

REZONING APPLICATION #05-17

O-N MINERALS/dba CARMEUSE LIME & STONE

Staff Report for the Planning Commission

Prepared: November 1, 2017

Staff Contact: Candice E. Perkins, AICP, CZA, Assistant Director

| | <u>Reviewed</u> | <u>Action</u> |
|-----------------------|-----------------|---------------|
| Planning Commission: | 11/15/17 | Pending |
| Board of Supervisors: | 12/13/17 | Pending |

PROPOSAL: To rezone 394.2+/- acres from the EM (Extractive Manufacturing) District with proffers to the EM (Extractive Manufacturing) District with revised proffers. The Middletown site was originally rezoned to the EM (Extractive Manufacturing) District with Rezoning #03-06 for O-N Minerals (Chemstone) which was approved in 2008. The Applicant is seeking to revise the proffers pertaining to viewshed plans, berms, landscaping and cemetery access.

LOCATION: The properties are located west of the Town of Middletown. Specifically, the Middle Marsh Property is located east of Belle View Lane (Route 758), and west and adjacent to Hites Road (Route 625), and is further traversed by Chapel Road (Route 627). The Northern Reserve is bounded to the south by Cedar Creek, and is west and adjacent to Meadow Mills Road (Route 624).

EXECUTIVE SUMMARY & STAFF CONCLUSION FOR THE 11/15/17 PLANNING COMMISSION MEETING:

The purpose of this application is to request a proffer amendment to Rezoning #03-06 for O-N Minerals (Chemstone) which was approved in 2008. Rezoning #03-06 rezoned 394.2+/- acres from the EM (Extractive Manufacturing) District with proffers.

This amendment seeks to remove the previously proffered Overall Plan, Phasing I, II, III and IV Plans and the twelve viewshed plans which were all components of the General Development Plan (GDP). This rezoning seeks to eliminate these components and only utilize one GDP sheet. The proposed amendment also seeks to remove the maximum and minimum berm heights, revise the timing of the installation of the berms and seeks to remove the landscaping exhibit for the berms. The amendment also seeks to revise the entrance to one of the two cemeteries located on the site. All other proffers remain generally consistent with the 2006 approved rezoning and proffer statement.

Elements of the rezoning application have been identified that should be carefully evaluated to ensure that they fully address the impacts associated with this amendment. The Planning Commission should pay particular attention to the berm height amendments and cemetery access amendments proposed with this proffer amendment.

Following the required public hearing, a recommendation regarding this rezoning application to the Board of Supervisors would be appropriate. The Applicant should be prepared to adequately address all concerns raised by the Planning Commission.

This report is prepared by the Frederick County Planning Staff to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this application. It may also be useful to others interested in this zoning matter. Unresolved issues concerning this application are noted by staff where relevant throughout this staff report.

| | <u>Reviewed</u> | <u>Action</u> |
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MAGISTERIAL DISTRICT: Back Creek

PROPERTY ID NUMBERS: 83-A-109 and 90-A-23 (portions of)

PROPERTY ZONING: EM (Extractive Manufacturing) District

PRESENT USE: Quarry and Undeveloped

ADJOINING PROPERTY ZONING & PRESENT USE:

| | |
|--------------------------------------|-------------------------------|
| North: RA (Rural Areas) | Use: Residential |
| South: EM (Extractive Manufacturing) | Use: Shenandoah County |
| East: RA (Rural Areas) | Use: Residential/Agricultural |
| West: RA (Rural Areas) | Use: Residential/Agricultural |

PROPOSED USES: Quarry

REVIEW EVALUATIONS:

Frederick County Attorney: *Please see attached email from Roderick B. Williams, County Attorney, dated June 26, 2017.*

Planning & Zoning:

1) **Site History:**

The original Frederick County zoning map (U.S.G.S. Middletown Quadrangle) identifies the subject parcels as being zoned A-2 (Agricultural General). The County's agricultural zoning districts were subsequently combined to form the RA (Rural Areas) District upon adoption of an amendment to the Frederick County Zoning Ordinance on May 10, 1989. The corresponding revision of the zoning map resulted in the re-mapping of the subject property and all other A-1 and A-2 zoned land to the RA District. The subject properties were rezoned to the EM (Extractive Manufacturing) District with the approval of Rezoning #03-06 on May 28, 2008 (see attached original proffers).

2) **Comprehensive Plan:**

The 2035 Comprehensive Plan is the guide for the future growth of Frederick County.

The 2035 Comprehensive Plan is an official public document that serves as the Community's guide for making decisions regarding development, preservation, public facilities and other key components of Community life. The primary goal of this plan is to protect and improve the living environment within Frederick County. It is in essence a composition of policies used to plan for the future physical development of Frederick County.

The Area Plans, Appendix I of the 2035 Comprehensive Plan, are the primary implementation tool and will be instrumental to the future planning efforts of the County.

Land Use

The subject properties are located within the Rural Areas of Frederick County and are outside of the limits of the Urban Development Area (UDA) and the Sewer and Water Service Area (SWSA). The Rural Areas land use designation is defined in the Comprehensive Plan as all areas outside of the designated Urban Development Area. The primary land uses in the Rural Areas are agriculture and forests. The primary growth pattern consisting of widely scattered, large lot residential development.

Transportation and Access.

The Eastern Road Plan of the Comprehensive Policy Plan does not cover this portion of the County. Per the 2006 rezoning, site access continues to be via the existing quarry entrance on McCune Road (Route 757) – *See proffer 2.1*

3) **Historic:**

The Historic Resources Advisory Board (HRAB) reviewed the original 2006 rezoning

application on December 20, 2005. This rezoning does not increase the historic impacts from the original rezoning application. Staff would note that the Applicant has completed the 8-acre land dedication to the Cedar Creek Battlefield Foundation as stated in proffer 3.1, as well as, the Phase I Archeological Survey per proffer 3.2.

4) **Proffer Statement – Dated June 13, 2005; revised September 25, 2017:**

Proposed revisions from the approved proffer statement (please see attached redline copy of the proffer statement):

- **Proffer Introduction:** This proffer amendment proposes to remove the previously proffered Overall Plan, Phasing I, II, III and IV Plans and the twelve viewshed plans. The amended proffer proposes to only utilize a Generalized Development Plan which was also part of the previously approved rezoning.
 - The proffered overall plan depicted the proposed quarry areas and the well monitoring locations. The proposed GDP shows future quarry activities, berm locations, but does not show the well monitoring locations.
 - The Phasing I, II, III and IV Plans of the GDP from the approved rezoning show a phasing sequence for the development of the property. While the phasing plans that were part of the proffered GDP are proposed to be removed with this amendment, the phasing text has been retained in proffer 15 and is consistent with the approved rezoning.
- **Site Development – Proffer 2.2 - Berm Height** - This proffer amendment proposes to remove the maximum and minimum berm heights, revises the timing of the installation of the berms and removes the landscaping exhibit:
 - Berms were proffered with a maximum height of 30 feet and a minimum height of 10 feet. The amendment removes all reference to the height of the berms.
 - *Berm Installation* - Berm A and Berm B were to be installed within 10 years of the approval of the proffer (2018) and Berm C and Berm D were to be installed no later than 10 years prior to the commencement of mining north of Chapel Road. The proffer now states that the berms will be installed prior to the commencement of any extraction of materials.
 - The amendment removes Exhibit 3 which pertained to the description of the plants to be installed on the berms.

Staff Comment: *Staff has concern regarding the total elimination of the berm height range proffer. If approved, the applicant would have total discretion on the berm heights provided. The applicant should provide additional information on the*

minimum proposed berm height or if a minimum berm height is regulated by the Virginia Department of Mines, Minerals and Energy (VDMME).

- **Historic Resources – Proffer 3.3** – This proposed amendment seeks to relocate the access for the second cemetery located on parcel 109. Access to this cemetery is currently provided via Marsh Book Lane which is a private right-of-way. The approved rezoning stated that the applicant would improve this right of way within 12 months of completion of the cemetery restoration.
 - This proffer amendment seeks to eliminate the Marsh Brook Lane access and provide a new right-of-way that would provide access to the cemetery to Chapel Road.
 - This amendment does not contain a timeline for the installation of this roadway and does not contain a backup if agency approval cannot be obtained for the new access point on Chapel Road.

All other proffers remain generally consistent with the 2006 approved rezoning and proffer statement.

EXECUTIVE SUMMARY & STAFF CONCLUSION FOR THE 11/15/17 PLANNING COMMISSION MEETING:

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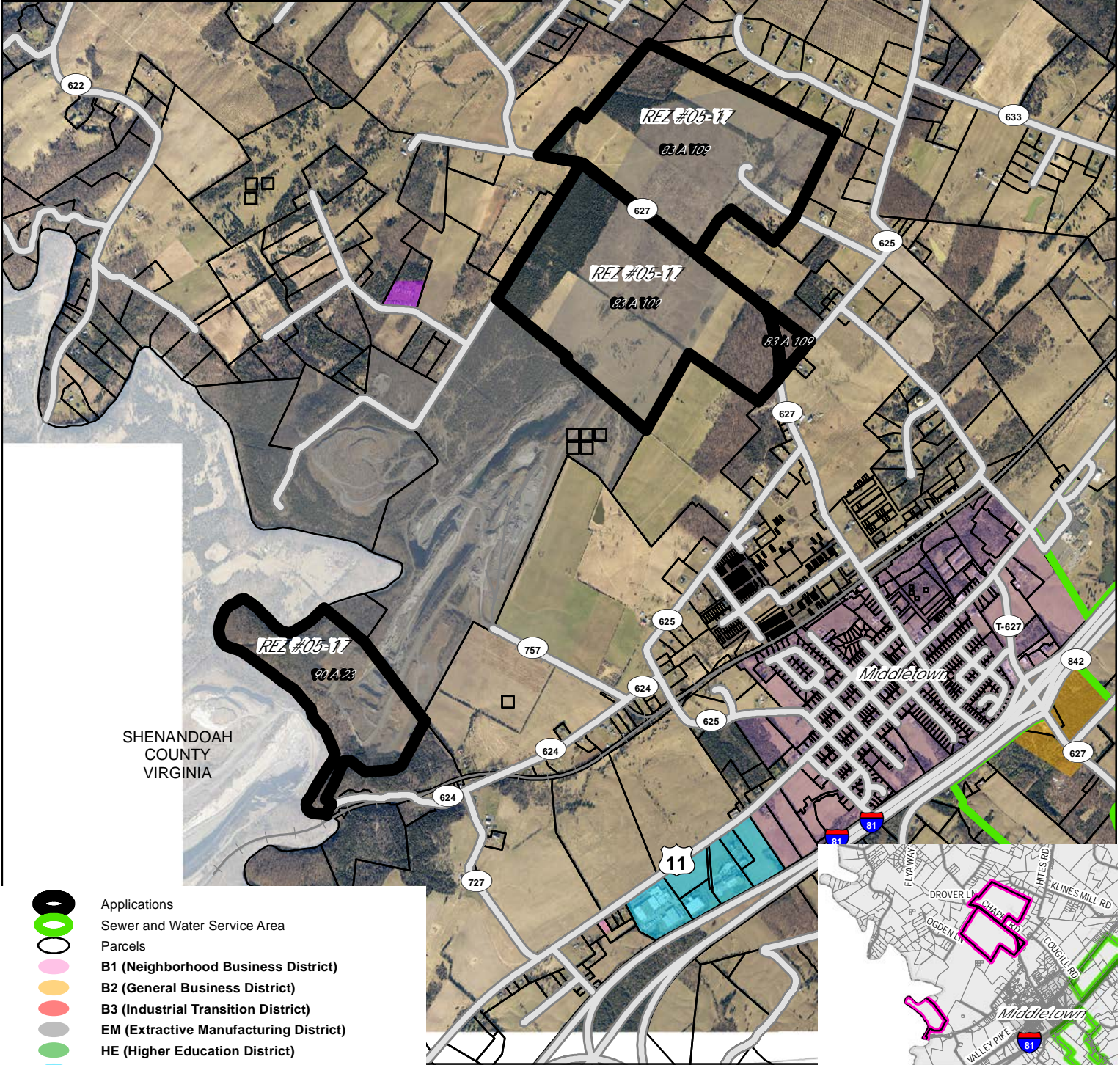
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Elements of the rezoning application have been identified that should be carefully evaluated to ensure that they fully address the impacts associated with this amendment. The Planning Commission should pay particular attention to the berm height amendments and cemetery access amendments proposed with this proffer amendment.

Following the required public hearing, a recommendation regarding this rezoning application to the Board of Supervisors would be appropriate. The Applicant should be prepared to adequately address all concerns raised by the Planning Commission.

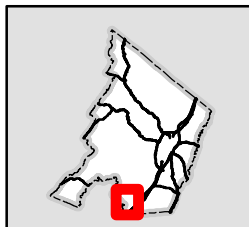
REZ # 05 - 17 O-N Minerals (Chemstone) Co.

PINs:
83 - A - 109, 90 - A - 23
Rezoning from EM to EM
Zoning Map



SHENANDOAH
COUNTY
VIRGINIA

- Applications
- Sewer and Water Service Area
- Parcels
- B1 (Neighborhood Business District)
- B2 (General Business District)
- B3 (Industrial Transition District)
- EM (Extractive Manufacturing District)
- HE (Higher Education District)
- M1 (Light Industrial District)
- M2 (Industrial General District)
- MH1 (Mobile Home Community District)
- MS (Medical Support District)
- OM (Office - Manufacturing Park)
- R4 (Residential Planned Community District)
- R5 (Residential Recreational Community District)
- RA (Rural Areas District)
- RP (Residential Performance District)



REZ # 05 - 17 O-N Minerals (Chemstone) Co.

