only as good as the data that we've got available to us and we're doing our best. We've actually reached out to homeowners where the information isn't necessarily complete in all of respects, and say hey, can we just come out and measure

your well, so that we know the elevation of your well, that it's in the right location, that the information on the well logs at the state level has the exact right longitude and latitude, and the elevation and we know where the pump is and we know where the screen is because sometimes that information is either inaccurate or missing, and then we can't make predictions as well.

JP BRANDENBURG: To be fair, these residential wells were never designed to be used as monitoring wells.

So they were not surveyed with any precision because why would you? So typically when we've put in a environmental well that we're using to track water levels--remember I showed you that picture of the well with the top popped off? You put a little mark on that and you get a surveyor out there and they survey it within one 10th of a foot. So that's the kind of precision you would normally use and the well just has to work and good enough. So especially older wells, I think EGLE on their website just puts the well at the center of the property or where they think it is if there wasn't a survey back in 1975 or whatever. So those are a little bit, you have to put some error bars on the model when you look at that and that's what we do. We have a high scenario and a low scenario that takes into account the fact that we don't know exactly where the wells are in

some cases.

JOHN ALLISON: Alright, a couple more.

So this is just trying to get information on the ponds. So you've got three ponds, 3, 2 and 5 that are 900, 890 to 900 foot elevation. Do you know the bottom elevations to those ponds?

ROB WILSON: No, they fluctuate. A couple of those we did not dig. So no, we do not know the bottom elevation of those ponds. No.

JOHN ALLISON: So you didn't keep records, so you don't really know.

ROB WILSON: Well, the one was dug in the sixties. So I mean to the extent that there was sediment and everything else, I can't speak to that.

JOHN ALLISON: Okay. Then a question on the discharge monitoring report. So for months and months and months, you were, whether it was accurate or not is not relevant. You were reporting to EGLE numbers in the range of 2. 9 to 3. 9 MGD on average, right?

ROB WILSON: Uh-hmm.

JOHN ALLISON: And isn't that in violation of part 327?

ROB WILSON: Part--

JOHN ALLISON: The water--

ROB WILSON: EGLE has not found that it's a

violation--

JOHN ALLISON: No, that's not the point. They may not have charged you with that, but isn't it a violation to be over 2 million gallons per day of withdrawal?

KEN VERMEULEN: But again, that was a measurement of discharge. It turns out there--

ROB WILSON: What percentage was the plant giving at that point? I mean the recirculated water, what percentage was going out? The outfall--

JOHN ALLISON: Your data that you provided EGLE said that you were above 2 million gallons per day. You thought or your consultants thought you were above that at that time, right?

Even though now we learned that that monitoring was incorrect, but you thought at the time that you were in the range of 2. 9 to 3. 9 MGD on average. RIght? And that I believe is a clear violation of part 327 water withdrawal.

KEN VERMEULEN: Well, again, that's not a level of water withdrawal. It is in fact roughly equivalent just based on the way the system works. But that measurement, that report was of our discharge. Our discharge permit is for up to 4. 8 million gallons. So it was not a violation. 4*68* 9, 9-4-4,4. 4, sorry, 4. 4.

So it was not a violation of our discharge permit. So I don't think it didn't strike anyone as a problem. It is a NPDES report for an NPDES permit and it was within the permit limits. It's kind of like when you get a monitoring well report and it's a whole bunch of MDs non-events.

ROB WILSON: Again, as I explained, when this process started for us in April, as you acknowledged, EGLE came to us and said, you need a large water withdrawal permit. We said, no, we don't. And to an extent, as we've highlighted tonight, there are fundamental disagreements on what you are using versus what you're capable of using.

But at that time we wouldn't have looked at it that way because we didn't think we needed such a permit. So you're asking if that was a violation and I would cite two things. A, we didn't think that we were violating--operating outside of a permit and B, and perhaps most importantly they haven't issued a violation. If they thought it was a violation, why didn't they issue a violation?

STEVEN WRIGHT: Maybe I can a little bit of light on that. If you read the NPDES permit carefully, you're only required to report the outflow and it's not necessarily a violation if you go over the permitted

level.

ROB WILSON: But we weren't over the permitted level.

JOHN ALLISON: Okay. So what are your current plan timelines for mining this site? So you're right now sort of in this phase B and C. So what's your timeline for completing B and C and what are your plans for D, E and F?

ROB WILSON: Some of that, as I think you may recall that I explained during the Conditional Use Permit, we will flow up and down. So our best estimate is still, I mean we're three years in, but we were between 15 to 20 years for total life of the mine. We don't view that that has changed. Obviously with 275 in the last year or so. The demand has been slightly higher when you--that project completes in the fall, we expect you know--volumes to go down until--I mean that's a major project, so I don't think one of that size, shape and color is coming back anytime soon. That is at 275 is a very major project. I don't anticipate another one of that size, shape, and color coming back tomorrow.

So I view that I guess John, I think that it will float up and down. But I think this is kind of a peak in terms of demand. So maybe it accelerated a little bit and I think you'll see it settle off and who knows what

road funding or building projects or anything like are three or four years from now.

JOHN ALLISON: Okay, so then D, E, and F. So as you ultimately move to those, why wouldn't we expect those to cause additional well impacts?

ROB WILSON: I'm going to turn to JP on that one because additional well impacts. Well A, we're gping to--as you said earlier, we're going to study that. But also groundwater static water level is static water level and just because you expose it to the air if you will, is not necessarily changing the--

KEN VERMEULEN: We're not looking to change the water elevation--we're dewatering to a certain elevation that will stay constant.

KRISTINE OLSSON: Say that again?

JOHN ALLISON: Not if you don't get a revised Conditional Use Permit.

ROB WILSON: Well.

JOHN ALLISON: At any rate.

KRISTINE OLSSON: So you're saying you're not going to be in--D, E, and F, it will not result in increasing the pumping over 1. 8 million gallons per day or whatever it is.

ROB WILSON: No.

RENA BASCH: Okay.

ROB WILSON: And we'll also have additional areas opened up and this is part of what we'll be studying. Areas that are mined out possibly could be storage ponds, retention ponds, areas where water is stored on site.

Those are things that we're looking into as part of this study as well. So you'd be retaining even more water on site. And areas that we're mining right now when you're done mining them potentially.

And we'll look at the benefits of that and if that allows water to reinfiltrate.

I'd be purely speculating Kris right now to say that it's just things that we're looking at.

KRISTINE OLSSON: And that's one of the things obviously we're very concerned about is the dewatering and the changes to the aquifer. So we'd like to really understand especially the connectivity of this aquifer system with areas around. You have drawn the cross sections according to wells that had been impacted. But as was pointed out, the hydrogeology is very uncertain with Michigan's subsurface. Things are pinching out and you're getting different thicknesses throughout. And so we really want to know something about the recharge capability of the aquifers.

ROB WILSON: And I think the only way we're

going to know that we've concluded is to have monitoring wells, and see what level waters are going up or down and then we can make better informed decisions. Prior to then, just using well information would be irresponsible on our part to make long-term decisions or come to you or the residents and say we feel that we're fine.

We're just not in a position to say that at this point until we have that information available.

And as Rena pointed out, and JP highlighted earlier, Trailwood is a good bit of distance away and it's going to take us some time to identify where those monitoring walls would be appropriate that could help him to discern yes, this could be as a result of us or no it couldn't because this is a different lens at a different and they're not connected. Those are all things we're going to have to try to determine.

KEN VERMEULEN: The other thing that we are looking at, and again, it's not perfect, but it's the data we have, though even--even if the Trailwood wells were the result of the mine, and let's just assume for the purpose of discussion that they are. A lot of the other wells in the area that are in the newer development for example, are all drilled significantly deeper than the two wells have been impacted.

And based on the information we've got from

Wellogic, which is only as good as it is, but those wells do not appear to be threatened, even if our water elevation were to extend that far, which is a long way and we wouldn't expect it, but even if it did, we wouldn't expect any of those wells to be impacted because they're drilled--

ROB WILSON: For no other-no other reason than to understand it, we're trying to look in, I mean I know somebody said there's a development 30 miles north, there's a lot of developments a lot closer than that.

And so, I mean some that are being done by the city, some that are done by private business, some that are housing developments. I'm not saying those are the results. I'm not pointing any fingers at anybody. And it may end up being that the fingers pointed squarely at me. I'm just saying we're considering all the factors and we're going to look at all of them.

JOHN ALLISON: I have one last one. Condition 13 of the PUD. Applicant shall submit to the township in the form of an annual report, information regarding vehicle traffic using Ann Arbor Road and entering the property. You have been operating since 2020. How many annual reports have you provided the township?

ROB WILSON: We were requested one this year and we've provided them quarterly as agreed upon by the

township.