PINs:
83 - A - 109, 90 - A - 23
Rezoning from EM to EM
Zoning Map

Note:
Frederick County Dept of
Planning & Development
107 N Kent St
Suite 202
Winchester, VA 22601
540 - 665 - 5651
Map Created: October 18, 2017
Staff: cperkins



0 1,600 3,200 6,400 Feet

REZ # 05 - 17

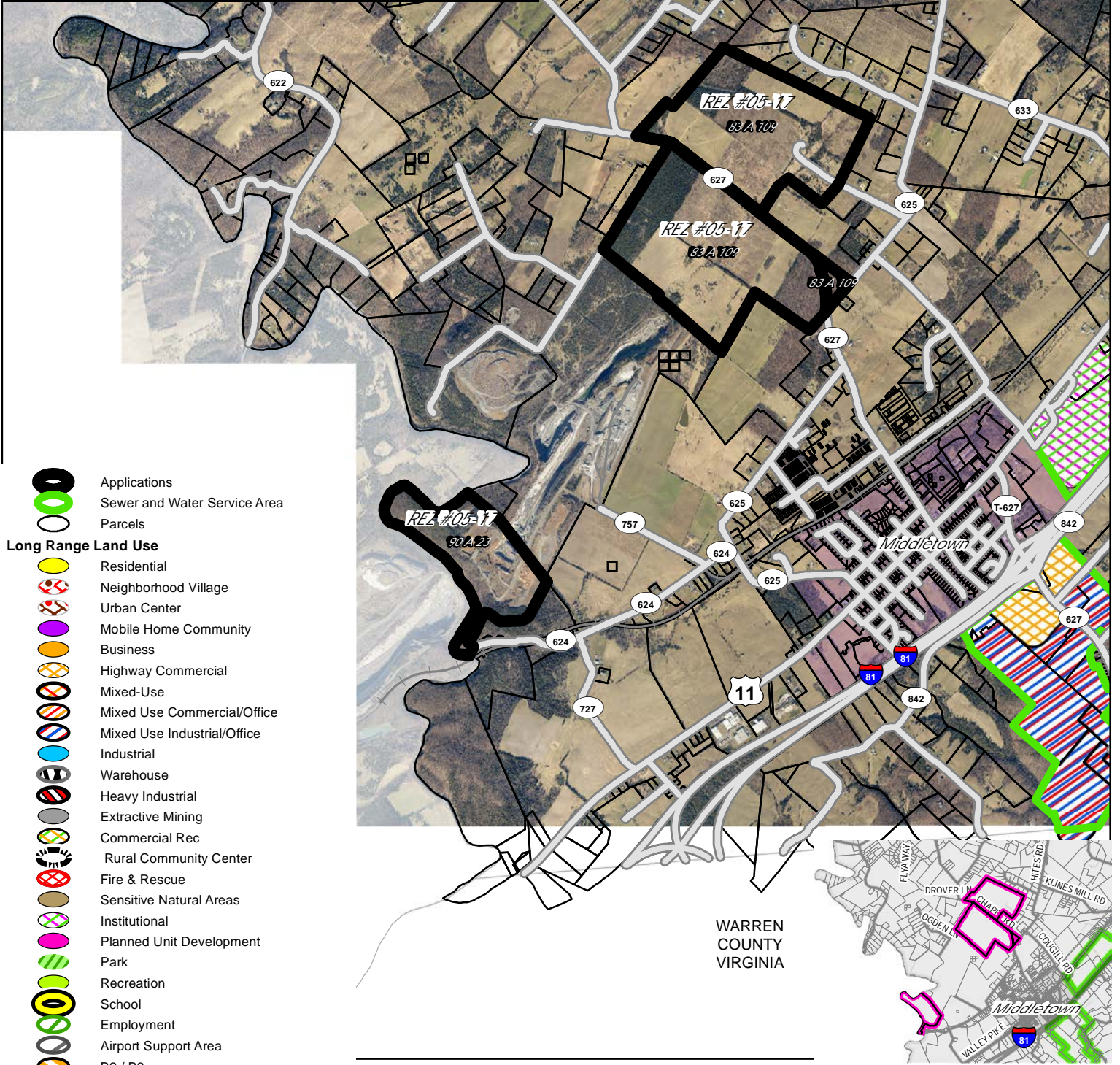
O-N Minerals (Chemstone) Co.

PINs:

83 - A - 109, 90 - A - 23

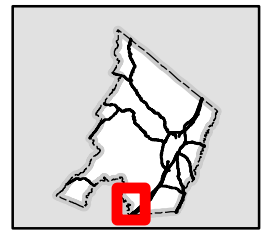
Rezoning from EM to EM

Long Range Land Use Map



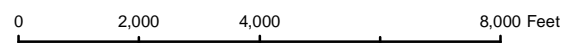
-  Applications
-  Sewer and Water Service Area
-  Parcels
- Long Range Land Use**
-  Residential
-  Neighborhood Village
-  Urban Center
-  Mobile Home Community
-  Business
-  Highway Commercial
-  Mixed-Use
-  Mixed Use Commercial/Office
-  Mixed Use Industrial/Office
-  Industrial
-  Warehouse
-  Heavy Industrial
-  Extractive Mining
-  Commercial Rec
-  Rural Community Center
-  Fire & Rescue
-  Sensitive Natural Areas
-  Institutional
-  Planned Unit Development
-  Park
-  Recreation
-  School
-  Employment
-  Airport Support Area
- B2 / B3
- Residential, 4 u/a
- High-Density Residential, 6 u/a
- High-Density Residential, 12-16 u/a
- Rural Area
- Interstate Buffer
- Landfill Support Area
- Natural Resources & Recreation
- Environmental & Recreational Resources

WARREN COUNTY VIRGINIA



REZ # 05 - 17
 O-N Minerals
 (Chemstone) Co.
 PINs:
 83 - A - 109, 90 - A - 23
 Rezoning from EM to EM
 Long Range Land Use Map

Note:
 Frederick County Dept of
 Planning & Development
 107 N Kent St
 Suite 202
 Winchester, VA 22601
 540 - 665 - 5651
 Map Created: October 18, 2017
 Staff: cperkins



**REZONING APPLICATION FORM
FREDERICK COUNTY, VIRGINIA**

To be completed by Planning Staff:

| | | | |
|-------------------------|-----------------|------------------|-------------------------------|
| Zoning Amendment Number | <u>05-17</u> | Fee Amount Paid | \$ <u>10,000⁰⁰</u> |
| PC Hearing Date | <u>11/15/17</u> | Date Received | <u>10/17/17</u> |
| | | BOS Hearing Date | <u>12/13/17</u> |

The following information shall be provided by the applicant:

All parcel identification numbers, deed book and page numbers may be obtained from the **Office of the Commissioner of Revenue, Real Estate Division, 107 North Kent Street, Winchester.**

1. Applicant:

O-N Minerals (Chemstone) Company

Name: d/b/a Carmeuse Lime & Stone Telephone: 540-465-6802

Address: 11 Stanwix Street, 21st Floor
Pittsburgh, PA 15222

2. Property Owner (if different than above):

Name: _____ Telephone: _____

Address: _____

3. Contact person if other than above:

Name: Thomas Moore Lawson, Esq. Telephone: (540) 665-0050

4. Property Information:

- a. Property Identification Number(s): 83-A-109 & 90-A-23
- b. Total acreage to be rezoned: 394.2
- c. Total acreage of the parcel(s) to be rezoned (if the entirety of the parcel(s) is not being rezoned): _____
- d. Current zoning designation(s) and acreage(s) in each designation: Extractive Manufacturing (EM) 394.2 Acres
- e. Proposed zoning designation(s) and acreage(s) in each designation: Extractive Manufacturing (EM) 394.2 Acres
- f. Magisterial District(s): Back Creek

5. Checklist: Check the following items that have been included with this application.

| | | | |
|--|-------------------------------------|---------------------------|-------------------------------------|
| Location map | <input checked="" type="checkbox"/> | Agency Comments | <input checked="" type="checkbox"/> |
| Plat | <input checked="" type="checkbox"/> | Fees | <input checked="" type="checkbox"/> |
| Deed to property | <input checked="" type="checkbox"/> | Impact Analysis Statement | <input checked="" type="checkbox"/> |
| Verification of taxes paid | <input checked="" type="checkbox"/> | Proffer Statement | <input checked="" type="checkbox"/> |
| Plat depicting exact meets and bounds for the proposed zoning district | <input type="checkbox"/> | | <input type="checkbox"/> |
| Digital copies (pdf's) of all submitted documents, maps and exhibits | <input type="checkbox"/> | | <input type="checkbox"/> |

6. The Code of Virginia allows us to request full disclosure of ownership in relation to rezoning applications.

Please list below all owners or parties in interest of the land to be rezoned:

O-N Minerals (Chemstone) Company d/b/a Carmeuse Lime & Stone

7. Adjoining Property: See Attached

| <u>PARCEL ID NUMBER</u> | <u>USE</u> | <u>ZONING</u> |
|-------------------------|------------|---------------|
| <hr/> | <hr/> | <hr/> |
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| <hr/> | <hr/> | <hr/> |
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| <hr/> | <hr/> | <hr/> |

8. Location: The property is located at (give exact location based on nearest road and distance from nearest intersection, using road names and route numbers):

The subject parcels are situated generally west of the Town of Middletown. Specifically, the Middle Marsh Property is

located east of Belle View Lane (Route 758), and west and adjacent to Hites Road (Route 625), and is further traversed by Chapel

Road (Route 627). The Northern Reserve is bounded to the south by Cedar Creek, and is west and adjacent to Meadow Mills Road (Route 624).

9. The following information should be provided according to the type of rezoning proposed:

Number of Units Proposed

Single Family homes: _____ Townhome: _____ Multi-Family: _____
 Non-Residential Lots: _____ Mobile Home: _____ Hotel Rooms: _____

Square Footage of Proposed Uses

Office: _____ Service Station: _____
 Retail: _____ Manufacturing: _____
 Restaurant: _____ Warehouse: _____
 Commercial: _____ Other: 78 Acres - quarry pits

10. Signature:

I (we), the undersigned, do hereby respectfully make application and petition the Frederick County Board of Supervisors to amend the zoning ordinance and to change the zoning map of Frederick County, Virginia. I (we) authorize Frederick County officials to enter the property for site inspection purposes.

I (we) understand that the sign issued when this application is submitted must be placed at the front property line at least seven days prior to the Planning Commission public hearing and the Board of Supervisors public hearing and maintained so as to be visible from the road right-of-way until the hearing.

I (we) hereby certify that this application and its accompanying materials are true and accurate to the best of my (our) knowledge.

Applicant(s): Mauli D. Basile Date: 01/18/2017

_____ Date: _____

Owner(s): Mauli D. Basile Date: 01/18/2017

_____ Date: _____

ADJOINING PROPERTY OWNERS

Owners of property adjoining the land will be notified of the Planning Commission and the Board of Supervisors meetings. For the purpose of this application, **adjoining property is any property abutting the requested property on the side or rear or any property directly across a public right-of-way, a private right-of-way, or a watercourse from the requested property.** The applicant is required to obtain the following information on each adjoining property including the parcel identification number which may be obtained from the office of the Commissioner of Revenue. *The Commissioner of the Revenue is located on the 2nd floor of the Frederick County Administrative Building, 107 North Kent Street.*

| Name and Property Identification Number | Address |
|---|-------------------------|
| Name SOMPANDH WANANT | 4834 GAINSBOROUGH DRIVE |
| Property # 84-6-1 | FAIRFAX, VA 22032 |
| Name WILLIAM AND LAURIE HUNTER | 151 WESTERNVIEW DRIVE |
| Property # 84-6-2 | MIDDLETOWN, VA 22645 |
| Name KEVIN AND ELIZABETH BARRINGTON | 205 WESTERNVIEW DRIVE |
| Property # 84-6-3 | MIDDLETOWN, VA 22645 |
| Name DANIEL E. TAYLOR, JR. | 241 WESTERNVIEW DRIVE |
| Property # 84-6-4 | MIDDLETOWN, VA 22645 |
| Name MARK AND NATASHA HOWARD | 277 WESTERNVIEW DRIVE |
| Property # 84-6-5 | MIDDLETOWN, VA 22645 |
| Name DONALD AND DONNA HOPKINS | 325 WESTERNVIEW DRIVE |
| Property # 84-6-6 | MIDDLETOWN, VA 22645 |
| Name MICHAEL AND SANDRA SWIGER | 357 WESTERNVIEW DRIVE |
| Property # 84-6-7 | MIDDLETOWN, VA 22645 |
| Name BARBARA J. BASILE | 379 WESTERNVIEW DRIVE |
| Property # 84-6-8 | MIDDLETOWN, VA 22645 |
| Name JAMES AND SHARON SANTMYERS | 411 WESTERNVIEW DRIVE |
| Property # 84-6-9 | MIDDLETOWN, VA 22645 |

| Name and Property Identification Number | Address |
|---|-----------------------|
| Name KEITH AND LINDA MCNEELY | 443 WESTERNVIEW DRIVE |
| Property # 84-6-10 | MIDDLETOWN, VA 22645 |
| Name HAROLD F. STALCUP | 3458 ZEPP ROAD |
| Property # 84-6-11 | MAURERTOWN, VA 22644 |
| Name PAUL J. CLEVINGER | 451 WESTERNVIEW DRIVE |
| Property # 84-6-12 | MIDDLETOWN, VA 22645 |
| Name LYNNETTE C. DALTON | 430 WESTERNVIEW DRIVE |
| Property # 84-6-13 | MIDDLETOWN, VA 22645 |
| Name JOHN AND MEGAN HANSEN | 342 WESTERNVIEW DRIVE |
| Property # 84-6-14 | MIDDLETOWN, VA 22645 |
| Name SYLVIA A. BOTTOMLY | 300 WESTERNVIEW DRIVE |
| Property # 84-6-15 | MIDDLETOWN, VA 22645 |
| Name EDWIN AND ELIZABETH STREUN | 276 WESTERNVIEW DRIVE |
| Property # 84-6-16 | MIDDLETOWN, VA 22645 |
| Name KURT AND DENISE BORGOYN | 210 WESTERNVIEW DRIVE |
| Property # 84-6-17 | MIDDLETOWN, VA 22645 |
| Name WILLIAM BENSON HANMER III | 120 WESTERNVIEW DRIVE |
| Property # 84-6-18 | MIDDLETOWN, VA 22645 |
| Name GARY S. & DALE A. NICHOLS | 216 MARSH BROOK LANE |
| Property # 84-A-7 | MIDDLETOWN, VA 22645 |
| Name RICHARD A. & JANET S. DYE | 11310 VALE ROAD |
| Property # 84-A-12 | OAKTON, VA 22124 |
| Name H & E, LC | 1832 CHAPEL ROAD |
| Property # 84-A-17 | MIDDLETOWN, VA 22645 |
| Name WILLIAM AND MELYNDA HOEMMEN | 1875 HITES ROAD |
| Property # 84-A-17A | MIDDLETOWN, VA 22645 |
| Name PATRICIA HUDGINS AND ROBERT RENNER | 1786 CHAPEL ROAD |
| Property # 91-A-7 | MIDDLETOWN, VA 22645 |