The permit does not define the frequency in which they are. I recommended quarterly. That seemed amenable. That's what we've done. We did take a long time. If you want me to go back retroactively, I'm more than happy to do that.

My computer software would not allow me to do that without disclosing who the customers were. And once I give it to you, it is freedom of information, and all of my competition can see who is buying what from me. But I'm happy to go back retroactively and show you all the way back to the Conditional Use Permit.

JOHN ALLISON: Please do. I don't think the township had to request those. They were due annually.

The frequency is well-defined unless we asked for it more than that. We shouldn't have to ask for those, but I would appreciate them.

RENA BASCH: I have a couple of questions. It was mentioned a few times in the public comment session that hydrogen sulfide gas has become an issue. I wasn't quite sure. Can you speak to that?

ROB WILSON: Other than to say we use absolutely no chemicals in our process whatsoever, it's just water and sand and gravel. And it was also mentioned something about suspended solids, and what that

context was taken very out of context. We are required by EGLE as part of our NPDES permit to check weekly and provide samples to an independent lab that takes those. And those are all in compliance. So our response to the township was we are within the parameters of those. Obviously that--

RENA BASCH: Was part of your NPDES permit?

ROB WILSON: Yes. And that's all public record. It's all with EGLE. But if you--I know it should be in those reports that Rena was referencing, but if you'd like us to send them to you, we're happy to do so.

But in terms of those elevated levels, this is the first I'm hearing of that. Our water testing shows none of that and I can't just like arsenic not coming from our process. I can't understand more that would have anything to do with us. Because we don't use any chemicals.

RENA BASCH: Okay. And another issue that came up was the possibility of just simply dredging out the gravel and not dewatering. Can you speak to that?

ROB WILSON: As I said a little earlier, this--we looked at all methods and this is a method that my family is familiar with.

It seemed like the best fit for the layer of this

deposit dredges. Without getting into the nitty gritty, certain types of dredges require certain depths for them to run efficiently. I'm not saying that there couldn't have been an option here.

It just seemed like the most practical one for this application, given the depth of the gravel or lack thereof, was to do it this way.

But we did take it to an environmental firm. We had them review it and they told us they didn't believe there would be any impact. I can't speak to what their assumptions would've been. Right now our focus, as I've told some of you, is to finding a resolution and moving this hydrogeological study forward versus pointing fingers because if I sit here and waste a lot of energy on what advice I was given, it really doesn't fix anyone's issues.

KRISTINE OLSSON: My last one was--would be what can you speak to the effects of arsenic, higher arsenic levels in some of these new wells you've had to drill? And you've provided treatment for the household. But can you speak to the concern about the effects on agricultural products and on livestock and on animals?

ROB WILSON: Well, I would invite them to chime in if I say this wrongly, but again, it's just been one that we've had to put in that lower aquifer. It's just

been one homeowner.

And depending on the personal preference of that homeowner, you can treat the water at various different points. So even yes to the citizen that says, are you going to run it to my barn? If the barn gets the water from the same well that your house does, it's absolutely possible to do something like that. So their plants, their animals, everything if they so choose, if we structure it, I think as Ken said, the size of the reverse osmosis system or the treatment system, there are others, can be adaptable, Chris, to that specific application.

KRISTINE OLSSON: So if there's a resident or a farmer and or any kind of farmer or business or resident that finds that their wells have gone dry, you are amenable to drilling down into a different aquifer. And if there is problems with arsenic, you will provide treatment for whatever their water usage is.

ROB WILSON: Yes. So going a step beyond that, as I highlighted, we will work with township council and EGLE to highlight what that will look like and put it in writing so that it's not just conjecture me up here just saying it.

KRISTINE OLSSON: Thank you.

DIANE O'CONNELL:[78] I just have a kind of a

process or just to point out, it's midnight almost, and tonight's agenda was to hear about the hydrological report, but I'm hearing things from the residents and from your careful study John, that we need to--that we need to do some more work.

I'm not prepared. I haven't looked into the Conditional Use Permit conditions. I thought tonight was really the agenda item was really about the EGLE water withdrawal permit. But I think our next step would be to schedule an agenda item--or I don't know.

I personally need some more information. A lot of this stuff is kind of brand new and need to read it.

JOHN ALLISON: Yeah. I have a question for Dr. Wright, if I may. I understand what you're saying, but I want. So if the dewatering pumping was stopped in the bind area, current dewatering pumping and the discharge into the wetlands were stopped, and water from the northwest and northeast ponds was drained back into the southwest mine area. The place has been dewatered, possibly filling up to that. That's 373, 390 feet. Is it possible the original water table would be replenished?

STEVEN WRIGHT: It would be likely. It would take some time for that to occur. And it's sometimes hard to predict exactly how long that recovery takes, but

it would-it would happen somewhat.

JOHN ALLISON: Okay. I think that's an important thing we all need to think about, but it's possible. Possible.

DIANE O'CONNELL: Yeah.

JOHN ALLISON: This is not what they want to hear. That's not what they want to do. But with dredging, they might be able to do that. So I just think as you're thinking about things, I came prepared to do more tonight, but it's fine.

KRISTINE OLSSON: Any more comments?

JOHN ALLISON: Well, I just would like to say--so first I want to thank the residents for their comments and their dozens of emails and I want to thank you, Diane for the letter to EGLE opposing the water withdrawal permit and serving them as a point of conduct for all these thank both you and Rena for getting the website up and getting the contacts to the residents whose wells might be impacted.

It appears that we might be able to do a bit better on that yet, but nonetheless, and it seems to me that there would've been no impacts to the wells if the conditions that we approved as a board had been followed.

It's clear to me that that's the case. And so I just want us to think about that. I have to say that I'm

really disturbed by what I felt was a cavalier attitude on the part of the MMM towards our Conditional Use Permit and development agreements, our natural features, and of course our residents. And so in my 20 years, seven years on this board, I don't think I've ever run into a business that I thought treated our ordinances with such impunity. And so I'm just,

DIANE O'CONNELL: Well, Rena has brought up some process related things and we've brought up a lot of Conditional Use Permit issues and items.

We do need to know how to follow up with examining and looking at our Conditional Use Permit. And we need to spend some time and do the kind of analysis that we typically do. We don't move quickly, we move carefully. Carefully, and we want to make sure that we are doing the best job that we can.

So at this time, yes.

RENA BASCH: Yeah, just to explain, just as EGLE, there are a lot of processes and deadlines and things that are embedded in legislation and embedded in our ordinances. And so just as we all had the opportunity to comment on EGLE's--on the permit application--and they have to respond within 120 days.

I just really want to take the time to understand our own, to get some legal advice on our own processes to

be sure.

For example, we have deadlines by which we have to--like I'm the clerk. I have to publish every public hearing and by certain time periods. And so it's a lot of things.

So I just didn't want us to take any actions that weren't on the agenda. And so I would just like to take the time and explain to the residents why we don't rush into things because we have to follow the process that's in the law. Just as EGLE is following the process, it's in the law.

DIANE O'CONNELL: For example, the role of the planning commission, right? We need to be clear.

RENA BASCH: Right. The role--we need to examine our ordinances to make sure that we understand the role of the planning commission and the board in the Conditional Use Permitting process.

DIANE O'CONNELL: So with that, I would like to move to direct the township attorney to prepare a legal opinion regarding potential violations of the Conditional Use Permit for the mineral mining that was issued to AMC WSG LLC with respect to the mineral mine, commonly referred to as the Vella Pit, the rights and the remedies available to the Township in relation to any such violation and the relationship between the Conditional

Use Permit, the Township's available rights and remedies, and the permit application made to EGLE with respect to the Vella Pit, as well as other existing permits.

JOHN ALLISON: Second.

DIANE O'CONNELL: Discussion. All in--

JOHN ALLISON: So I think that's a great idea. Is it possible to get this expeditiously and before, and well before our next meeting? That's a question for Nathan.

DIANE O'CONNELL: Yes.

JOHN ALLISON: Nathan, you sat here all night. So you get to say something.

NATHAN DUPES: Yes.

JOHN ALLISON: Yeah, I mean, I just think that we should maybe even think about scheduling a special meeting or something before our next meeting. I think we should, we need to do this.

DIANE O'CONNELL: So we will get the opinion from our attorney and then

JOHN ALLISON: Okay.

DIANE O'CONNELL: We'll see. Yeah.

JOHN ALLISON: And can--Dr. Wright, can you get us a report? Yeah, thank you.

DIANE O'CONNELL: So that we can carefully analyze where we are. Alright, other comments? All those

in favor? Aye. And again, motion passes.

End of Transcript

STATE OF MICHIGAN)

COUNTY OF MACOMB)

CERTIFICATE OF REPORTER

I, MICHAEL T. LESICH - Certified Electronic Recorder, do hereby certify that this transcript, consisting of 85 pages, is a true and accurate transcription, to the best of my ability, of the audio portion of an Ann Arbor Charter Township Board of Trustees meeting that took place in Ann Arbor Charter Township, Washtenaw County Michigan, on August 21, 2023.

An audio recording was provided to the reporter and the reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the audio recorded.

September 21, 2023

_____

MICHAEL T. LESICH, CER 8982
Certified Electronic Recorder
15201 Fairview Drive
Fraser, Michigan 48026
(586) 216-2588

EXHIBIT 5

TOWNSHIP BOARD OF TRUSTEES
CHARTER TOWNSHIP OF ANN ARBOR
WASHTENAW COUNTY, MICHIGAN
RESOLUTION APPROVING CONDITIONAL USE PERMIT FOR AMC-WSG, LLC GRAVEL PIT
DATE: JULY 20, 2020

Resolution adopted at a regular meeting of the Board of Trustees of the Charter Township of Ann Arbor, Washtenaw County, Michigan, held at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, on January 20, 2020.

PRESENT: Diane O'Connell, Rena Basch, Michael Moran, Della DiPietro, Rodney Smith, John Allison, Randy Perry

ABSENT: None

Motion by Trustee: Basch; supported by Trustee: Perry.

I. RECITALS

A. Ann Arbor Charter Township ("Township") received an application dated February 11, 2020, as revised by submissions dated March 17, 2020 and April 20, 2020 (collectively the "Application") for a Conditional Use Permit for Mineral Mining ("CUP") for AMC-WSG, LLC, a Michigan limited liability company ("Applicant"). The Application is to expand the sand and gravel mining operations of an existing gravel pit on the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, Ann Arbor Charter Township, containing approximately 142 acres of property ("Property"), including, but not limited to, by increasing the amount of materials mined on the Property and upgrading tools and equipment on site.

B. The Application also includes a request for approval of a combined preliminary and final site plan initially dated February 11, 2020 and updated March 17, 2020 (collectively the "Site Plan"). Under the Township's Code of Ordinances (the "Code"), requests for conditional land uses are reviewed concurrently with site plans.

C. Applicant is currently under contract with Washtenaw Sand & Gravel Co., a Michigan corporation and the current owner of the Property ("Owner"), to purchase the Property. Owner has submitted correspondence to the Township consenting to the Application and to Applicant entering into all necessary agreements with the Township for approval of the Mining Activities (defined below). A copy of the correspondence was included in the Application.

D. The Application includes plans for expanding Owner's current sand and gravel mining operation currently in operation on the Property. The expanded operation will use front-end loaders, excavators, and dump trucks to mine the sand and gravel and carry it to a wash plant on site. The new operation will use approximately five (5) to seven (7) large pieces of equipment on a daily basis. Unlike the current operation by Owner, the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily March through November (referred to as the "peak season"), but there will be winter stockpiles depending on customer demand. Applicant has

indicated that winter mining could occur if conditions are favorable for mining. Applicant estimates that, initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day during the peak season, and could go up to 80 per day during the peak season. In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

E. The Mining Activities do not constitute a permissible prior nonconforming extraction operation under Code Section 74-224.

F. Applicant represents to the Township that for the duration of any conditional use permit granted by the Township, Applicant will use Earhart Road consistent with, in accordance with the regulations of, and under the limits of, a Normal Route, sometimes referred to as a "Class B," or "medium volume" road under the Washtenaw County Road Commission ("WCRC") Procedures & Regulations for Permit Activities, meaning that no improvements will be required by WCRC to comply with a "Designated Route" and/or "Class A" road requirements. The Applicant represents that it will not seek a designated haul route permit from the WCRC to increase the number of trips or to allow for heavier loads for the duration of this CUP without first requesting an amendment to the CUP to allow for same.

G. The Township Planner and Township Engineer have reviewed the Application and Site Plan and provided detailed comments and reviews, the most recent being the Township Planner's reviews dated February 27, 2020, April 6, 2020 and April 27, 2020, and the Township Engineer's reviews dated February 27, 2020, April 2, 2020, April 30, 2020 and June 30, 2020 (together, the "Reports").

H. On April 13, 2020, the Planning Commission held a Special Meeting to consider the Application and to set a date for a public hearing. On May 4, 2020, the Planning Commission held a public hearing to consider the CUP. On June 1, 2020, July 6, 2020 and at a special meeting held on July 13, 2020, the Planning Commission extensively considered the application for CUP and requested additional information and clarifications from the Applicant.

I. The Township Planning Commission considered the Application and Site Plan, the reports and comments of the Township Planner and Township Engineer, and the comments of the public at the public hearing on the CUP as well as during public comment at each of the meetings described above, and adopted a resolution ("PC Resolution") approving the Site Plan and recommending approval of the CUP to the Township Board based on findings and subject to the conditions set forth in the PC Resolution. A copy of the PC Resolution is attached as Exhibit A.

II. STANDARDS AND FINDINGS – CONDITIONAL USE PERMIT

Section 74-137 of the Code states that any Conditional Land Use approval shall run with the land and shall remain unchanged except upon mutual consent of the Township Board and the landowner. The Planning Commission and Township Board must evaluate the proposed use to determine if it meets all the required standards listed in Code Sections 74-136 and 74-592.

Code Section 74-592 states that any approval of the CUP is conditioned upon Applicant's adherence to all of the performance standards set forth in Code Section 74-594, as well as the conditions of the PC Resolution and this Resolution.

Based on the foregoing and the PC Resolution, the Township Board adopts the standards and findings of the Planning Commission pertaining to the CUP pursuant to Code Sections 74-136 and 74-592 and, subject to the conditions of the Planning Commission as set forth in the PC Resolution (as modified and supplemented by the Township Board herein) approves the CUP for the Mining Activities on the Property.

III. CONDITIONS – CUP

Based on the foregoing, the Township Board approves the CUP as set forth in the PC Resolution, subject to the conditions set forth in the PC Resolution (as modified and supplemented by the Township Board herein), as follows, which conditions shall run with the Property and are required in order for no very serious consequences to occur in connection with the Mineral Activities on the Property:

1. Within one (1) year after approval of the CUP, Applicant shall plant evergreen trees within the 100-foot buffer adjacent to the existing single family home to the south of the Property so that a proper buffer will be established by the time that the Mining Activities will be located closer to the southern boundary line of the Property.

2. Applicant shall plant native species identified on the Bio-Retention Plant List described above for the 25-foot buffer around the lakes to be created in accordance with the reclamation plan included in the Application and approved Site Plan, except in those locations designated for boat launches or docks.

3. Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the Township.

4. In the event Applicant or any subsequent owner ceases use of the Property as described in this Resolution for a period in excess of 24 months, the CUP may be revoked in accordance with the Code.

5. Applicant shall reapply for a new conditional use permit within five (5) years after final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Code.

6. Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvements to Earhart Road prior to obtaining approval from the Township regarding the change in use. Applicant acknowledges and agrees that any change in the use of Earhart Road is a change in use under the CUP and will require an amendment to the CUP, or application for a new conditional use permit, in the sole discretion of the Township.

7. Applicant and Township must sign a Development Agreement in a form acceptable to the Township, as required by Section 74-177 of the Code, and Applicant must deposit the performance guarantees as required by Section 74-592 of the Code for restoration of the Property and to cover the costs of the Township Engineer in certifying conformance, as well as a cash escrow with the Township to allow the Township and WCRC to undertake additional dust control, grading and gravel application measures on Earhart Road.

8. Applicant shall remove all inoperable vehicles and equipment not used for Mining Activities from the Property within twelve (12) months after approval of the CUP.

9. In the event that a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Code within thirty (30) days of approval of this CUP. Further, Applicant shall plant grass seed to restore the neighboring property in the location of the road encroachment. In the event that the road does need to be relocated, the Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.

10. Applicant shall not perform any concrete, cement or asphalt production on the Property in accordance with Code Section 74-592.

11. The Owner, Applicant and their tenants shall comply with all comments, conditions and recommendations set forth in this Resolution and the Reports related to the CUP and Site Plan and any reports and comments of the Township Building and Zoning Official, Township Fire Chief, Township attorney and Township Utilities Department.

12. Applicant shall limit truck entering and exiting the Property to an average of fifty (50) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day.

13. Applicant shall track, compile and submit to the Township, in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the monthly daily average and monthly maximum counts.

14. Use of the Property shall be in accordance with this Resolution and other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.

15. All truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.

16. Crushing operations are prohibited within 300 feet of any neighboring residences.

17. Applicant shall not utilize chemicals in relation to the washing process of the Mining Activities (only water is permissible in relation to the washing process).

18. Prior to any Mining Activities, Applicant shall provide the Township (for administrative review) with updates of the Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.