| Name and Property Identification Number | Address |
|---|-------------------------------------|
| Name JOHN S. SCULLY IV AND WINCHESTER WAREHOUSING | 114 NORTH CAMERON STREET |
| Property # 84-6-22 | WINCHESTER, VA 22601 |
| Name DENNIS F. BOYER | 165 DROVER LANE |
| Property # 83-A-107; 83-A-108; 83-A-108B | MIDDLETOWN, VA 22645 |
| Name THOMAS AND DORA BOWMAN | 1115 CHAPEL ROAD |
| Property # 83-A-106 | MIDDLETOWN, VA 22645 |
| Name JEAN SINGH | 190 NEWELL DRIVE |
| Property # 83-A-103B | MIDDLETOWN, VA 22645 |
| Name GARRETT FARMS, LLC | 224 MEADOW MILLS ROAD |
| Property # 90-A-20; 84-A-16 | MIDDLETOWN, VA 22645 |
| Name MILDRED G. BRUMBACK | 420 BELLE GROVE ROAD |
| Property # 90-A-26 | MIDDLETOWN, VA 22645 |
| Name BARRY L. BOWSER | P.O. BOX 21 |
| Property # 90-A-25 | MIDDLETOWN, VA 22645 |
| Name CEDAR CREEK BATTLEFIELD FOUNDATION INC. | P.O. BOX 229 |
| Property # 90-A-23A | MIDDLETOWN, VA 22645 |
| Name BLUEGRASS MATERIALS COMPANY LLC | 200 WEST FORSYTH STREET, SUITE 1200 |
| Property # 90-A-22 | JACKSONVILLE, FL 32202 |
| Name MIDDLETOWN HUNT CLUB INC. | P.O. Box 121 |
| Property # 90-A-24 | MIDDLETOWN, VA 22645 |
| Name | |
| Property # | |
| Name | |
| Property # | |
| Name | |
| Property # | |
| Name | |
| Property # | |



June 20, 2017

Mr. Thomas Moore Lawson
Lawson and Silek, PLC
P.O. Box 2740
Winchester, Virginia 22604

**RE: Proposed Rezoning for O-N Minerals (Chemstone) Company
Property Identification Numbers (PINs): 83-A-109 and 90-A-23**

Dear Mr. Lawson:

I have had the opportunity to review the draft rezoning application for the O-N Minerals (Chemstone) Company property. This application seeks to amend the proffers from Rezoning #03-06 for 394.2 acres of land zoned EM (Extractive Manufacturing) District. Staff's review comments are listed below for your consideration.

- 1. Proffer Amendment.** This proposed revision seeks to revise berm heights, berm construction timeframes, archeological survey timing, removal of the phasing plans and the removal of the viewshed plans. These changes are not consistent with a minor proffer amendment. The fee provided with the package has been returned with this letter; the application fee for this rezoning is \$10,000.
- 2. Proffer Date.** Revise sheet 1 of the proffer statement to show an April revision date, consistent with page 2 of the statement.
- 3. Proffer 2 – Site Development.** This revision removes all references to berm height (maximum of 30' – minimum of 10') and the requirement that the berms and landscaping be installed prior to the commencement of mining operations. Staff recommends including a reduced berm height range as well as a requirement that the berm be installed and landscaped before the commencement of any mining activities.
- 4. Amended GDP.** The typical berm details shown on the Amended GDP need to be enlarged – the text is illegible.

Page 2
Mr. Thomas Moore Lawson
RE: O-N Minerals (Chemstone) Company
June 20, 2017

All of the above comments and reviewing agency comments should be appropriately addressed before Staff can accept this rezoning application. Please feel free to contact me with questions regarding this application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Candice E. Perkins".

Candice E. Perkins, AICP, CZA
Assistant Director

CEP/pd

Candice Perkins

From: Rod Williams
Sent: Monday, June 26, 2017 12:42 PM
To: Thomas Moore Lawson, Esq.
Cc: Candice Perkins
Subject: Re: Carmeuse Middletown rezoning

Ty,

I have now reviewed the revised proffer statement, dated February 24, 2017, and have the following comments, tracked to correspond to the comments in my original letter dated February 24, 2017:

1. Rezoning Number and Date - The revised proffer statement fails to address this comment.

2. Acreage being rezoned - I note the submission of the Exhibit 1 Amended GDP, which has a line purporting to indicate, per the legend, "Proposed Zoning Boundary", but the document is not capable of allowing for confirmation that this actually corresponds with the 394.2 acres to be applied for in the proposed rezoning. Also, staff should be aware that, as the proposed rezoning is currently contemplated, two different sets of proffers will apply, one to one area of the Middletown quarry and one to another area of the Middletown quarry, such that some activities could take place outside the area subject to the proposed rezoning without therefore being subject to the proffers currently being reviewed.

3. "Applicant"/"Owner" - Comment resolved.

4. Preliminary paragraphs - Regarding the GDP, I note that it is curiously dated April 28, 2017, a full two months after the February 24 date of the revised proffer statement. It is unclear how the revised proffer statement could meaningfully refer to a document that did not exist at the time of its development.

5. Proffer 2.2 (landscaping/berms) - The proffer is still not sufficiently definite, especially as to berm heights and also as to the "reasonable approval" of the Zoning Administrator. Also, staff should be aware that the applicant's ability to comply is contingent in the applicant's rights on land it leases but does not own.

6.-16. Staff will need to confirm compliance as to those items noted as completed or ongoing. Also, as to the other comments in my February 24 letter, I do not repeat them here, in recognition of the 2008 approval of the proffers on which the comments were based. Staff should also be aware that, since the previous review, the applicant has proposed elimination of the phasing provisions; this includes the provision that no mining will take place north of Chapel Road for 20 years.

17. This was a note for staff, which remains valid, but is not repeated here.

18. Public hearing requirement - I reiterate the previous comment that that nature of the proffer amendments is such that a public hearing is appropriate. Along these lines, I note that a public hearing waiver under Virginia Code Sec. 15.2-2302 and County Code Sec. 165-102.06 is only discretionary.

19. Signature - The proffer statement is signed by a "Site Production Manager". We will need further evidence that a "Site Production Manager" has authority to sign the proffers.

Subject to the above comments, the proffer statement would be in a legally acceptable form.

Rod

Sent from my iPad

On Jun 21, 2017, at 5:13 PM, Rod Williams <rwillia@fcva.us> wrote:

Ty,

I received your message earlier today. I've tied up with a bunch of other things today. I am in the process of reviewing the revised submission. While I will be out of the office until Tuesday, I plan to review the papers during that time and will follow up with any comments.

Rod

Roderick B. Williams
County Attorney
County of Frederick, Virginia
107 North Kent Street, 3rd Floor
Winchester, Virginia 22601
Telephone: (540) 722-8383
Facsimile: (540) 667-0370
E-mail: rwillia@fcva.us

AMENDED PROFFER STATEMENT

REZONING: RZ#
Rural Areas (RA) to Extractive Manufacturing (EM)

PROPERTY: 394.2Acres +/-;
Portions of Tax Map Parcels 83-A-109 (“parcel 109”) and 90-A-23
 (“parcel 23”) (the “Properties”)

RECORD OWNER: O-N Minerals (Chemstone) Company (“Owner”)

APPLICANT: O-N Minerals (Chemstone) Company

PROJECT NAME: Chemstone - Middletown

ORIGINAL DATE
OF PROFFERS: June 13, 2005

REVISION DATE(S): February 24, 2017, June 5, 2017, September 25, 2017

The undersigned Owner hereby proffers that the use and development of the portions of the above-referenced parcels, which are requested to be rezoned, the portions requested to be rezoned being shown on the attached and incorporated plat identified as “Exhibit 1”, shall be in strict conformance with the following conditions, which shall supersede all other proffers on the Properties that may have been made prior hereto. In the event that the above-referenced EM conditional rezoning is not granted as applied for by the Owner, these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Properties with “final rezoning” defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of Supervisors’ (the “Board”) decision granting the rezoning may be contested in the appropriate court. If the Board’s decision is contested, and the Owner elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Properties adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. Any proffered conditions that would prevent the Owner from conforming with State and/or Federal regulations shall be considered null and void. The term “Owner” as referenced herein shall include within its meaning all future owners and successors in interest. When used in these proffers, the “Generalized Development Plan,” shall refer to the plan entitled “Generalized Development Plan, O-N Minerals

(Chemstone)” dated May, 2008 and revised June 28, 2017 (the “Amended GDP”). Exhibit 1. The Owner attaches and incorporates the Amended GDP. The Owner proffers that its development of the Properties will be in substantial conformity with the Amended GDP. The Generalized Development Plan included in the Proffer Statement approved on May 28, 2008 (“GDP”) is hereby replaced as it relates to the installation and location of berms and viewsheds. All other aspects of the GDP remain the same and in full force and effect.

1. Land Use

1.1 The Properties shall be developed with extractive manufacturing land uses pursuant to the mining permit approved by the Division of Mineral Mining (“DMM”) of the Virginia Department of Mines, Minerals and Energy (“VDMME”), and shall therefore conform to the Mineral Mining Law and Reclamation Regulations for Mineral Mining of the Commonwealth of Virginia.

1.2 The Owner hereby proffers not to engage in the following uses on the Properties:

- Oil and natural gas extraction;
- Asphalt and concrete mixing plants;
- Brick, block and precast concrete products;
- Cement and lime kilns; and
- Coal and natural gas-fired power plants or facilities which sell power to the local utility or power grid*

*This is not to be interpreted as a restriction against using power plants on the Properties as necessary to support extractive mining activities.

2. Site Development

2.1 Properties’ access via public secondary roads shall be limited to the existing quarry entrance on McCune Road (Route 757). Access by vehicles needed for periodic maintenance of the Properties shall not be limited. [ONGOING]

2.2 A combination of landscaping, earthen berms and fencing shall be installed around the Properties in the areas depicted on the Amended GDP. The berms shall be landscaped to minimize impacts to the viewshed of the surrounding community and shall be installed at the commencement of permitting of the Properties for mining but before any extraction of material for processing and in the locations depicted on the Amended GDP. The landscaping shall have a mix of deciduous and coniferous plantings placed in a random manner to be consistent with existing vegetation patterns. The landscaping shall be subject to reasonable approval of the Zoning Administrator of Frederick County and upon consultation with the State Forester. With respect to Berm A, located on Tax Parcel 90-A-2, not owned by the Owner, the berm will be constructed by the Owner as the tenant under a 100-year lease of Parcel 90-A-2, with authority under the lease to construct Berm A.

- 2.3 The existing overburden stock pile on the southeast corner of the current Middletown plant site shall be reduced in height to the greater of 30 feet or the height of the adjacent tree line (lying to the east) within 5 years of the approval of the rezoning. [COMPLETED]

3. Historic Resources

- 3.1 The Owner shall create an 8 acre historic reserve as shown on the GDP, within which archeological resources and other historic activities have been identified. Further, the Owner shall place restrictions on the reserve land for how the reserve will be used by the Properties' owner and future owners. A copy of said restrictions are attached and incorporated as "Exhibit 2". Said reserve land shall be dedicated to the Cedar Creek Battlefield Foundation, Inc. within 60 days of final rezoning. [NOTE: the aforementioned 8 acre historic reserve property is not to be included in the property to be rezoned.] [COMPLETED]
- 3.2 The Owner shall complete a Phase I Archaeological Survey of parcels 23 and 109. The Phase I Archaeological Survey of parcel 23 shall be completed within 12 months of the approval of the rezoning. For the remaining tracts of land, the Owner shall complete a Phase I Archaeological Survey of particular tract of land before any mining activities commence on that property. The Owner may commence mining activities on a particular portion of the Properties before the completion of the Phase I survey for all of the Properties, but under any and all circumstances, no mining operations shall commence on any portion of the Properties until after the Phase I Archeological Survey has been completed on said portion of the Properties. Said survey shall locate, identify, and comprehensively record all historic sites, buildings, structures, and objects on the parcels. Such survey shall be conducted in accordance with the guidelines for a Phase 1 Survey as defined in the Virginia Department of Historic Resources "GUIDELINES FOR CONDUCTING CULTURAL RESOURCE SURVEY IN VIRGINIA - Chapter 7: Guidelines for Archaeological Investigations in Virginia," 1999 (Rev. Jan. 2003). [COMPLETED]
- 3.3 Two cemeteries have been identified on the Properties. The first cemetery is located adjacent to Chapel Road and is in an area that is not designated for mining and is also outside of the berming area. That cemetery is currently undergoing a historical restoration. After the historical restoration, the Owner will follow the recommendations of the Owner's historian. [COMPLETED]

The second cemetery is located in the area where berming is slated to be installed. The Owner proffers the berming will be located in such a way as to not encroach on the cemetery. This cemetery is also currently undergoing a historical restoration. After the historical restoration, the Owner will follow the recommendations of the Owner's historian. In addition, the cemetery is accessed through a right-of-way which is of record providing access to the cemetery from Route 625. The Owner agrees to build a right-of-way to access the second cemetery in the general location depicted on the Amended GDP and which shall

have an entrance on Chapel Road. The primary purpose of the right-of-way shall be for access by the descendants of those in the cemetery and shall be conditioned upon and subject to all applicable agency approvals, including, but not limited to, the approval by the Virginia Department of Transportation of an entrance (to the extent the same is required) on the public road.

4. Rights to Water Supply – [ONGOING]

4.1 The Owner shall guarantee the Frederick County Sanitation Authority (“FCSA”) rights to the water resources available on the Properties in accordance with the existing agreements between the Owner and FCSA.

5. Ground Water – [COMPLETED]

5.1 The Owner shall install a minimum of three monitoring wells to effectively establish and monitor the groundwater level in order to avoid detrimental impacts to surrounding properties. Said wells shall be installed prior to any land disturbance of the portion of the Properties identified as parcel 109 by the GDP, and shall be located within 500 feet of the Properties’ boundaries. A minimum of one monitoring well shall be installed within 500 feet of the parcel 109 Properties’ boundary. The exact location of the monitoring wells is depicted on the Overall Plan of the GDP.

5.2 Subject to and consistent with the provisions of paragraph 9.2, the Owner shall remediate any adverse impacts to wells located on surrounding properties caused by mining operations on the Properties. Costs associated with any required remediation shall be borne by the Owner.

Furthermore, the Owner agrees to participate in a pre-blast survey and well monitoring survey, as further described herein. The intent of the aforementioned surveys is to provide a mechanism to remediate any adverse impacts to wells and/or structures, which are caused by the mining operations on the Properties.

6. Dust Control – [ONGOING]

6.1 Dust from drills, muck piles, material handling, screens, crushers, conveyors, feeders, hoppers, stockpiles, load-outs, and traffic areas shall be controlled by wet suppression or equivalent, and controlled by and consistent with the terms of the Department of Environmental Quality (“VDEQ”) general air permit. The Owner shall remediate any adverse impacts to surrounding properties caused by dust associated with the mining operations on the Properties.

7. Blasting Control – [ONGOING]

7.1 All blasting associated with mining operations on the Properties shall be limited by the mining permit approved by the DMM of the VDMME. Peak Particle Velocities (PPV) associated with blasting on the Properties shall not exceed the

levels stipulated by said permit. In addition, the Owner agrees to have an approved blasting plan in place at all times. An example of the current blasting plan is attached. Further, in addition, the Owner agrees that there will be no block holing or adobe blasting conducted on the Properties. Any damage to surrounding properties caused by blasting on the Properties shall be remediated at the Owner's expense.

8. Traffic – [ONGOING]

8.1 The Owner's current number of truck loads leaving the site on a daily basis is approximately 63, and the Owner has had higher numbers of recorded truck loads leaving the plant to a total of 114 truck loads per day. The Owner, in its proffer, is agreeing to restrict truck traffic to the Properties to 86 truck loads per day averaged over the prior 30 days, but intends to also have an ability to increase the number of truck loads in the event of an emergency or circumstances, which could be caused by issues driven by the Owner's customers, suppliers, and/or carriers. Examples of such shall include, but are not limited to, an interruption of rail service to the site and/or any sites that are serviced by rail from the Owner's Properties and/or any other interruption of the ability to deliver materials at the Owner's site or any other sites which are owned, controlled, or by business relationship connected with the Owner's site. To that end, and in any circumstance, the Owner agrees to restrict truck traffic to the Properties to a maximum of 200 truck loads per day averaged over the prior 30 days through the scale house hauling mined materials on and/or off the proposed quarry site from the existing quarry entrance. The maximum number of truck loads will be regulated by the Owner and its successors and/or assigns. A record of the actual number of truck loads per day shall be kept current (and maintained for one year) by the Owner at its scale house office. Said record shall be made available in a form which confirms the number of trips and the form will be produced to Frederick County officials upon demand with reasonable notice. The Owner proffers there will be no truck loads from the Properties on Sundays and the hours of truck loading on Saturdays will be no later than 7:00 p.m. The Owner further proffers it will instruct all truckers as to the proper route of travel from the Properties to Route 11, which shall exclude both Belle Grove and Chapel Roads.

9. Pre-Blast Surveys – [ONGOING]

9.1 The Owner will offer voluntary pre-blast surveys of properties that are within 1,500 feet of the boundaries of parcel 23 and parcel 109. The aforementioned surveys will be conducted by an independent engineering firm, which will investigate and document the pre-blast conditions of the participants' residences and/or outbuildings. The Owner and its successors and assigns will contact all citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109, and monitor the tax roles for Frederick County on an annual basis in order to contact any citizens who have recently purchased the aforementioned property. This contact will be made by the Owner and its successor and assigns to invite citizens who have property within 1,500 feet of the boundaries of parcel 23

and parcel 109 to participate in the pre-blast surveys. Contact will be made by registered return-receipt letters, mailed annually from the time of the rezoning. All citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109 can, and are encouraged to, participate in the survey by contacting the Owner and scheduling a mutually agreeable time for the independent engineering firm to visit the party's residence to document and survey the pre-blast condition of the party's residences/outbuildings following the procedures set forth in the attached and incorporated "Exhibit 3". If the property owner agrees to participate, the Owner's and/or its engineering firm shall visit and inspect the party's residences/outbuildings to monitor the condition of the same. A record of those pre-blast conditions will be kept by the independent engineering firm with copies retained by the Owner and the participating property owner. In the event of a change in condition, which is alleged by the participating property owner as a result of mining operations, the engineering firm will then conduct a follow-up visit and investigation and use the pre-blast information as a control and basis for subsequent analysis. Said analysis shall be used to determine the cause of any negative change in condition. If it is determined there is a change in condition in the residences/outbuildings, which has been caused by the Owner's mining activities on the Properties, then the Owner agrees to remediate and/or repair said negative change in condition to restore it to its status prior to blasting operations. In addition, the Owner agrees to establish seismic monitoring of the proposed quarry site to monitor all blasting activities and keep records of said seismic monitoring as required by the VDMME.

- 9.2 The Owner will offer voluntary well monitoring surveys of properties that are within 1,500 feet of the boundaries of parcel 23 and parcel 109. The aforementioned surveys will be conducted by an independent well drilling firm or hydrogeologist, which will investigate and document the pre-mining conditions of the participants' wells. The Owner and its successors and assigns will contact all citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109, and monitor the tax roles for Frederick County on an annual basis in order to contact any citizens who have recently purchased the aforementioned property. This contact will be made by the Owner and its successor and assigns to invite citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109 to participate in the well monitoring surveys. Contact will be made by sending annually registered return-receipt letters. All citizens who have property located within 1,500 feet of the boundaries of parcel 23 and parcel 109 can and are encouraged to participate in the survey by scheduling a mutually agreeable time for the independent well drilling firm to visit the party's residence to document and survey the pre-blast condition of the party's well following the procedures set forth in the attached and incorporated "Exhibit 4A and 4B". A record of these pre-mining conditions will be kept by the independent well drilling firm, with copies retained by the Owner and the participating property owner. In the event a change of condition is alleged by the property owner as a result of mining operations, the Owner will provide an interim replacement water supply as necessary to supply the property owner with water. The well drilling firm will then conduct a follow-up visit and investigation and use pre-blast

information as a control and basis for subsequent analysis. If it is determined that the status of the neighboring property owner's well has deteriorated from the condition it was in at the time of the pre-blast survey, then the Owner agrees to restore the well to its condition existing at the time of the pre-blast survey and/or provide the adjoining property owner a replacement well of the same condition (or better) of that which existed at that time of the pre-blast survey.

- 9.3 In addition to the above, the Owner agrees to maintain in force an insurance policy or other sufficient security for the period of time covering the active mining operations on the Properties and to maintain in effect for a period of one year from the date of cessation of said mining operations, and to cover the costs of any remediation and/or repair, which is required pursuant to the terms of sections 9.1 and 9.2 above. Said policy or surety shall be in the amount of no less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Frederick County may review from time to time the amount of the policy or surety to evaluate whether the minimum amount of \$1,000,000.00 is sufficient to protect the cost of any remediation and/or repair, which is required pursuant to the terms of sections 9.1 and 9.2. In the event Frederick County believes that the amount of the policy or surety needs to be increased for the reasons set forth above, then the Owner and Frederick County shall reach an agreement as to the proper amount of policy or surety. The approval of said increase shall not be unreasonably withheld, conditioned or denied by either party. The Owner shall annually provide to the County a Certificate of Insurance from the insurance carrier.

10. Reclamation – [ONGOING]

- 10.1 It is intended that pursuant to the terms of the agreement reached with the FCSA that at the time of cessation of mining activities, the Properties' quarry pits shall be used by the FCSA as water reservoirs. The control of the water levels in the quarry pits shall be handed over to the FCSA. It is intended that the quarry pits at that time will contain quantities of water monitored and directed by the FCSA, and which will be conducive to the general betterment of natural habitat.

11. Noise Abatement – [ONGOING]

- 11.1 Operations on the Properties will not exceed the VDMME Engineering's decibel guidelines. The Owner will make all reasonable efforts to locate mining machinery in the quarry pit or behind berms.

12. Lighting – [ONGOING]

- 12.1 There shall be no affixed lighting structures above-ground on the berms other than as may be required for or provided by regulations that affect the plant operations, including but not limited to, Mine Safety Health Administration ("MSHA"), VDMME, and any other governmental or regulatory body that oversees mining operations. Lighting used for devices or machines that convey materials or for pit crushing facilities and other mining activities is permitted. Conveying and pit

crushing facilities shall also be interpreted as including such other devices or activities that perform similar or related functions that may come into use and/or existence at some time in the future while the extractive mining use is still in effect on the Properties. In addition to the above, all lighting will be installed in such a manner that there will be no spillover beyond any property line of the Owner onto adjacent properties not owned by the Owner.

13. Air Permit – [ONGOING]

13.1 The Owner shall maintain its existing general air permit controlling emissions in accordance with the VDEQ standards and also see that the existing general air permit covers all activities conducted on the rezoned Properties.

14. Environment – [ONGOING]

14.1 In addition to compliance with the VPDES water discharge permit already in place, the Owner agrees to work with a recognized environmental entity of the Owner's choosing during its operations to ensure that the water emissions from water flowing from the quarry operations on the Properties is of a quality consistent with the water quality in Cedar Creek so as to maintain an environment conducive to natural habitats. No additional water discharge points will be added.

14.2 The Owner agrees that all areas currently in trees on property owned by the Owner, which is outside of the rezoned Properties and identified on the GDP as "Middletown Woods", shall be maintained using best management practices.

14.3 The Owner proffers to keep its mining operations at least 200 feet from the edge of Cedar Creek.

15. Phasing

15.1 The Applicant agrees that mining activities on the Properties shall occur with the following phasing:

After the rezoning is approved, the Applicant will start creating berms on the newly rezoned Properties and the Applicant shall start quarrying in the area identified as parcel 23. Mining in parcel 23 shall occur from the time period commencing with the approval of the rezoning for a period of time which is estimated to be twenty years. [COMPLETED IN PART – The berm referenced is installed and mining is continuing but not yet completed.]

For the newly zoned area, which is north of the existing EM zoned property, and south of Chapel Road, mining activities will commence no earlier than ten years from the date that the rezoning referenced herein is approved.

For the newly zoned area, which lies north of Chapel Road, mining will commence no earlier than twenty years from the date that the rezoning referenced herein is approved.

[signature on following page]

Respectfully submitted,

O-N MINERALS (CHEMSTONE) COMPANY

By: Ian Karkaria

Its: Area Operations Manager



COMMONWEALTH OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this 20 day of September, 2017, by Ian Karkaria, Area Operations Manager of O-N Minerals (Chemstone) Company.

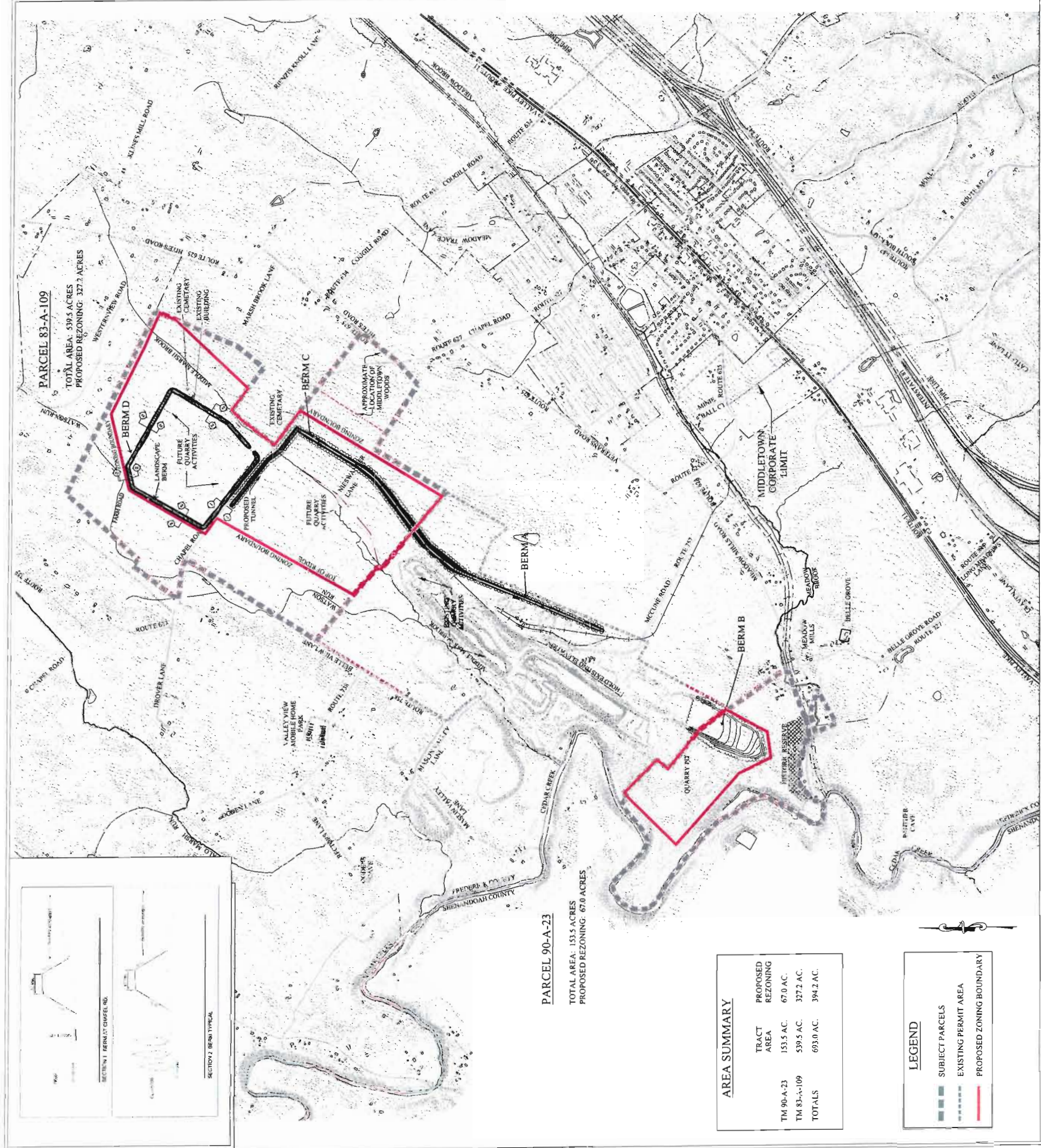


NOTARY PUBLIC

My commission expires: October 31, 2019
Registration number: 7384271



Jaime Ann DeHaven
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7384271
My Commission Expires
October 31, 2019