19. Prior to creating a five (5) acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.

20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements a set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

IV. TOWNSHIP BOARD APPROVAL

Based on the foregoing findings and standards and subject to the foregoing findings and conditions, the Township Board approves the CUP for the Mining Activities on the Property.

RESOLUTION DECLARED ADOPTED.

Diane O'Connell
Township Supervisor

I certify that the foregoing is a true and complete copy of a resolution adopted by Township Board of the Ann Arbor Charter Township, County of Washtenaw, State of Michigan, at a regular meeting held on July 20, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Rena Basch
Township Clerk

Dated: July 29, 2020

EXHIBIT 6

L: 5382 P: 908 6549686 AG
10/22/2020 01:34 PM Total Pages: 42
Lawrence Kestenbaum, Washtenaw Co

Time Submitted for Recording
Date 10-21 20 20 Time 1:00 PM
Lawrence Kestenbaum
Washtenaw County Clerk/Register

DEVELOPMENT AGREEMENT
(AMC-WSG, LLC)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made effective October 12, 2020, by and among Ann Arbor Charter Township, a Michigan municipal corporation, whose address is 3792 Pontiac Trail, Ann Arbor, Michigan 48105 ("Township"), and AMC-WSG, LLC, a Michigan limited liability company, whose address is 4984 Earhart Road, Ann Arbor Township, Michigan ("Applicant").

RECITALS:

A. Applicant is the developer of the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, containing approximately 142 acres of property ("Property").

B. Applicant applied for a Conditional Use Permit for Mineral Mining ("CUP") to, among other things, increase the amount of materials mined on the Property, and upgrade tools and equipment located on the Property and use in connection with the Mining Activities (defined below). Applicant also requested approval of a combined preliminary and final site plan initially dated February 11, 2020, updated March 17, 2020 and updated again on May 12, 2020, and amended by a memo dated June 16, 2020, as well as changes to the plans administratively approved, dated October 14, 2020 (collectively the "Site Plan").

C. The Application includes plans for expanding the previous owner's (Washtenaw Sand and Gravel Co.) sand and gravel mining operation currently in operation on the Property. The new operation will use large pieces of equipment including front-end loaders, excavators, and dump trucks to mine the sand and gravel and to carry it to a wash plant on site. Unlike the previously existing operation of Washtenaw Sand and Gravel Co., the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily in March through November (referred to as the "peak season"), but there will be winter stockpiles depending on customer demand. Applicant has indicated that winter mining could occur if conditions are favorable for mining. Applicant estimates that, initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day during the peak season, and could go up to 80 per day during the peak season. Collectively, all plans set forth in the Application and outlined herein shall be referred to as the "Project". In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

D. The Project, Mining Activities and Site Plan are consistent with the July 13, 2020 Resolution of the Township Planning Commission recommending approval of the combined preliminary and final site plan and conditional use permit for mineral mining, with certain findings and conditions, subject to the modification set forth in the PC Resolution and Board Resolution (defined below). A copy of the July 13, 2020 Resolution of the Township Planning Commission is attached as Exhibit B ("PC Resolution").

E. The Township Board of Trustees by Resolution dated July 20, 2020 approved the CUP. A copy of the July 20, 2020 Resolution of the Township Board of Trustees is attached as Exhibit C ("Board

Resolution"). Collectively the PC Resolution and the Board Resolution shall be referred to as the "Resolutions."

F. The Property is owned by WSG Properties LLC, a Michigan limited liability company, whose address is 6966 Fisher Road, Jeddo, Michigan 48032 ("Owner"). Owner consented to the Application, and further consents to the execution and recording of this Agreement, binding the Property and any person or entity claiming any property right or ownership interest in the Property. The Owner's consent to this Agreement is evidenced by its execution of this Agreement attached herein.

G. The Resolutions and Section 74-177 of the Township's Code of Ordinances (the "Township Code") require that the Applicant and the Township enter into a development agreement incorporating the standards, findings and conditions for approval of the Site Plan and CUP and providing for deposit of performance guarantees as required by Sections 74-178 and 74-592(C)(12)(a)-(b) of the Township Code.

AGREEMENT

NOW, THEREFORE, for and in consideration of less than $100, and the mutual covenants and benefits of this Agreement, the receipt, adequacy and sufficiency of which is hereby acknowledged, and fully incorporating the above-stated recitals into this Agreement, the Township, Applicant and Owner agree as follows:

1. Incorporation of the Site Plan and CUP. The standards, findings and conditions for approval of the Site Plan and CUP as set forth in the Resolutions attached hereto as Exhibits B and C, and as required by the provisions of the Township Code are incorporated by reference in this Agreement. Applicant agrees to comply with all of the standards, findings and conditions of approval of the Site Plan and CUP including those set forth in the Resolutions, the Township Code, and other applicable laws and ordinances in the use and development of the Project and Mining Activities. The Site Plan approved by the Township Planning Commission in the PC Resolution and the Board Resolution consists of 27 sheets, and addresses comments set forth in the Resolutions and the reviews of the Township Planner and the Township Engineer (collectively, the "Township Consultants"), as it may be further amended consistent with Township Consultants comments ("Final Site Plan"). Failure to comply with the standards, findings and conditions of the Resolutions and the Township Code is a breach of this Agreement, subject to the rights and remedies of the Township as set forth herein.

2. Storm Water Agreements and Township Inspection Access. Applicant shall enter into a Stormwater Maintenance Agreement for the Project with the Township , as required by Sections 26-512 and 26-513 of the Township Code prior to issuance of a Certificate of Occupancy for the Project. The Applicant shall allow the Township, or its agent appointed by the Township, upon the presentation of credentials and, following appropriate site safety and security protocols to enter upon the permittee's premises upon reasonable advance notice during regular business hours where a stormwater management system is located in order to inspect such stormwater system for compliance with the provisions of the Storm Water Agreement.

3. Performance Guarantee; Escrow. Prior to conducting any Mining Activities at the Property or any activities related to the Project, Applicant shall deposit with the Township a performance guarantee in an amount and in a form acceptable to the Township and the Township Consultants and as approved by the Township attorney to guarantee restoration of the Property and to cover the costs of the Township Engineer in certifying conformance as provided in Section 74-592 of the Township Code ("Restoration Security Deposit"). The Restoration Security Deposit shall include funds for any inspection or enforcement activities by the Township to ensure proper operation and maintenance of the Stormwater Management System as set forth in the stormwater maintenance agreement described in Section 2 above as Section 74-513 of the Township Code.

4. Additionally, Applicant shall deposit a cash escrow in an amount acceptable to the Township and the Township Consultants to allow the Township and the Washtenaw County Road Commission to

undertake additional dust control, grading and gravel application measures on Earhart Road and Joy Road on an annual basis ("Road Escrow"). As set forth in a separately executed escrow agreement between the Township, Applicant and Owner, the Road Escrow shall be deposited annually by Applicant for the duration of the CUP.

5. Earhart Road; Report. As set forth in the Resolutions, Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvement to Earhart Road prior to obtaining approval from the Township regarding the change in use.. Applicant acknowledges and agrees that any change in the use of Earhart Road by Applicant is a change in use under the CUP and will require an amendment to the CUP and this Agreement, or application for a new conditional use permit, in the sole discretion of the Township.

6. Trips. Applicant shall limit trucks entering and exiting the Property to an average of fifty (50) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day. Applicant shall track, compile and submit to the Township, in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the daily average per month and monthly maximum counts. As set forth in the Resolutions, all truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.

7. Internal Roadway Encroachment. Applicant acknowledges and agrees that as of the date of this Agreement, a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Code by September 30, 2020. Further, Applicant shall plant grass seed to restore the neighboring property in the location of the road encroachment. Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.

8. Permits. The Applicant shall obtain all applicable building, grading, soil erosion control, EGLE, WCRC, WCWRC and other permits and approvals required by the Township Code and by other applicable governmental authorities prior to commencement of any Mining Activities or other changes to the Property contemplated by such permits.

9. Development. The Project and Property shall be constructed, used and maintained by the Applicant in a manner consistent with the Final Site Plan, the Resolutions and other resolutions and permits issued by the Township.

10. Re-Application. Applicant shall reapply for a new conditional use permit within five (5) years after final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Township Code.

11. Use. The Project shall be developed and used for the Mining Activities as shown on the Final Site Plan, and in accordance with the applicable zoning regulations.

12. Compliance with Agreements and Permits. Applicant shall comply with the terms of this Agreement, the Resolutions, the CUP, the Final Site Plan, and other applicable permits and agreements, including without limitation the stormwater maintenance agreement and other requirements of the Final Site Plan and Resolutions.

13. Notice to Cure. Upon Township's determination that a breach of this Agreement has occurred by Applicant or the Owner, Township shall provide written notice to Applicant and Owner of the breach, and except in the event of an emergency, a reasonable period of time in which to cure such breach, prior to the Township exercising its remedies hereunder. Township's failure to notify Applicant and/or Owner of a breach of this Agreement shall not be deemed a waiver of any breach of this Agreement.