PARCEL 83-A-109
 TOTAL AREA: 539.5 ACRES
 PROPOSED REZONING: 327.2 ACRES

PARCEL 90-A-23
 TOTAL AREA: 153.5 ACRES
 PROPOSED REZONING: 67.0 ACRES

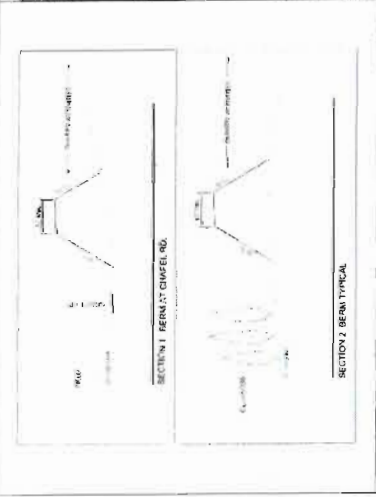
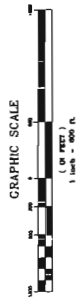
AREA SUMMARY

| TRACT AREA | PROPOSED REZONING |
|---------------|-------------------|
| TM 90-A-23 | 67.0 AC. |
| TM 83-A-109 | 327.2 AC. |
| TOTALS | 394.2 AC. |

- LEGEND**
- SUBJECT PARCELS
 - - - - - EXISTING PERMIT AREA
 - - - - - PROPOSED ZONING BOUNDARY

O-N Minerals Chemstone
GENERALIZED DEVELOPMENT PLAN
 FREDERICK COUNTY, VIRGINIA

MAY 2008
 REVISED APRIL 28, 2017

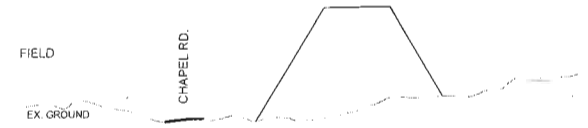


PREPARED BY:
PENNONI ASSOCIATES INC.
 117 East Pleasant Street
 Winchester, VA 22601
 T 540.667.2138
 F 540.665.0483

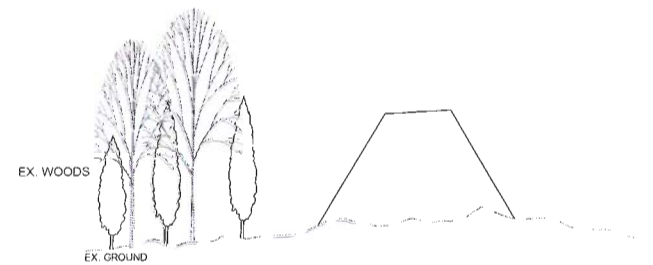




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 PLOT STYLE: PENNONI.ctb



SECTION 1 BERM AT CHAPEL RD.



SECTION 2 BERM TYPICAL

NOT FOR CONSTRUCTION

PENNONI ASSOCIATES INC.
 117 East Piccadilly Street
 Winchester, VA 22801
 T 540.667.2139 F 540.665.0493

ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK

CARMEUSE QUARRY EXPANSION
BERM "D"
 IMPROVEMENTS LOCATED IN
 FREDERICK COUNTY VA.
 CARMEUSE
 1696 ORANDA ROAD | PO BOX 71
 STRASSBURG, VA 22657

| NO. | DATE | REVISIONS | BY |
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ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS ON THE EXTENSIONS OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REUSE WITHOUT WRITTEN PERMISSION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO PENNONI ASSOCIATES. AND OWNERS SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

| | |
|---------------|------------|
| PROJECT | CRMU1601 |
| DATE | 2016-10-10 |
| DRAWING SCALE | 1"=400' |
| DRAWN BY | CJM |
| APPROVED BY | RM |

080008915

0241

DEED OF GIFT

THIS DEED OF GIFT is made and dated this 25th day of July, 2008 by and between O-N MINERALS (CHEMSTONE) COMPANY, a Delaware Corporation, whose address is P.O. Box 71, Strasburg, Virginia 22657, hereinafter referred to as GRANTOR, and CEDAR CREEK BATTLEFIELD FOUNDATION, INC., a Virginia corporation, whose address is P.O. Box 229, Middletown, Virginia 22645, hereinafter referred to as GRANTEE.

WITNESSETH:

That for and in consideration of the conveyance hereby made, and other good and valuable considerations, the receipt of which is hereby acknowledged, Grantor hereby does grant, bargain, convey and sell with Special Warranty of Title, unto the Grantee all the Grantor's right, title, and interest in those certain tracts or parcels of real property having the following Legal Description:

All that certain tract or parcel of land with all easements and appurtenances thereunto belonging, lying, and being in the Back Creek Magisterial District, Frederick County, Virginia, containing 8 acres more or less, the metes and bounds whereof are shown on a certain plat of survey by Carl J. Rinker & Associates dated July 9, 2008, which plat shall be recorded with this Deed of Gift as "Exhibit A" thereto ("Property").

Reference is hereby made to "Exhibit A" and the attachments and references therein contained for a further and more particular description of the Property hereby conveyed.

This conveyance is made subject to all duly recorded and enforceable restrictions, easements, and rights of way and is also subject to the following conditions:

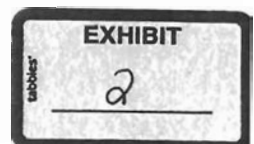
Document prepared by:
Thomas Moore Lawson, Esquire
P.O. Box 2740
Winchester, VA 22604

Return to:
Thomas Moore Lawson, Esquire
P.O. Box 2740
Winchester, VA 22604

Tax Map No. portion of 90-A-23
Consideration: \$0.00

Grantee's Address:
P.O. Box 229
Middletown, VA 22645

This deed is exempt from all recordable taxes by virtue of Section 58.1-811 (D) of the Code of Virginia.



- There shall be no structures built on the Property unless first approved by Grantor;
- The Property shall be maintained in a neat and orderly condition at all times and any trees maintained using best management practices;
- Grantor further reserves the right to take any action reasonably required to maintain the Property in the event the Grantee fails to do so. This right shall include, but not be limited to, the right to enter upon the Property to do such work on the Property as may be required to effect the conditions on the Property described herein.

In addition, this conveyance is made subject to the following first right of refusal. With the agreement of Grantee as evidenced by its signature below, Grantor hereby reserves a first right of refusal for any future sale, transfer or conveyance of the Property (or portion thereof) by the Grantee except a sale, transfer or conveyance to an entity that is (a) related to the Grantee and (b) a charitable entity established for the preservation of historic properties.

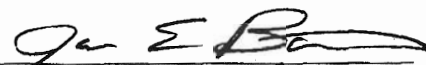
In the event that Grantee receives a bona fide offer or tenders a bona fide offer for the sale, transfer or conveyance of the Property (or any portion thereof) to any person or entity, then Grantee shall forthwith send to Grantor a notice in writing of its desire or intention to sell, transfer or convey the Property (or a portion thereof) accompanied by a copy of the offer. Upon receipt of that notice, Grantor shall have thirty (30) days from the date of its receipt of the notice to notify Grantee of its desire and agreement to purchase the Property (or the portion thereof) under the terms and conditions as contained in that offer. If Grantor gives Grantee notice of its intent to purchase the Property (or a portion thereof) as described above, Grantee shall sell the Property (or portion thereof) to Grantor under the terms and conditions contained in the offer.

If Grantor elects not to purchase the Property (or portion thereof) or does not respond to the notice and offer from the Grantee, then Grantee may sell the Property (or portion thereof), but only in accordance with the terms and conditions contained in the bona fide offer.

If the transaction contemplated by the bona fide offer is not completed within ninety (90) days after the expiration of the last day upon which Grantor has the right to give notice of its intent to purchase, then Grantee shall not thereafter sell or offer the Property (or any portion thereof) unless and until it again complies with the above requirements.

WITNESS the following signatures and seals:

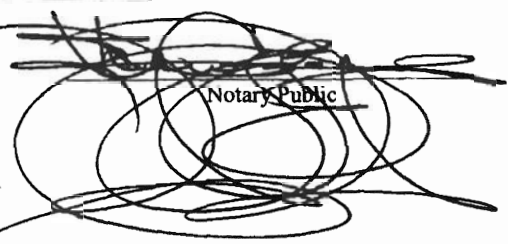
GRANTOR:
O-N MINERALS (CHEMSTONE) COMPANY


By: James E. Bottom
Its: Area Operations Manager

COMMONWEALTH OF VIRGINIA

~~CITY~~/COUNTY of Fluvanna, to-wit:

The foregoing instrument was acknowledged before me this 25th day of July, 2008, by James E. Bottom, Area Ops. Mgr. of O-N Minerals (Chemstone) Company.


Notary Public

My commission expires _____
Registration No. _____



0244

CEDAR CREEK BATTLEFIELD FOUNDATION, INC.

By: Stanley M. Hirschberg, M.D.
Its: Stanley M. Hirschberg, M.D.
President

COMMONWEALTH OF VIRGINIA

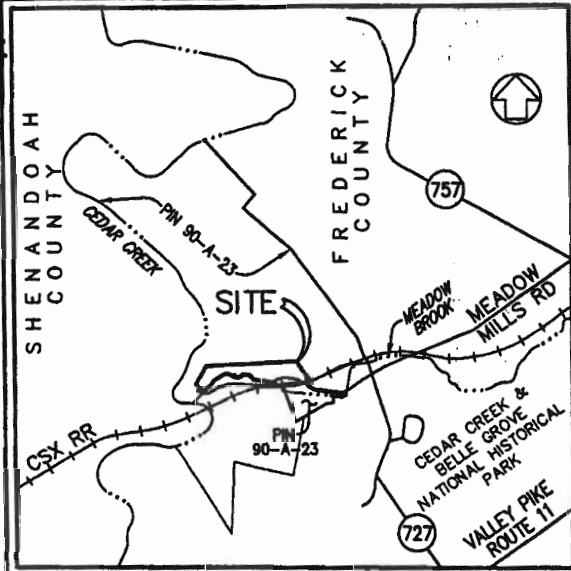
CITY/COUNTY of Frederick, to-wit:

The foregoing instrument was acknowledged before me this 24th day of July, 2008, by Stanley Hirschberg, M.D. President of Cedar Creek Battlefield Foundation, Inc.

Sharon I. Hauseneluck
Notary Public

My commission expires: 4-30-09
Registration No.: 357188





VICINITY MAP
SCALE: 1" = 2,000'

SURVEYOR'S CERTIFICATION:
I, CARL J. RINKER, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PROPERTY CONTAINED IN THIS SUBDIVISION IS THE SAME PROPERTY CONVEYED TO O-N MINERALS (CHEMSTONE) COMPANY BY DEED RECORDED IN DEED BOOK 582 AT PAGE 122 AMONG THE LAND RECORDS OF FREDERICK COUNTY, VIRGINIA.



APPROVED BY:
FREDERICK COUNTY SUBDIVISION ADMINISTRATOR *[Signature]* 22 July 09

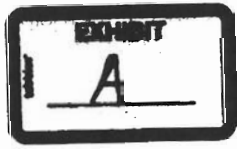
NOTES:

1. FREDERICK COUNTY TAX MAP: 90-A-23. CURRENT OWNERSHIP: O-N MINERALS (CHEMSTONE) COMPANY, DB 582, PG 122. CURRENT ZONING: RA.
2. MERIDIAN AND BOUNDARY INFORMATION SHOWN HEREIN ARE BASED ON THAT CERTAIN BOUNDARY SURVEY ATTACHED TO THE DEED RECORDED IN DB 582, PG 122.
3. THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT AND THEREFORE DOES NOT NECESSARILY SHOW ALL ENCUMBRANCES OR OTHER MATTERS AFFECTING THE PROPERTY.
4. PURSUANT TO AN EXAMINATION OF HUD FLOOD INSURANCE RATE MAP, COMMUNITY PANEL 510063 01758, EFFECTIVE JULY 17, 1978, A PORTION OF THE SUBJECT PROPERTY LIES IN ZONE A (AREAS OF 100-YEAR FLOOD; BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS NOT DETERMINED). 100 YEAR FLOODPLAIN LIMITS SHOWN HEREIN HAVE BEEN DIGITALLY SCALED FROM THE REFERENCED FIRM PANEL.
5. THIS PARCEL HAS NOT BEEN APPROVED FOR SANITARY WASTE DISPOSAL, APPROVAL MUST BE OBTAINED PRIOR TO BUILDING PERMITS FOR STRUCTURES REQUIRING SUCH FACILITIES.
6. EXISTING SUBJECT AND ADJOINING PROPERTY AREAS REPRESENTED HEREIN ARE DERIVED FROM INFORMATION OBTAINED FROM THE FREDERICK COUNTY GIS WEBSITE MAY 20, 2008.
7. REFERENCE IS HEREBY MADE TO THE "RIGHT-OF-WAY AND TRACK MAP, THE WINCHESTER AND STRASBURG RAILROAD COMPANY" (ORIGINAL DATE JUNE 30, 1918), CURRENTLY (UP)DATED JUNE 10, 2008, FILE NUMBER V08841 (V-321/8) PROVIDED BY CSX REAL PROPERTY, INC. GIS DEPARTMENT AND REVIEWED IN CONJUNCTION WITH PREPARATION OF THIS PLAT.