14. Indemnification. Applicant and Owner shall defend, indemnify and hold the Township harmless from and against any and all claims, demands, actions, damages, injuries, costs or expenses of any kind or nature ("Claims"), arising out of breach of this Agreement by Applicant and/or Owner, including reasonable costs, expenses and attorneys' fees incurred by the Township in connection with such Claims or the enforcement of this Agreement.

15. Authority. Owner represents that it is the fee simple owner of the Property and the person signing this Agreement on behalf of the Owner is authorized to do so, and bind the Property to its terms. Owner hereby consents to the recording of this Agreement. Owner shall provide the consent and subordination of any existing mortgagee of Applicant or any other person with an interest in the Property prior to recording of this Agreement. Applicant represents that the person signing this Agreement on behalf of the Applicant is authorized to do so, and bind the Property to its terms.

16. Binding Effect; Remedies. This Agreement shall be binding on Applicant, the Owner and their transferees, successors and assigns, and any person or entity claiming any property right or ownership interest in the Project. This Agreement may be amended only by an amendment signed by all parties. This Agreement shall run with the land described in Exhibit A and shall be recorded in the office of the Washtenaw County Register of Deeds. A violation of this Agreement by Applicant shall be a violation of the Final Site Plan approval and shall entitle the Township to all rights and remedies available against such party at law or in equity including but not limited to those remedies set forth in Section 74-184 of the Township Code. In the event Developer fails to comply with or breaches any of its obligations under this Agreement, Township shall have, in addition to any other right and remedy the Township has under this Agreement, the Stormwater Maintenance Agreement, and/or under the Township Code, the right to enter onto the Property to perform the Developer's obligations, upon notice to Developer for access to the Property or otherwise exercise the Township's rights and remedies under this Agreement, including but not limited to performing maintenance. Notwithstanding the foregoing, the Township shall have no obligation to perform any maintenance or enforcement activities at the Project.

17. Governing Law and Venue. This Agreement shall be governed and construed according to the laws of the State of Michigan. The parties further agree that Washtenaw County Circuit Court shall be the exclusive forum and venue of any dispute arising from this Agreement.

[*signatures on following pages*]

Dated: 10-7-, 2020

APPLICANT:

AMC-WSG, LLC, a Michigan limited liability company

By: _____

Name: Robert W. Wilson

Its: Vice President

STATE OF MICHIGAN)
) ss.
COUNTY OF Washtenaw)

The foregoing instrument was acknowledged before me this 7 day of October, 2020, by Robert W. Wilson, the Vice President of AMC-WSG, LLC, a Michigan limited liability company, on behalf of such company.

_____
KATRINA KNAPPIN Notary Public
Washtenaw County, Michigan
Acting in the County of: Washtenaw
My Commission Expires: 10/2/26

[*signatures continue on the following page*]

OWNER:

WSG PROPERTIES LLC, a Michigan limited liability company

By: _____

Name: Robert W. Wilson

Its: Vice President

STATE OF MICHIGAN)
) ss.
COUNTY OF Washtenaw)

The foregoing instrument was acknowledged before me this 7 day of October, 2020, by Robert W. Wilson, the Vice President of WSG Properties LLC, a Michigan limited liability company, on behalf of such company.

_____
KATRINA KNAPPIN Notary Public
Sanilac County, Michigan
Acting in the County of: Washtenaw
My Commission Expires: 10/2/26

[*signatures continue on following page*]

Dated: OCTOBER 12, 2020

TOWNSHIP:

Ann Arbor Charter Township, a municipal corporation

By: Diane O'Connell
Diane O'Connell
Its: Supervisor

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me on this 12TH day of OCTOBER, 2020, by Diane O'Connell, the Supervisor of Ann Arbor Township, a Michigan municipal corporation on behalf of the Township.

Notary Public, _____
LIVINGSTON County, Michigan
Acting in WASHTENAW County, Michigan
My Commission Expires On: 10/14/2024

INSTRUMENT DRAFTED BY AND WHEN RECORDED RETURN TO:
Alexandra E. Dieck
Bodman PLC
201 S. Division, Suite 400
Ann Arbor, Michigan 48104

JOANNE M COLLINS
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF LIVINGSTON
My Commission Expires October 14, 2024
Acting in the County of WASHTENAW

EXHIBIT 7

VELLA PIT
MID MICHIGAN MATERIALS

4984 Earhart Rd.
Ann Arbor, MI 48105
734-668-7915

8 August 2023

Mr. Nathan Dupes
Bodman PLC
1901 St. Antoine Street
6th Floor at Ford Field
Detroit, Michigan 48226

Subject: Response to Ann Arbor Charter Township Questions
Mid Michigan Materials – Vella Pit Operations

Dear Mr. Dupes:

Mid Michigan Materials (MMM) and Haley & Aldrich of Michigan, Inc. (Haley & Aldrich) have reviewed your letter dated 10 July 2023 regarding MMM Vella Pit operations. The following presents responses to the questions/requests included in that correspondence.

Question 1. Any documentation explaining why residential wells in the vicinity of Vella Pit have been drying up or less productive than usual.

Response: A hydrogeological study is ongoing and is expected to be completed shortly; we will be prepared to present the results at an upcoming Township meeting. MMM has lowered the water level in one of its ponds on site in order to access the additional sand and gravel beneath the water using their existing equipment. The shallow aquifer is a "leaky confined aquifer," meaning the aquifer recharges more slowly than would normally be anticipated. The original modeling done for this project (by a previous consultant) used aquifer properties for an unconfined aquifer. Haley & Aldrich has developed the current model using the more accurate confined aquifer parameters. We have also identified several discrepancies and/or missing data in the publicly available well log information, compared with actual current on-site measurements. For example, some of the well logs are missing information regarding well pump depth. Other measurements appear to differ depending on which well driller installed the well. Yet other well locations (latitude/longitude and elevation) appear to be inaccurate. All of this data is critical to developing an accurate model and making accurate predictions as to the potential impact on wells. One of our primary goals is obtaining accurate information to improve the predictive abilities of the model. Additionally, MMM is conducting additional field work to further evaluate the properties of the aquifer using monitoring wells for more accurate modeling. The hydrogeologic investigation is also evaluating the impact of other large withdrawals in the area on the aquifer.

Question 2. Any hydrogeological or similar analysis of how current or proposed water withdrawals may impact the watershed, the aquifers, and nearby wells.

Response: As stated above, the hydrogeological analysis is ongoing, and we will be prepared to present those results at an upcoming Township meeting.

Question 3. Any hydrogeological or similar analysis concerning the Fleming Creek watershed, including surface elevation, water table, aquifer analysis (including transmissivity and productivity).

Response: We are not aware of any historic transmissivity or productivity data for Fleming Creek and its related wetland; however, MMM will be installing several monitoring wells to further evaluate the shallow aquifer properties and increase the reliability of the new model.

Question 4. Your client has suggested that mining operations have reached a "steady state," implying that additional wells will not be impacted. Provide documentation/analysis in support.

Response: MMM's mining operations have reached steady state, in that we do not plan to actively lower the water level any further in the portion of the pit where material is being mined. However, we will continue to pump to maintain the current water level. This is what MMM meant by "steady state." There was no intent to imply that additional wells would not be impacted, as that is the study that is currently ongoing.

Question 5. Measurements of current water elevation for: (a) settling basins, or any other reservoir that your client has dewatered/pumped or plans to dewater/pump, (b) wetlands impacted by NPDES discharge, (c) Fleming Creek and tributaries.

Response: We plan to install staff gauges as soon as possible depending on equipment availability (and supply chain issues) to get real-time data for these measurements. Elevations in the settling ponds can fluctuate (perhaps several feet) based on precipitation and MMM operations. However, below is a snapshot of the elevations on 1 August 2023:

Northwest Settling Pond: 899' 3"

Northeast Settling Pond: 901' 10"

Southwest Pond (bottom of active pit): 859' 6"

Southeast Settling Pond: 891' 5"

On 1 August 2023, there was no standing water in the wetland.

Question 6. Measurements of normal water elevation for (b) and (c) in previous.

Response: We do not have water level elevations for the wetlands or Fleming Creek prior to beginning discharge to Fleming Creek under our NPDES permit in 2022.

Question 7. State the intended future water elevations for the settling basins, or any other reservoir that your client has dewatered/pumped or plans to dewater/pump.

Response: The water elevation in the mine pit is intended to remain consistent at the current level. Elevations in the settling ponds will continue to fluctuate due to precipitation and water use within the operation.

Question 8. Current and historical surface area for the settling basins, or any other reservoir that your client has dewatered/pumped or plans to dewater/pump.