OWNER'S CONSENT:

THE ABOVE AND FOREGOING SUBDIVISION OF THE PROPERTY OF O-N MINERALS (CHEMSTONE) COMPANY AS APPEARS ON THE ACCOMPANYING PLATS, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

[Signature]
[Signature] Spencer C. Stinson, General Manager
PRINTED NAME & TITLE
July 16, 2008 (DATE)



NOTARY PUBLIC
STATE OF Virginia
CITY/COUNTY OF Frederick
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE

ON 7-18-08 BY Spencer Stinson
(DATE) (NAME)
[Signature]
(NOTARY PUBLIC)

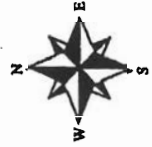
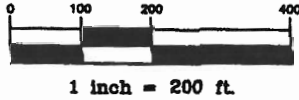
FOR RURAL SUBDIVISION
OF THE LAND OF
O-N MINERALS (CHEMSTONE) COMPANY
BACK CREEK MAGISTERIAL DISTRICT
FREDERICK COUNTY, VIRGINIA
SCALE: AS SHOWN DATE: JUNE 25, 2008
REVISED: JULY 9, 2008

MY COMMISSION EXPIRES 4-30-2009
[Signature] Registration No. 357188 (DATE)

Carl J. Rinker & Associates
741 Philips Court
Strasburg, VA
540-439-4715

AREA TABULATION:
 (OLD) 90-A-23 153.50 AC
 (SEE NOTE 6) -8.0139 AC
 PARCEL A
 (REMAINDER) 90-A-23 145.486 AC

GRAPHIC SCALE

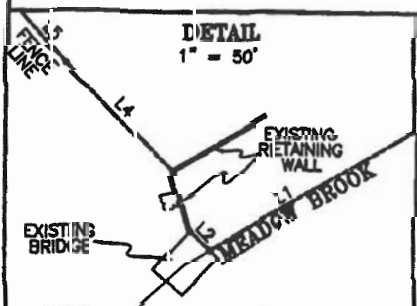
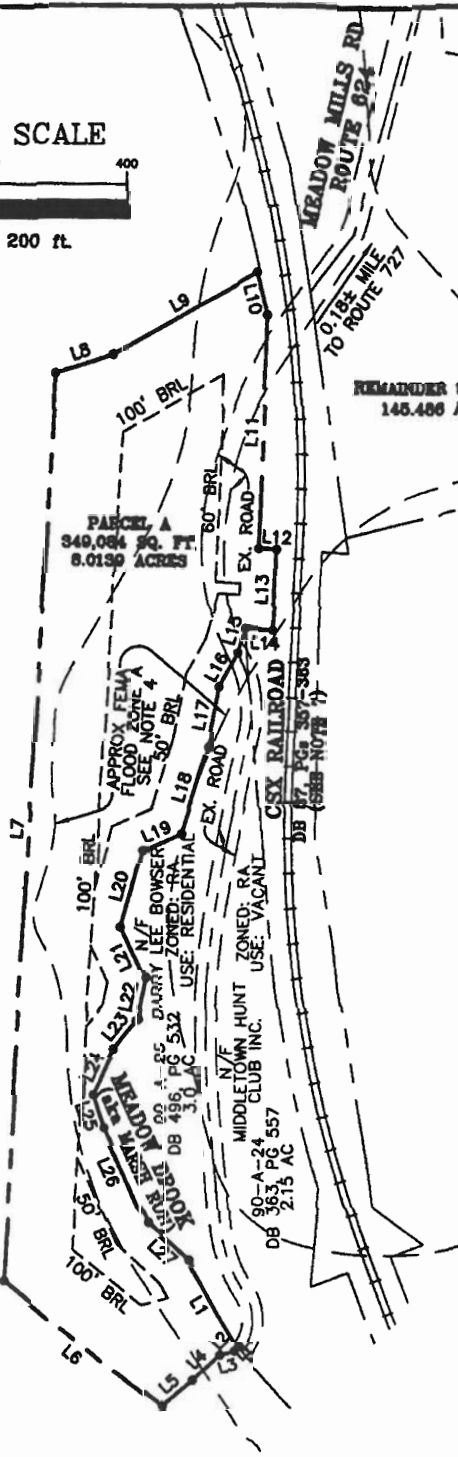


REMAINDER 90-A-23
145.486 ACRES

PARCEL A
349,084 SQ. FT.
8.0139 ACRES

REMAINDER 90-A-23
145.486 ACRES

| LINE | BEARING | DISTANCE |
|------|-------------|----------|
| L1 | S89°36'45"W | 142.52' |
| L2 | N47°42'49"W | 9.59' |
| L3 | N15°52'44"W | 22.16' |
| L4 | N44°25'50"W | 33.99' |
| L5 | N42°01'49"W | 57.18' |
| L6 | N37°35'33"E | 292.45' |
| L7 | S88°35'28"E | 1303.64' |
| L8 | S18°05'05"E | 87.01' |
| L9 | S29°06'54"E | 236.43' |
| L10 | S78°09'02"W | 61.82' |
| L11 | N87°47'09"W | 328.51' |
| L12 | S02°43'57"W | 26.00' |
| L13 | N87°05'42"W | 116.90' |
| L14 | N02°34'34"E | 41.00' |
| L15 | N73°35'59"W | 34.99' |
| L16 | N61°11'46"W | 55.17' |
| L17 | N79°13'29"W | 88.69' |
| L18 | N73°10'45"W | 129.48' |
| L19 | N24°46'35"W | 63.00' |
| L20 | N74°55'35"W | 111.16' |
| L21 | S84°37'31"W | 81.52' |
| L22 | N78°12'17"W | 61.62' |
| L23 | N51°30'49"W | 52.51' |
| L24 | N64°44'51"W | 73.52' |
| L25 | S71°26'56"W | 50.03' |
| L26 | S65°36'51"W | 151.36' |
| L27 | S41°51'08"W | 79.70' |



MINOR RURAL SUBDIVISION
 OF THE LAND OF
O-N MINERALS (CHEMSTONE) COMPANY
 BACK CREEK MAGISTERIAL DISTRICT
 FREDERICK COUNTY, VIRGINIA
 SCALE: AS SHOWN DATE: JUNE 25, 2008
 REVISED: JULY 9, 2008

Carl J. Rinker & Associates
 74 Phillips Court
 Staunton, VA
 540-459-4715

VIRGINIA: FREDERICK COUNTY.SCT.

This instrument of writing was produced to me on

7-25-08 at 4:28 PM
and with certificate acknowledgement thereto annexed
was admitted to record. Tax imposed by Sec. 58.1-802 of

Exempt, and 58.1-801 have been paid, if assessable.

Rebecca P. Hogan, Clerk

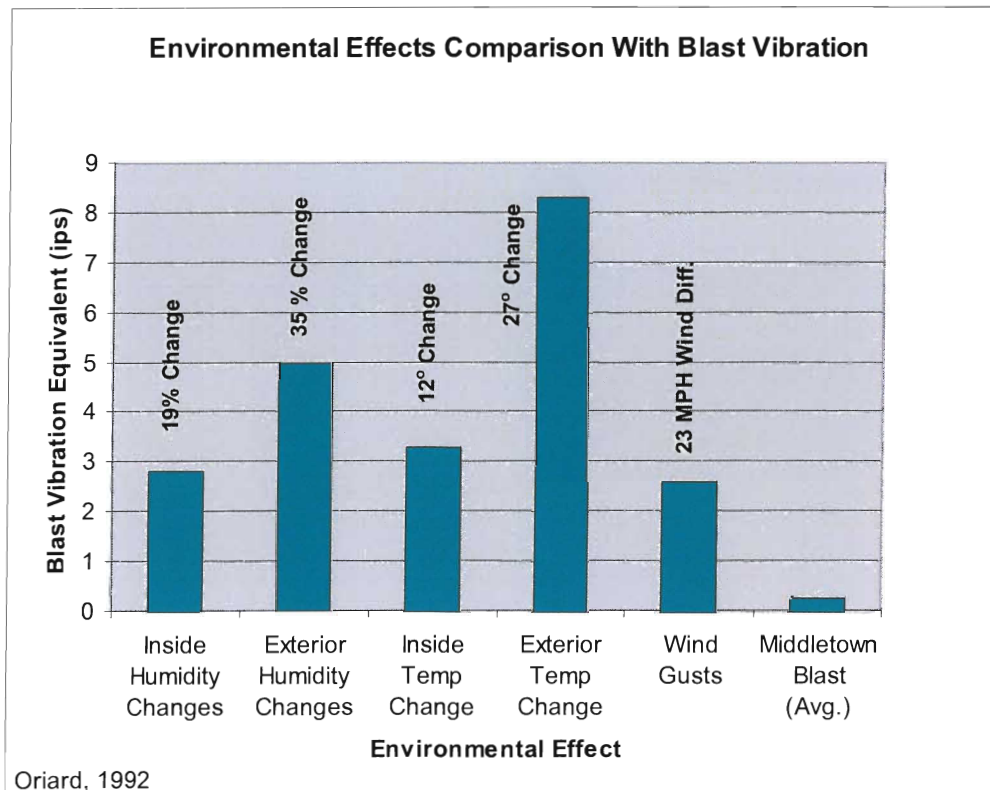
Methodology and Purpose of Pre-Blast Surveys at the Middletown Operation

WHAT IS THE PURPOSE OF A PRE-BLAST SURVEY?

As the name implies, the pre-blast survey is a visual inspection of selected structures located adjacent to proposed blasting activities. While off-site effects of commercial blasting such as that proposed for the Middletown expansion are expected to pose no threat to existing structures, it has been historically documented that when the perception of blasting reaches new or additional property owners, it is human nature to pay additional attention to one's property.

Decades of research performed by the US Bureau of Mines as well as other investigative groups, have fully documented not only the impact of blasting on structures, but also the impact of ambient environmental conditions. While blast effects typically remain well below the effects of various environmental forces, stress caused by everyday exposure to various weather events regularly places strain on construction materials above their ability to resist impact. In other words, these studies have documented what every homeowner already knows, houses, over time, will develop cracks and defects.





With the property owner paying close attention to the structure upon the perception of blasting operations, minor, threshold cracks that may have previously gone unnoticed now become the focus of attention. The question becomes; “were they there before the blasting started”?

The pre-blast survey has become a standard practice for mine and quarry expansion to remove as much doubt regarding the effect, or lack of effect, of blasting on the community as possible. By documenting the condition of a structure before it is exposed to transient ground vibration energy from blasting, a baseline of condition can be developed to aid both the property owner, as well as the mine operator, in determining cause and effect associated with blasting.

HOW IS A PRE-BLAST SURVEY CONDUCTED?

The pre-blast survey is a relatively simple process requiring no effort on behalf of the property owner other than providing access to his or her home for about one to two hours. The inspector will ask to be given access to both exterior and interior walls, floor and ceiling surfaces, looking for any observable cracks, separations, settlement or other feature that would be considered a change from standard building conditions. Most of the cracks found in residential structures are easily observed at window and door openings, wall junctions and ceiling tape joints.

Whenever a crack is found, the inspector will document the location of the crack and its characteristics by taking a photograph or videotape of each observed area. In addition to the photograph, a written

description of each crack will be made, providing the location of the crack, length/width features and any other observations deemed of interest.

After reviewing all interior surfaces, a similar survey of the exterior of the structure will be performed, using the same simple technique of inspecting observable surfaces and documenting any change in condition with photographs and or videotape. In addition, basic information regarding the structure (age, additions, major repairs, etc.) will be requested similar to what is done for a home purchase inspection.

At the conclusion of the survey, the inspector will create a written report containing all of the photographic documentation, as well as the written narrative identifying the location and characteristics of each photograph. A copy of this report will be provided to the property owner. For a typical 3,000 ft² residential home, a complete survey can be completed in less than two hours.

HOW MANY TIMES WILL MY PROPERTY BE SURVEYED?

In most cases, a single survey is performed when it is projected that approaching blast operations will become perceptible to the property owner. Because of the impact of environmental forces on any structure over time, it is not appropriate to survey structures if prolonged periods of time will elapse prior to the commencement of blasting in the area.

In operations such as Middletown, it would be expected that perception of blasting activities would occur when blasting operations are at a distance of approximately 3,000 feet from blasting operations. Given the phasing of mining activities at Middletown, this would mean that some existing and future structures might not require a pre-blast survey for many years.

Sometimes arrangements are made with property owners to have all adjoining properties surveyed upon the receipt of the new mine permit as a means of providing everyone with a general baseline of structure condition at the commencement of general mining activities associated with the permit. An agreement is then made to allow for a second survey when blasting activities reach perceptible levels if a time period greater than six months has elapsed since the initial survey.

As all blasting operations are monitored with approved seismic monitoring equipment, no additional surveys will be required.

HOW DO I KNOW THE SURVEY IS IMPARTIAL?

This is one of the cases where anything that is done with regard to the pre-blast survey that is substandard or incorrectly done will aid the property owner. The primary error that is made with regard to a survey is to miss an existing crack or condition that should be documented. Logic would indicate that this only works in the property owner's favor as, in essence, the structure contains pre-existing cracks that have not been documented, leaving the possibility that they may be claimed as blast related at a later date. I know of no manipulation of a pre-blast survey that can be done that would aid the mine operator in any way.

The pre-blast survey is an effective tool in providing the property owner and the mine operator with a baseline reference for the condition of the community prior to blasting. While it needs to be stressed that

continued exposure to environmental forces will, over time, show some change in the condition of any structure, the pre-blast survey is still an effective means of establishing guidelines prior to blasting activities.

WELL GUARANTEE AGREEMENT

Carmeuse Lime & Stone, its successors or assigns (hereinafter referred to as "MINE OWNER") guarantees to the undersigned Owner that it will replace or replenish the Owner's existing privately owned domestic-use water well(s) under the following circumstances:

Any water well negatively impacted in such a way as to render it unsuitable for its existing use, on property within 1,500 feet of any parcels being actively quarried and dewatered by MINE OWNER located at its Middletown plant (hereinafter referred to as the MINE OWNER Facility) by depleting a well, lowering the water surface below the pump or negatively intercepting the groundwater flow to the well. If at some future date MINE OWNER expands the MINE OWNER Facility and the active mining operations into other adjoining properties not currently zoned for earth materials extraction, then this Well Guarantee Agreement will be automatically expanded to include all parcels within 1,500 feet from those areas.

MINE OWNER will repair the problem by lowering the pump, deepening the well, drilling a replacement well, and/or installing an appropriate water quality treatment system at no cost to the Owner.

The undersigned Owner, in accepting this guarantee, agrees to the following conditions:

The Owner grants permission to MINE OWNER or its representative to inspect and evaluate the current condition of the well as part of a baseline water well inspection survey.

The Owner grants permission to MINE OWNER or its representative to perform water level measurements of the well or collect water quality samples (in addition to the baseline water well inspection survey) on an as needed basis for the purpose of creating background data for the well, and to assess potential complaints.

The Owner agrees to notify within twenty-four (24) hours of discovery of the reduction of water supply, depletion of the well or degradation in water quality so that MINE OWNER and a third-party hydrogeologist (as a Licensed Professional Geologist in the State of Virginia) can verify and/or document any occurrences noted during quarrying at the MINE OWNER Facility that may have contributed to the reduction of water supply or well depletion.

The third-party hydrogeologist shall document the reduction of water supply, depletion of the well or degradation in water quality. Further, the hydrogeologist will make a determination as to the cause of the reduction of water supply, depletion of the well or degradation in water quality only for purposes of determining the appropriate repair or remediation. MINE OWNER shall be responsible for supplying temporary potable water for human consumption, and potentially, water hauling for other uses (as appropriate) until the problem is corrected. MINE OWNER shall be allowed by the Owner to evaluate the well and conduct such reasonable tests as it deems necessary to verify the cause of the reduction of water supply, depletion of the well or degradation in water quality.

MINE OWNER agrees to bear all reasonable expenses that result from said reduction of water supply or well depletion; including, but not limited to temporary potable water supply for human consumption, household use, water hauling for other potential uses (as appropriate), well and pump modification, new well construction, and legal fees expended in implementing this Well Guarantee Agreement. The owner shall notify MINE OWNER prior to undertaking remedial activities or incurring expenses that later may be borne by MINE OWNER.

Repair costs due to worn or defective pumps, electrical cabling, and piping are specifically



excluded from this guarantee.

The terms of the Well Guarantee Agreement are binding during the active life of the said MINE OWNER Facility, including one year following cessation of mining activities. Upon the expiration of one year following completion of quarrying activities at the MINE OWNER Facility, this Well Guarantee Agreement shall be considered null and void.

Owner:
Date:
MINE OWNER:
Title:
Date:

Local homeowners within 1,500 feet of the property line of the proposed expansion will be invited to take part in a pre-expansion survey of their domestic water wells.

Within ___ days after rezoning is approved, each property owner within the 1,500 ft. radius of the proposed expansion will be sent an informational newsletter explaining the purpose of the Survey. A second letter, which will include a short scheduling form for owners to fill out and return to Carmeuse Lime & Stone, will be sent out within ___ days after the newsletter, and a public information meeting will be held as a follow up. As the scheduling forms are received, the property owners will be contacted by Carmeuse personnel to coordinate a day and time that is convenient to conduct the survey.

The Survey generally will consist of a short, in-person or phone, interview with the resident, property owner, or other knowledgeable party to gain information on the history of their well. The interview will followed by a physical inspection of the well. This includes obtaining the water level, pump setting depth and total depth. Existing driller's logs will also be examined. All sampling will be conducted in accordance with _____ governing approved testing procedures for potable water wells.

Field parameters measured at the time of collection include pH, Specific Conductance, Temperature, and Turbidity. The samples will be packed in ice and transported under chain-of-custody to a third party, accredited analytical laboratory for analysis. The samples will be analyzed at the laboratory for pertinent biological and chemical constituents. These include Total Coliform, Alkalinity, Chloride, Sulfate, Nitrate, Phosphorus, Potassium, Sodium, Magnesium, Calcium, Iron, and Manganese.

Each well will also be tested to determine its Specific Capacity, which will be used as a baseline for well yield estimations at that particular location. Well water at each respective well will be purged at a measured flow rate (variable for each well) for a specific time interval (also variable for each well) using the existing pumping system currently in place. The water level in each well will be measured during the testing period. Typically the well will be purged at a flow rate of less than 5 to 10 gallons per minute for approximately 30 minutes or less. The Specific Capacity for each test will be calculated using the average pumping rate during the test divided by the water level drawdown incurred at the well during the test.

Copies of the resulting reports will be provided to the property owner, as well as being maintained by Carmeuse and the designated third party performing the evaluation.



AMENDED PROFFER STATEMENT

| REZONING: RZ# 03-06
Rural Areas (RA) to Extractive Manufacturing (EM)

PROPERTY: 394.2Acres +/-;
Portions of Tax Map Parcels 83-A-109 (“parcel 109”) and 90-A-23
 (“parcel 23”) (the “Properties”)

| RECORD OWNER: O-N Minerals (Chemstone) Company (“Owner”)

| APPLICANT: O-N Minerals (Chemstone) Company (“Applicant”)

PROJECT NAME: Chemstone - Middletown

ORIGINAL DATE
OF PROFFERS: June 13, 2005

| REVISION DATE(S): February 24, 2017, June 5, 2017, September 25, 2017

| The undersigned Applicant-Owner hereby proffers that the use and development of the portions of the above-referenced parcels, which are requested to be rezoned, the portions requested to be rezoned being shown on the attached and incorporated plat identified as “Exhibit 1”, shall be in strict conformance with the following conditions, which shall supersede all other proffers on the Properties that may have been made prior hereto. In the event that the above-referenced EM conditional rezoning is not granted as applied for by the Applicant-Owner, these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Properties with “final rezoning” defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of Supervisors’ (the “Board”) decision granting the rezoning may be contested in the appropriate court. If the Board’s decision is contested, and the Applicant-Owner elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal.

| The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Properties adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. Any proffered conditions that would prevent the Applicant-Owner from conforming with State and/or Federal regulations shall be considered null and void. The term “Applicant-Owner” as referenced herein shall include within its meaning all future owners and successors in interest. When used in these proffers, the “Generalized Development Plan,” shall refer to the plan entitled “Generalized Development

Plan, O-N Minerals (Chemstone)” dated May, 2008 and revised June 28, 2017 (the “Amended GDP”). Exhibit 1. The Applicant-Owner attaches and incorporates the Amended GDP, which includes a plan titled “Generalized Development Plan”; a plan titled “Overall Plan”; four plans titled “Phase I Plan”, “Phase II Plan”, “Phase III Plan”, and “Phase IV Plan”; and twelve viewshed plats titled “Viewshed 1A, Viewshed 1B, Viewshed 2, Viewshed 3, Viewshed 4A, Viewshed 4B, Viewshed 5A, Viewshed 5B, Viewshed 6, Viewshed 7, and Viewshed 8”. The aforementioned documents are and shall be incorporated by reference herein as “Exhibit 2”. The Applicant-Owner proffers that its development of the Properties will be in substantial conformity with the Amended GDP. The Generalized Development Plan included in the Proffer Statement approved on May 28, 2008 (“GDP”) is hereby replaced as it relates to the installation and location of berms and viewsheds. All other aspects of the GDP remain the same and in full force and effect.

1. Land Use

1.1 The Properties shall be developed with extractive manufacturing land uses pursuant to the mining permit approved by the Division of Mineral Mining (“DMM”) of the Virginia Department of Mines, Minerals and Energy (“VDMME”), and shall therefore conform to the Mineral Mining Law and Reclamation Regulations for Mineral Mining of the Commonwealth of Virginia.

1.2 The Applicant-Owner hereby proffers not to engage in the following uses on the Properties:

Oil and natural gas extraction;
Asphalt and concrete mixing plants;
Brick, block and precast concrete products;
Cement and lime kilns; and
Coal and natural gas-fired power plants or facilities which sell power to the local utility or power grid*

*This is not to be interpreted as a restriction against using power plants on the Properties as necessary to support extractive mining activities.

2. Site Development

2.1 Properties’ access via public secondary roads shall be limited to the existing quarry entrance on McCune Road (Route 757). Access by vehicles needed for periodic maintenance of the Properties shall not be limited. [ONGOING]

2.2 A combination of landscaping, Earthen berms and fencing shall be installed around the Properties in the areas depicted on the Amended GDP. ~~active quarry pits in the location show on the GDP. The berms shall have a maximum height of 30 feet and a minimum height of 10 feet. The berms (Berm A and Berm B) depicted on the Phase I Plan of the GDP shall be installed within 10 years of the approval of the rezoning. The berms (Berm C and Berm D) depicted on the Phase II Plan of the GDP shall be installed no later than 10 years prior to the commencement of mining north of Chapel Road.~~ The berms shall be landscaped

to minimize impacts to the viewshed of the surrounding community and shall be installed at the commencement of permitting of the Properties for mining but before any extraction of material for processing and in the locations depicted on the Amended GDP. ~~The Such~~ landscaping shall have consist of a mix of deciduous and coniferous plantings placed in a random manner to be consistent with existing vegetation patterns. ~~The description of the plants to be installed on the berms are more specifically described in the attached and incorporated "Exhibit 3."~~ The landscaping shall be subject to reasonable approval of the Zoning Administrator of Frederick County and upon consultation with the State Forester. With respect to Berm A, located on Tax Parcel 90-A-2, not owned by the Applicant Owner, the berm will be constructed by the Applicant Owner as the tenant under a 100-year lease of Parcel 90-A-2, with authority under the lease to construct Berm A.

- 2.3 The existing overburden stock pile on the southeast corner of the current Middletown plant site shall be reduced in height to the greater of 30 feet or the height of the adjacent tree line (lying to the east) within 5 years of the approval of the rezoning. [COMPLETED]

3. Historic Resources

- 3.1 The Applicant Owner shall create an 8 acre historic reserve as shown on the GDP, within which archeological resources and other historic activities have been identified. Further, the Applicant Owner shall place restrictions on the reserve land for how the reserve will be used by the Properties' owner and future owners. A copy of said restrictions are attached and incorporated as "Exhibit 24". Said reserve land shall be dedicated to the Cedar Creek Battlefield Foundation, Inc. within 60 days of final rezoning. [NOTE: the aforementioned 8 acre historic reserve property is not to be included in the property to be rezoned.] [COMPLETED]
- 3.2 The Applicant Owner shall complete a Phase I Archaeological Survey of parcels 23 and 109. The Phase I Archaeological Survey of parcel 23 shall be completed within 12 months of the approval of the rezoning. For the remaining tracts of land, the Applicant Owner shall complete a Phase I Archaeological Survey of particular tract of land before any mining activities commence on that property. The Applicant Owner may commence mining activities on a particular portion of the Properties before the completion of the Phase I survey for all of the Properties, but under any and all circumstances, no mining operations shall commence on any portion of the Properties until after the Phase I Archeological Survey has been completed on said portion of the Properties. Said survey shall locate, identify, and comprehensively record all historic sites, buildings, structures, and objects on the parcels. Such survey shall be conducted in accordance with the guidelines for a Phase 1 Survey as defined in the Virginia Department of Historic Resources "GUIDELINES FOR CONDUCTING CULTURAL RESOURCE SURVEY IN VIRGINIA - Chapter 7: Guidelines for Archaeological Investigations in Virginia," 1999 (Rev. Jan. 2003). [COMPLETED]

3.3 Two cemeteries have been identified on the Properties. The first cemetery is located adjacent to Chapel Road and is in an area that is not designated for mining and is also outside of the berming area. That cemetery is currently undergoing a historical restoration. After the historical restoration, the Applicant-Owner will follow the recommendations of the Owner'sApplicant's historian. [COMPLETED]

The second cemetery is located in the area where berming is slated to be installed. The Applicant-Owner proffers the berming will be located in such a way as to not encroach on the cemetery. This cemetery is also currently undergoing a historical restoration. After the historical restoration, the Applicant-Owner will follow the recommendations of the Applicant's-Owner's historian. In addition, the cemetery is accessed through a right-of-way which is of record providing access to the cemetery from Route 625. The Owner agrees to build a right-of-way to access the second cemetery in the general location depicted on the Amended GDP and which shall have an entrance on Chapel Road. The primary purpose of the right-of-way shall be for access by the descendants of those in the cemetery and shall be conditioned upon and subject to all applicable agency approvals, including, but not limited to, the approval by the Virginia Department of Transportation of an entrance (to the extent the same is required) on the public road. The Applicant proffers to improve said right of way so that it can be used for access by the descendants of those in the cemetery within 12 months of completion of the cemetery restoration. Once said right of way has been improved, the Applicant will provide continued maintenance and have use of same.

4. Rights to Water Supply – [ONGOING]

4.1 The Applicant-Owner shall guarantee the Frederick County Sanitation Authority (“FCSA”) rights to the water resources available on the Properties in accordance with the existing agreements between the Applicant-Owner and FCSA.

5. Ground Water – [COMPLETED]

5.1 The Applicant-Owner shall install a minimum of three monitoring wells to effectively establish and monitor the groundwater level in order to avoid detrimental impacts to surrounding properties. Said wells shall be installed prior to any land disturbance of the portion of the Properties identified as parcel 109 by the GDP, and shall be located within 500 feet of the Properties’ boundaries. A minimum of one monitoring well shall be installed within 500 feet of the parcel 109 Properties’ boundary. The exact location of the monitoring wells is depicted on the Overall Plan of the GDP.

5.2 Subject to and consistent with the provisions of paragraph 9.2, the Applicant-Owner shall remediate any adverse impacts to wells located on surrounding properties caused by mining operations on the Properties. Costs associated with any required remediation shall be borne by the Applicant-Owner.

Furthermore, the Applicant-Owner agrees to participate in a pre-blast survey and well monitoring survey, as further described herein. The intent of the aforementioned surveys is to provide a mechanism to remediate any adverse impacts to wells and/or structures, which are caused by the mining operations on the Properties.

6. Dust Control – [ONGOING]

6.1 Dust from drills, muck piles, material handling, screens, crushers, conveyors, feeders, hoppers, stockpiles, load-outs, and traffic areas shall be controlled by wet suppression or equivalent, and controlled by and consistent with the terms of the Department of Environmental Quality (“VDEQ”) general air permit. The Applicant-Owner shall remediate any adverse impacts to surrounding properties caused by dust associated with the mining operations on the Properties.