Response: Below is a table showing the estimated surface areas for the settling basins in 2021, when MMM began operations, and in July 2023.

Pond	2021 Estimated Surface Area	2023 Estimated Surface Area
Northwest Pond	3 acres	4.5 acres
Northeast Pond (historically two ponds)	North pond- 0.5 acres South pond- 0.2 acres	3.1 acres
Southwest Pond (in active mining area)	0.1 acres	1.4 acres
Southeast Pond	2.8 acres	2.9 acres

Question 9. Current and trailing six-month water withdrawal rates.

Response: MMM does not have historic withdrawal data. MMM has recently installed meters to accurately measure water withdrawal rates. We will provide that data as it is obtained.

Question 10. Hours of operation and capacity of each existing and proposed water withdrawal pump.

Response: There is only one groundwater withdrawal pump (in the bottom of the active pit), and it runs on a float system, so it turns on when the water level reaches a set point and runs until the water drops to the lower set point. Typically, the pump may run 24 hours a day, seven days a week during wet time periods and less than that during dryer weather. Other pumps on site move water that has already been withdrawn from one pond to another but do not withdraw additional groundwater. No additional pumps are proposed.

Question 11. Current NPDES permit for discharge to northern wetlands.

Response: The NPDES permit for the site is attached.

Question 12. All monitoring and flow data associated with NPDES discharge.

Response: The Discharge Monitoring Reports ("DMRs") for August 2022 through June 2023 are attached. The DMR for July 2023 is awaiting one additional laboratory report and will be provided once complete. Each report summarizes the daily flow for the month, along with the collected laboratory data. Prior to August 2022, MMM did not discharge. Note that initial DMRs (August 2022 through April 2023) likely overstated the actual discharge rates. MMM installed additional equipment on the discharge in April 2023 to more accurately measure the discharge, and identified the fact that prior measurements were overstated. This more recent (reduced) discharge data was confirmed with an ultrasonic flow meter that MMM rented to verify the discharge rate.

Question 13. "Records of any issues, MMM technical evaluation, findings, and corrective actions," as described in Part V of the Application, for operations to date.

Response: MMM has been working directly with residents as issues arise. In general, corrective actions taken included having residential wells evaluated by a professional well driller, lowering the pump if appropriate, or installing a new well if lowering the pump isn't beneficial. MMM has been responsive and made every effort to rectify each situation as quickly as possible.

Question 14. Part VII(4) of the Application states: "MMM withdraws the minimum amount of water necessary to efficiently run their operation…." Provide documentation/analysis supporting that statement.

Response: MMM follows water conservation principals in the course of aggregate mining and processing operations, as summarized in the attached water conservation best practices document. However, some level of dewatering is required in order to access the sand and gravel material for processing and sales. It is not beneficial to MMM or to the operation to remove more water than is necessary to access the sand and gravel reserves for mining purposes. Therefore, MMM withdraws only what is necessary to access the saleable material at the Site.

Question 15. Part VII(5)(b) of the Application states: "The current site water supply system has been evaluated and after reasonable water conservation measures have been implemented, additional water withdrawal is required to meet site requirements." Provide documentation/analysis supporting that statement.

Response: MMM follows water conservation principals in the course of aggregate mining and processing operations, as summarized in the attached water conservation best practices document. However, some level of dewatering is required in order to access the sand and gravel material for processing and sales. The water withdrawal is not due to needing water but required to access the materials in order to mine the sand and gravel.

Question 16. Part VII(5)(d) of the Application states: "Investigation of potential impact of pumping on the aquifer is ongoing." Provide documentation of any such investigation.

Response: See response above. The hydrogeological study of this area is ongoing. MMM's consultant, Haley & Aldrich, will be prepared to present the results of this study at an upcoming Township meeting There is no formal documentation to provide at this time.

Question 17. Provide any alternatives analysis conducted in connection with the Application.

Response: MMM has not prepared any formal alternatives analysis. However, based on our experience, any alternative mining method that would not require dewatering would not be economically feasible.

Question 18. Copies of any permits/other authorizations for operations other than NPDES, CUP, and proposed water withdrawal permit.

Response: The only other permit for this pit is a groundwater discharge permit, which is attached. On occasion, MMM may bring a temporary plant to the site to do additional crushing. The portable plant has an air permit that attaches to the temporary plant itself, not to the Vella location specifically. The temporary crusher has not been located on-site since last winter.

Please feel free to contact the undersigned if you have any questions or require additional information.

Sincerely,

Robert Wilson
Vice President

EXHIBIT 8

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
JACKSON DISTRICT OFFICE

PHILLIP D. ROOS
DIRECTOR

September 14, 2023

Violation Notice No. VN-014898

VIA EMAIL

Rob Wilson
Mid-Michigan Materials
4984 Earhart Road
Ann Arbor, Michigan 48105

Dear Rob Wilson:

SUBJECT: Violation Notice
Site Name: AMC-WSG LLC (Vella Pit)
Property Location: 4984 Earhart Road, Ann Arbor, Michigan 48105
National Pollutant Discharge Elimination System Permit No. MIG490349

On July 27, 2023, staff of the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), conducted a Compliance Evaluation Inspection (CEI) at the AMC-WSG LLC (Vella Pit), located at 4984 Earhart Road, Ann Arbor, Michigan to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq., and the administrative rules promulgated thereunder being 2006 AACS R 323.2101 et seq., as amended; The National Pollutant Discharge Elimination System (NPDES) Permit No. MIG490349 and NPDES, Notice of Coverage No. MIG490349, which was issued and effective on April 5, 2022.

WRD staff conducted a second inspection of the above referenced parcel of property on September 6, 2023, to determine compliance with Part 31, Water Resources Protection; and Part 91, Soil Erosion and Sedimentation Control, of the NREPA, MCL 324.9101 et seq., and the Administrative Rules promulgated thereunder, being 2005 AACS R 323.1701 et seq., as amended (Part 17 Rules); Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 et seq., and the administrative rules promulgated thereunder, being R281.811 et seq., as amended; and Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 et seq., and the administrative rules promulgated thereunder, being R281.921 et seq., as amended.

The Vella Pit is owned and operated by Mid-Michigan Materials (MMM). Current operations include mining and production of washed sand and stone. Reserve material is mechanically mined and hauled to the wash plant and sized for usable product. Finished product is stockpiled on site and the wastewater from the wash plant is routed

through four (4) on-site settling ponds for treatment and is discharged from the North pond to an unnamed tributary of Flemming Creek. Water is recirculated back to the wash plant from the pond directly West of the wash plant.

Bridgett Carver (WRD), Pat Norwood (MMM), and Nick Koch (MMM), participated in the on-site inspection on July 27, 2023, which included discussion of operations and sampling procedures, and a site tour inspection. Rob Wilson (MMM) participated in the on-site inspection via phone call to discuss records review, sampling review, and analytical methodology review. Post inspection records review, discharge monitoring report (DMR) spot checks, and analytical methodology was communicated with Rob Wilson and Leslie Nelson (Haley & Aldrich) via email. WRD would like to thank you all for your time and assistance with this inspection.

The following NDPES Permit items were discussed during the **July 27, 2023**, inspection:

1. Sampling procedures were discussed onsite with MMM staff. Total suspended solids (TSS) and total dissolved solids (TDS) samples were being taken as 3-part composite samples prior to being sent to Fibertec Environmental Services. According to the NPDES Mining Wastewater General Permit, the TDS sample type is a grab sample instead of a composite sample. Staff confirmed that they would change their procedures to reflect the permit sample type.

2. Flow monitoring was discussed onsite with MMM staff. The flow meter is located in the outfall pipe before the gate valve on the north side of the property. MMM staff stated that the flow meter was calibrated by an outside company in May 2023 and it was determined that if their flow was not filling the outfall pipe, then an accurate flow reading could not be obtained. After this was determined, MMM installed a gate valve to fix the issue. **Please submit the calibration record that was conducted by the Xylem in May 2023.**

3. Receiving waters turbidity was discussed onsite with MMM staff. WRD notified MMM staff of complaints that had recently been received of major turbidity reaching the Flemming Creek which inlets to Massey Lake. The operators were not aware of the issue at the time of the July inspection and the effluent discharge water appeared mostly clear with minimal turbidity. The discussion ended with the understanding that WRD staff would be investigating the turbidity complaints further via aerial photo review. MMM staff were asked to keep a close watch on the receiving waters during their daily outfall observation monitoring.

4. DMR Spot checks were conducted post inspection after records were sent via email on August 23, 2023. Upon review, two discrepancies were noted:

a. The May 3, 2023, DMR records show a pH analysis result of 7.8 SU; bench sheets provided via email on August 23, 2023, do not show any record of a pH analysis being conducted. In a follow up email communication on September 8, 2023, it was confirmed that the pH result submitted in the DMR was analyzed at the Fibertec Environmental Service laboratory two days after the sample was taken. This analysis result is invalid because it is outside the hold time of 15 minutes. It was also confirmed that an onsite analysis was conducted May 3, 2023, but that result was not recorded in the May DMR. **An email was sent to WRD staff on September 8, 2023, confirming the May, June, and July 2023 DMRS were revised with the correct on-site pH analysis results. No further action is needed.**

b. July 28, 2022, DMR records show a pH analysis result of 7.7 SU; bench sheets provided via email on August 23, 2023, do not show a record of a pH analysis being conducted. However, the bench sheet does show a 7.7 SU pH result on July 27, 2022. It may be likely that the pH result was recorded on the wrong day in the bench sheet or DMR. **Please confirm which date the pH 7.7 SU sample result was analyzed.**

5. Bench sheet records were reviewed post inspection during the DMR spot checks. On-site bench sheets include monitoring results for flow, pH, and outfall observation. Laboratory analysis sheets obtained from Fibertec Environmental Services are kept for TSS and TDS records. Sampler name, date, and time are recorded on the Chain of Custody (COC), analyst name, date and time are recorded on the laboratory analysis records. The COC was reviewed and was found to be satisfactory.

6. AMC-WSG LLC has reported the following Total Suspended Solids (TSS) monitoring violations occurring during the month of November 2022. These monitoring results are violations of your permit. **Please notify WRD staff of the cause of these TSS exceedances**

Date	Parameter	Effluent Limitation		Reported Values	
		Daily Maximum	Monthly Average	Daily Maximum	Monthly Average
11/16/2022	TSS	45		50	
11/30/2022	TSS	45		50	
11/2022	TSS Monthly		30		34

On August 11, 2023, WRD staff called Rob Wilson, Vice President of MMM to notify him of the ongoing turbidity investigation via aerial imagery review. In addition to the turbidity in the receiving waters of the unnamed tributary, Flemming Creek, and Massey Lake, WRD staff also notified Mr. Wilson of the potential Part 301, Inland Lakes and

Streams; Part 303, Wetlands Protection; and Part 91, Soil Erosion and Sedimentation Control, of the NREPA, concerns that had developed during the aerial photo review. A Microsoft Teams meeting was scheduled for August 15, 2023, with EGLE staff, MMM staff, and Haley & Aldrich staff, among others.

On August 15, 2023, a Microsoft Teams meeting was held to discuss potential violations at the Vella Pit under Part 31, Water Resources Protection; Part 91, Soil Erosion and Sedimentation Control; Part 301, Inland Lakes and Streams; and Part 303, Wetlands Protection, of the NREPA. During this meeting, it was determined that a second site inspection would be scheduled with all EGLE staff from the programs listed above. A second onsite inspection was scheduled and conducted on September 6, 2023.

The September 6, 2023, inspection was conducted by EGLE staff Bridgett Carver (Part 31), Matt Konieczki (Part 91), Jeff Pierce and Jim Bales (Part 301 and Part 303), and Andrew LeBaron (Water Use Program). MMM staff Rob Wilson lead the inspection tour with Leslie Nelson from Haley & Aldrich, along with Ken Vermeulen with Honigman LLP.

During the September 6, 2023, inspection, WRD staff observed the following:

1. Discharge of Sediment to Waters of the State: WRD staff observed the discharge of sediment to the unnamed tributary stream, Flemming Creek, Massey Lake, and adjacent wetlands. Additionally, the discharged sediment has accumulated within the wetlands, on the streambed of the unnamed tributary and Flemming Creek, and on bottomland of Massey Lake. The primary source of this sediment discharge appears to be from erosion runoff from the northern berm and erosional scouring at the effluent discharge outfall. The discharge of sediment to Waters of the State is a violation of Part 31, Water Resources Protection, of the NREPA, Section 324.3109 (1) and Part 91, Soil Erosion and Sedimentation Control, of the NREPA. Additionally, the accumulated sediment in the wetlands, the unnamed tributary, Flemming Creek, and Massey Lake is considered a filling of wetlands and a diminishment of the streams and lake, which are violations under Part 303, Wetlands Protection, and Part 301, Inland Lakes and Streams, of the NREPA, respectively.

2. Soil Erosion and Sedimentation Controls (SESC) Measures: Off-site sediment discharges were observed on the northern berm as a result of inadequate SESC measures. Additionally, erosion and off-site sediment discharges were noted at several locations on the east side of the site as a result of inadequate SESC measures. Failure to properly install and/or maintain SESC measures, extensive erosion, and off-site sediment discharges constitute violations of Part 91, Soil Erosion and Sedimentation Control, of the NREPA.

3. Construction/enlargement of a Waterbody within 500 feet of a stream: WRD staff have observed that the northern pond was constructed and enlarged in 2021 and 2022 and is within 500 feet of Flemming Creek without a permit. The

construction and/or enlargement of an artificial waterbody within 500 feet of a stream requires a permit under Part 301, Inland Lakes and Streams, of the NREPA. This activity is therefore in violation of Part 301.

4. Mining of the Southern Lake: A review of aerial imagery has identified that a waterbody with an approximate area of 2.66 acres was present in the southwest of the site in 2020 when the site was purchased by MMM. This waterbody was expanded through mining operations by MMM in 2021 and 2022 and resulted in creation of approximately five (5) acres of surface water, which is considered a lake under Part 301, Inland Lakes and Streams, of the NREPA. Aerial imagery from 2021 and 2022 shows the presence of this approximate five (5) acre lake until pumping operations began in 2022. The subsequent pumping operation has now drawn down the surface water and drained the lake. The creation, enlargement or diminishment of a lake requires a permit under Part 301. No permits have been applied for nor issued for this activity and is therefore in violation of Part 301.

MMM's current pump's rated capacity is 4.8 million gallons per day (MGD). A new or increased withdrawal above two (2) MGD requires a Part 327, Great Lakes Preservation, of the NREPA permit. The maximum pumping rate on MMM's current registration (registration id 8976-20234-35) is 2 MGD.

The violations identified in this Violation Notice are continuing. The violations identified in this letter are violations of Part 31, Water Resources Protection, Section 324.3109 (1); Part 91, Soil Erosion and Sedimentation Control; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 327 Great Lakes Preservation, of the NREPA. MMM should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31, Water Resources Protection; Part 91, Soil Erosion and Sedimentation Control; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 327, Great Lakes Preservation.

To bring the site into compliance with Part 31, Water Resources Protection, Section 324.3109 (1) and Part 91, Soil Erosion and Sedimentation Control, of the NREPA, MMM must do the following:

1. Submit, within 30 days of this letter or an agreed upon schedule, a detailed plan for review on how MMM will reduce the velocity of effluent discharge at the outfall and adequately dissipate the effluent discharge to prevent erosion and discharge of injurious turbidity to Waters of the State. Two potential options for addressing the discharge velocity that were discussed during our on-site meeting were installation of velocity control structures at the outfall or moving the outfall discharge location to an upland location with construction of a sediment basin at the outfall. The modification of the outfall may require a permit under Part 301, Inland Lakes and Streams, of the NREPA, and/or a revision to the NPDES permit.

2. Submit by October 13, 2023, documentation (including photos) summarizing actions taken to address these violations and a brief plan summarizing any remaining actions to be taken with estimated completion dates. This should include proposed actions for installing adequate SESC measures at the site and any additional actions MMM proposes to remove accumulated discharged sediments to off-site Waters of the State and/or reduce continued mobilization of these sediments to Waters of the State during storm events.

3. Submit by November 13, 2023, documentation (including photos) summarizing how these violations have been adequately addressed. Note: A follow-up inspection may be completed, if necessary.

In consideration of the requirements of Part 301, Inland Lakes and Streams, of the NREPA, the WRD may be able to consider processing an After-the-Fact permit application for the enlargement of the pond within 500 feet of a stream and the excavation, expansion, and drawdown of a lake for the mining operations. To aid in WRD's review of the Part 301 violations, we are requesting you provide, by no later than 30 days from the date of this letter, the following information:

1. A copy of the current mining development plans, including plan views, cross-sections, and elevations of the previously existing ground surface and proposed final grades. These plans should also include the proposed future mining areas and final proposed area of the lake created from mining.

2. A Potentiometric Surface Map and/or contour map of water table elevations across the site. The map should also include the direction of groundwater flow, locations of monitoring wells on the site, and water-level measurements from nearby wetlands, streams, and lakes.

3. A Hydrogeologic Investigation Report and Modelling. It is WRD's understanding that MMM is currently developing the Hydrogeological Investigation report at this time, please submit any baseline information that is already prepared for the report and provide an estimated timeline for when the Hydrogeological Investigation will be completed.

To bring the site into compliance with Part 327, Great Lakes Preservation, of the NREPA, MMM must reduce the capacity of pump(s) withdrawing from waters of the State to no more than two (2) million gallons per day.

If you have any additional information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

Compliance with the terms of this Violation Notice does not relieve MMM of any liability, past or present for failure to comply with Part 31, Water Resources Protection; Part 91, Soil Erosion and Sedimentation Control; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 327, Great Lakes Preservation, of the NREPA.

The WRD reserves the right to take all necessary and appropriate enforcement actions for all violations observed to date and any violations that occur in the future. This may include civil action seeking fines, enforcement costs, injunctive relief, and potential criminal prosecution.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding Part 91 violations, please contact Matt Konieczki at KonieczkiM@Michigan.gov or 517-867-0745; Part 301/Part 303 violations, please contact Jeff Pierce at PierceJ2@Michigan.gov or 517-416-4297; Part 31 violations please contact Bridgett Carver at CarverB@Michigan.gov or 517-257-7380; Part 327 violations please contact Andrew LeBaron at LebaronA@Michigan.gov or 517-599-3792. You may also contact the EGLE, WRD, Jackson District Office, 301 East Louis Glick Highway, Jackson, Michigan 49201-1535.

Sincerely,

Tiffany J. Myers, Water Quality Supervisor
Jackson District Office
Water Resources Division
517-243-4915

Jeff Pierce, Water Resources Supervisor
Jackson District Office
Water Resources Division
517-416-4297

cc: Rick Judkins, Ann Arbor Charter Township (via email)
Nick Koch, Mid-Michigan Materials (via email)
Pat Norwood, Mid-Michigan Materials (via email)
Leslie Nelson, Haley & Aldrich (via email)
Rob Wilson, Haley & Aldrich (via email)
Ken Vermeulen, Honigman LLP (via email)
Jim Bales, EGLE, WRD (via email)
Bridgett Carver, EGLE, WRD (via email)
Matt Konieczki, EGLE, WRD (via email)
Andrew LeBaron, EGLE, WRD (via email)

EXHIBIT 9

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP, a Michigan municipal corporation, Plaintiff, v. WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company, Defendants.	Case No. -CZ Hon.

AFFIDAVIT OF TANYA WHELAN

I, Tanya Whelan, being duly sworn, state as follows:

1. I am a Michigan resident, am over the age of eighteen, and am competent to testify. If called to testify, I will testify in accordance with this affidavit.

2. I live at 4014 Earhart Road in Ann Arbor Township, Michigan, with my husband, teenage son, daughter (when she is home from university), and dog. Our property is approximately 12 acres in size, but our house is located very close to the corner of Earhart and Warren Roads.

3. We purchased our property in 2014 and moved into our house in 2015 after performing renovations. Our property is supplied by an on-site water well. Municipal water service is not available at our property.

4. The Vella Pit mining operation is located less than half of a mile north from our property.

5. When we moved into our home, we did not experience any significant issues concerning the Vella Pit operations. A few years later, a company I know as Mid Michigan

Materials, or "MMM," took over operations at the Vella Pit. Since MMM took over the Vella Pit, we have experienced significant impacts to our use and enjoyment of our property.

6. Around Christmas 2022, we first noticed our water sputtering and bubbling when we tried to use it. Around the end of December 2022, our water went completely dry, forcing us to use bottled water for a couple of weeks until we could have our well pump lowered.

7. When our water went dry, we first reached out to CGC Water Treatment, the company that services our well equipment and treatment system. CGC Water Treatment replaced our pressure tank, which did not fix the problem.

8. In early January 2023, we hired Mike's Well & Pump Service LLC. Mike's told us that our well's static water level had dropped at least 15 feet, which was the cause of our well going dry. On January 9, 2023, Mike's lowered our pump 7 feet. We paid approximately $1,668 to have the pump lowered.

9. Since the pump was lowered, we had to call CGC Water Treatment for more frequent service visits and had to purchase more water softening chemicals because the water drawn from the lower pump had more minerals (or, was "harder") than our previous supply. This increased the expense of maintaining our water supply.

10. During the summer of 2023, our water began sputtering again. Because lowering the pump farther was not an option due to the depth of our well, we were forced to have a new well drilled. Our replacement well was installed by Ann Arbor Well Drilling, Inc. in the middle of August 2023. Our replacement well was drilled to a depth of 92 feet.

11. We were not able to use our new well until last week (the week of September 18, 2023). We had to have the well bleached to address bacterial concerns, then had to have the water tested twice before Washtenaw County cleared us to begin using the well.

12. Before our new well was safe to use, we again had to purchase bottled water for our domestic needs. In total, we have had to use bottled water for 7 weeks due to our well issues.

13. Installation of a new well also caused significant damage to our landscaping, which will need to be repaired.

14. Around the time we had the new well installed, I contacted Rob Wilson of MMM. Mr. Wilson said that he would take care of any issue relating to our need for a new well. I believe that MMM has paid for our new well because, after I contacted Mr. Wilson, Ann Arbor Well Drilling contacted Mr. Wilson directly and I never received an invoice from the well driller for the installation costs. However, MMM has not reimbursed us for any of our other costs, including the cost to lower the pump in our original well, increased cost for well water treatment, cost of bottled water, and landscaping costs to repair the damage caused by the new well installation. Nor have we been compensated for any of the time we have spent addressing the water issues, nor the stress and anxiety those issues have caused.

15. Unfortunately, loss of our water supply is not the only complaint we have concerning MMM's operations, as I describe below.

16. MMM operates Monday through Saturday. Typically, at least four out of MMM's six working days their trucks start driving by our house before 7:00 a.m., and sometimes well before 7:00 a.m. On average we have trucks passing in front of our house every 6 minutes. When the double train gravel trucks drive by our house, the super loud rumbling and rattling of the trucks are extremely loud, such that we have to wait for the trucks to pass before resuming a

conversation. The decibel levels are consistently above 94 and are in violation of the environmental noise nuisance ordinance.

17. Due to the weight and loud rumbling and rattling of the double train gravel trucks, we consistently experience our whole house shaking and vibrating. This problem is sometimes so bad that, on days that I work from home, I will work from a coffee shop rather than work from my house.

18. The trucks also generate a lot of dust on our property, so much so that, typically every Sunday, we use a leaf blower to blow the dust off our driveway and other parts of our property.

19. We did not experience the same types of problems from the trucks that were used before MMM operated the Vella Pit. The prior operators used much smaller trucks for their operations, resulting in much lower noise and vibration levels, operated during normal business hours, took care of Earhart road, and had a lower truck count.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

Tanya Whelan

Subscribed and sworn to before me
this 28 day of September, 2023

Notary Public
Wayne County, State of Michigan
Acting in Wayne County, Michigan
My Commission Expires: July 12, 2025

RODOLFO PANTOJA-CALVILLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jul 12, 2025
ACTING IN COUNTY OF Wayne

EXHIBIT 10

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP, a Michigan municipal corporation,

Plaintiff,

v.

Case No. -CZ

Hon.

WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,

Defendants.

AFFIDAVIT OF JOHN DARISH

I, John Darish, being duly sworn, state as follows:

1. I am a Michigan resident, am over the age of eighteen, and am competent to testify. If called to testify, I will testify in accordance with this affidavit.

2. I live at 4715 Ridge Creek Lane in Ann Arbor Township, Michigan, with my wife and pets.

3. Our property is adjacent and to the east of the Vella Pit mining operation.

4. We had our well installed on June 14, 2021, by Cribley Well Drilling. At that time, the static water level was 18 feet.

5. In summer 2023, we learned that some of our neighbors' wells had run dry due to the operations at the Vella Pit.

6. Because of these concerns, we had Cribley check our well on August 21, 2023. On that date, the static water level was 43.25 feet, which was only approximately 1.5 feet from our existing pump.

7. These measurements show that our water level has dropped 25.25 feet in just 26 months.

8. Because it appeared that we were about to lose our water supply, we had our pump lowered 8 feet on August 25, 2023. We paid $386.40 for this work.

9. We also have experienced other adverse impacts from the operations at the Vella Pit.

10. We frequently hear heavy truck traffic before 7:00am several days per week, which I understand is earlier than the Vella Pit is authorized to operate.

11. Part of our property borders Massey Lake, which appears to have sediment from the Vella Pit flowing into it. We have noticed that the water in Massey Lake is less clear than it was previously and that vegetation in the lake has died off.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

John Darish

John Darish

Subscribed and sworn to before me
this 28 day of Sept, 2023

Cinthia Johnston
Notary Public
Wayne County, State of Michigan
Acting in Wayne County, Michigan
My Commission Expires: 12/27/2025

CINTHIA M JOHNSTON
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
ACTING IN THE COUNTY OF Wayne
MY COMMISSION EXPIRES 12/27/2025