7. Blasting Control – [ONGOING]

7.1 All blasting associated with mining operations on the Properties shall be limited by the mining permit approved by the DMM of the VDMME. Peak Particle Velocities (PPV) associated with blasting on the Properties shall not exceed the levels stipulated by said permit. In addition, the Applicant-Owner agrees to have an approved blasting plan in place at all times. An example of the current blasting plan is attached. Further, in addition, the Applicant-Owner agrees that there will be no block holing or adobe blasting conducted on the Properties. Any damage to surrounding properties caused by blasting on the Properties shall be remediated at the Applicant’s-Owner’s expense.

8. Traffic – [ONGOING]

8.1 The Applicant’s-Owner’s current number of truck loads leaving the site on a daily basis is approximately 63, and the Applicant-Owner has had higher numbers of recorded truck loads leaving the plant to a total of 114 truck loads per day. The Applicant-Owner, in its proffer, is agreeing to restrict truck traffic to the Properties to 86 truck loads per day averaged over the prior 30 days, but intends to also have an ability to increase the number of truck loads in the event of an emergency or circumstances, which could be caused by issues driven by the Applicant’s-Owner’s customers, suppliers, and/or carriers. Examples of such shall include, but are not limited to, an interruption of rail service to the site and/or any sites that are serviced by rail from the Applicant’s-Owner’s Properties and/or any other interruption of the ability to deliver materials at the Applicant’s-Owner’s site or any other sites which are owned, controlled, or by business relationship connected with the Applicant’s-Owner’s site. To that end, and in any circumstance, the Applicant-Owner agrees to restrict truck traffic to the Properties to a maximum of 200 truck loads per day averaged over the prior 30 days through the scale house hauling mined materials on and/or off the proposed quarry site from the existing quarry entrance. The maximum number of truck loads will be regulated by the

Applicant-Owner and its successors and/or assigns. A record of the actual number of truck loads per day shall be kept current (and maintained for one year) by the Applicant-Owner at its scale house office. Said record shall be made available in a form which confirms the number of trips and the form will be produced to Frederick County officials upon demand with reasonable notice. The Applicant-Owner proffers there will be no truck loads from the Properties on Sundays and the hours of truck loading on Saturdays will be no later than 7:00 p.m. The Applicant-Owner further proffers it will instruct all truckers as to the proper route of travel from the Properties to Route 11, which shall exclude both Belle Grove and Chapel Roads.

9. Pre-Blast Surveys – [ONGOING]

9.1 The Applicant-Owner will offer voluntary pre-blast surveys of properties that are within 1,500 feet of the boundaries of parcel 23 and parcel 109. The aforementioned surveys will be conducted by an independent engineering firm, which will investigate and document the pre-blast conditions of the participants' residences and/or outbuildings. The Applicant-Owner and its successors and assigns will contact all citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109, and monitor the tax roles for Frederick County on an annual basis in order to contact any citizens who have recently purchased the aforementioned property. This contact will be made by the Applicant-Owner and its successor and assigns to invite citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109 to participate in the pre-blast surveys. Contact will be made by registered return-receipt letters, mailed annually from the time of the rezoning. All citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109 can, and are encouraged to, participate in the survey by contacting the Applicant-Owner and scheduling a mutually agreeable time for the independent engineering firm to visit the party's residence to document and survey the pre-blast condition of the party's residences/outbuildings following the procedures set forth in the attached and incorporated "Exhibit 35". If the property owner agrees to participate, the Applicant's-Owner's and/or its engineering firm shall visit and inspect the party's residences/outbuildings to monitor the condition of the same. A record of those pre-blast conditions will be kept by the independent engineering firm with copies retained by the Applicant-Owner and the participating property owner. In the event of a change in condition, which is alleged by the participating property owner as a result of mining operations, the engineering firm will then conduct a follow-up visit and investigation and use the pre-blast information as a control and basis for subsequent analysis. Said analysis shall be used to determine the cause of any negative change in condition. If it is determined there is a change in condition in the residences/outbuildings, which has been caused by the Applicant's-Owner's mining activities on the Properties, then the Applicant-Owner agrees to remediate and/or repair said negative change in condition to restore it to its status prior to blasting operations. In addition, the Applicant-Owner agrees to establish seismic monitoring of the proposed quarry site to

monitor all blasting activities and keep records of said seismic monitoring as required by the VDMME.

9.2 The Applicant-Owner will offer voluntary well monitoring surveys of properties that are within 1,500 feet of the boundaries of parcel 23 and parcel 109. The aforementioned surveys will be conducted by an independent well drilling firm or hydrogeologist, which will investigate and document the pre-mining conditions of the participants' wells. The Applicant-Owner and its successors and assigns will contact all citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109, and monitor the tax roles for Frederick County on an annual basis in order to contact any citizens who have recently purchased the aforementioned property. This contact will be made by Applicant-the Owner and its successor and assigns to invite citizens who have property within 1,500 feet of the boundaries of parcel 23 and parcel 109 to participate in the well monitoring surveys. Contact will be made by sending annually registered return-receipt letters. All citizens who have property located within 1,500 feet of the boundaries of parcel 23 and parcel 109 can and are encouraged to participate in the survey by scheduling a mutually agreeable time for the independent well drilling firm to visit the party's residence to document and survey the pre-blast condition of the party's well following the procedures set forth in the attached and incorporated "Exhibit 46A and 46B". A record of these pre-mining conditions will be kept by the independent well drilling firm, with copies retained by the Applicant-Owner and the participating property owner. In the event a change of condition is alleged by the property owner as a result of mining operations, the Applicant-Owner will provide an interim replacement water supply as necessary to supply the property owner with water. The well drilling firm will then conduct a follow-up visit and investigation and use pre-blast information as a control and basis for subsequent analysis. If it is determined that the status of the neighboring property owner's well has deteriorated from the condition it was in at the time of the pre-blast survey, then the Applicant-Owner agrees to restore the well to its condition existing at the time of the pre-blast survey and/or provide the adjoining property owner a replacement well of the same condition (or better) of that which existed at that time of the pre-blast survey.

9.3 In addition to the above, the Applicant-Owner agrees to maintain in force an insurance policy or other sufficient security for the period of time covering the active mining operations on the Properties and to maintain in effect for a period of one year from the date of cessation of said mining operations, and to cover the costs of any remediation and/or repair, which is required pursuant to the terms of sections 9.1 and 9.2 above. Said policy or surety shall be in the amount of no less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Frederick County may review from time to time the amount of the policy or surety to evaluate whether the minimum amount of \$1,000,000.00 is sufficient to protect the cost of any remediation and/or repair, which is required pursuant to the terms of sections 9.1 and 9.2. In the event Frederick County believes that the amount of the policy or surety needs to be increased for the reasons set forth above, then the Applicant-Owner and Frederick County shall reach an agreement as to the proper

amount of policy or surety. The approval of said increase shall not be unreasonably withheld, conditioned or denied by either party. The Applicant Owner shall annually provide to the County a Certificate of Insurance from the insurance carrier.

10. Reclamation – [ONGOING]

10.1 It is intended that pursuant to the terms of the agreement reached with the FCSA that at the time of cessation of mining activities, the Properties’ quarry pits shall be used by the FCSA as water reservoirs. The control of the water levels in the quarry pits shall be handed over to the FCSA. It is intended that the quarry pits at that time will contain quantities of water monitored and directed by the FCSA, and which will be conducive to the general betterment of natural habitat.

11. Noise Abatement – [ONGOING]

11.1 Operations on the Properties will not exceed the VDMME Engineering’s decibel guidelines. The Applicant Owner will make all reasonable efforts to locate mining machinery in the quarry pit or behind berms.

12. Lighting – [ONGOING]

12.1 There shall be no affixed lighting structures above-ground on the berms other than as may be required for or provided by regulations that affect the plant operations, including but not limited to, Mine Safety Health Administration (“MSHA”), VDMME, and any other governmental or regulatory body that oversees mining operations. Lighting used for devices or machines that convey materials or for pit crushing facilities and other mining activities is permitted. Conveying and pit crushing facilities shall also be interpreted as including such other devices or activities that perform similar or related functions that may come into use and/or existence at some time in the future while the extractive mining use is still in effect on the Properties. In addition to the above, all lighting will be installed in such a manner that there will be no spillover beyond any property line of the Applicant Owner onto adjacent properties not owned by the Applicant Owner.

13. Air Permit – [ONGOING]

13.1 The Applicant Owner shall maintain its existing general air permit controlling emissions in accordance with the VDEQ standards and also see that the existing general air permit covers all activities conducted on the rezoned Properties.

14. Environment – [ONGOING]

14.1 In addition to compliance with the VPDES water discharge permit already in place, the Applicant Owner agrees to work with a recognized environmental entity of the Applicant’s Owner’s choosing during its operations to ensure that the water emissions from water flowing from the quarry operations on the Properties

is of a quality consistent with the water quality in Cedar Creek so as to maintain an environment conducive to natural habitats. No additional water discharge points will be added.

14.2 The Applicant Owner agrees that all areas currently in trees on property owned by the ~~Owner Applicant~~, which is outside of the rezoned Properties and identified on the GDP as “Middletown Woods”, shall be maintained using best management practices.

14.3 The Applicant Owner proffers to keep its mining operations at least 200 feet from the edge of Cedar Creek.

15. Phasing

15.1 The Applicant agrees that mining activities on the Properties shall occur with the following phasing ~~and as set forth on the Phasing Plans of the GDP:~~

After the rezoning is approved, the Applicant will start creating berms on the newly rezoned Properties and the Applicant shall start quarrying in the area identified as parcel 23. Mining in parcel 23 shall occur from the time period commencing with the approval of the rezoning for a period of time which is estimated to be twenty years. [COMPLETED IN PART – The berm referenced is installed and mining is continuing but not yet completed.]

For the newly zoned area, which is north of the existing EM zoned property, and south of Chapel Road, mining activities will commence no earlier than ten years from the date that the rezoning referenced herein is approved.

For the newly zoned area, which lies north of Chapel Road, mining will commence no earlier than twenty years from the date that the rezoning referenced herein is approved.

Respectfully submitted,

O-N MINERALS (CHEMSTONE) COMPANY

By: _____ Ian Karkaria

Its: _____ Area Operations Manager

COMMONWEALTH OF VIRGINIA, AT LARGE

FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by _____, Ian Karkaria, Area
Operations Manager of O-N Minerals (Chemstone) Company.

NOTARY PUBLIC

My commission expires: _____
Registration number: _____

PROPOSED PROFFER STATEMENT

REZONING: RZ# 03-06
Rural Areas (RA) to Extractive Manufacturing (EM)

PROPERTY: 394.2 Acres +/-;
Portions of Tax Map Parcels 83-A-109 ("parcel 109") and 90-A-23
("parcel 23") (the "Properties")

RECORD OWNER: O-N Minerals (Chemstone) Company

APPLICANT: O-N Minerals (Chemstone) Company ("Applicant")

PROJECT NAME: Chemstone - Middletown

ORIGINAL DATE
OF PROFFERS: June 13, 2005

REVISION DATE(S): January 16, 2006 February 8, 2006 August 28, 2006
March 18, 2008 April 18, 2008 May 14, 2008
May 20, 2008 May 22, 2008 May 27, 2008

The undersigned Applicant hereby proffers that the use and development of the portions of the above-referenced parcels, which are requested to be rezoned, the portions requested to be rezoned being shown on the attached and incorporated plat identified as "Exhibit 1," shall be in strict conformance with the following conditions, which shall supersede all other proffers on the Properties that may have been made prior hereto. In the event that the above-referenced EM conditional rezoning is not granted as applied for by the Applicant, these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Properties with "final rezoning" defined as that rezoning which is in effect on the day following the last day upon which the Frederick County Board of Supervisors' (the "Board") decision granting the rezoning may be contested in the appropriate court. If the Board's decision is contested, and the Applicant elects not to submit development plans until such contest is resolved, the term rezoning shall include the day following entry of a final court order affirming the decision of the Board which has not been appealed, or, if appealed, the day following which the decision has been affirmed on appeal.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Properties adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. Any proffered conditions that would prevent the Applicant from conforming with State and/or Federal regulations shall be considered null and void. The term "Applicant" as referenced herein shall include within its meaning all future owners and successors in interest. When used in these proffers, the "Generalized

Development Plan,” shall refer to the plan entitled “Generalized Development Plan, O-N Minerals (Chemstone)” dated May, 2008 (the “GDP”). The Applicant attaches and incorporates the GDP, which includes a plan titled “Generalized Development Plan”; a plan titled “Overall Plan”; four plans titled “Phase I Plan”, “Phase II Plan”, “Phase III Plan”, and “Phase IV Plan”; and twelve viewshed plats titled “Viewshed 1A, Viewshed 1B, Viewshed 2, Viewshed 3, Viewshed 4A, Viewshed 4B, Viewshed 5A, Viewshed 5B, Viewshed 6, Viewshed 7, Viewshed 8 and Viewshed 9”. The aforementioned documents are and shall be incorporated by reference herein as “Exhibit 2.” The Applicant proffers that its development of the Properties will be in substantial conformity with the GDP.

1. Land Use

1.1 The Properties shall be developed with extractive manufacturing land uses pursuant to the mining permit approved by the Division of Mineral Mining (“DMM”) of the Virginia Department of Mines, Minerals and Energy (“VDMME”), and shall therefore conform to the Mineral Mining Law and Reclamation Regulations for Mineral Mining of the Commonwealth of Virginia.

1.2 The Applicant hereby proffers not to engage in the following uses on the Properties:

Oil and natural gas extraction;
Asphalt and concrete mixing plants;
Brick, block and precast concrete products;
Cement and lime kilns; and
Coal and natural gas-fired power plants or facilities which sell power to the local utility or power grid*

*This is not to be interpreted as a restriction against using power plants on the Properties as necessary to support extractive mining activities.

2. Site Development

2.1 Properties’ access via public secondary roads shall be limited to the existing quarry entrance on McCune Road (Route 757). Access by vehicles needed for periodic maintenance of the Properties shall not be limited.

2.2 Earthen berms shall be installed around the active quarry pits in the location shown on the GDP. The berms shall have a maximum height of 30 feet and a minimum height of 10 feet. The berms (Berm A and Berm B) depicted on the Phase I Plan of the GDP shall be installed within 10 years of the approval of the rezoning. The berms (Berm C and Berm D) depicted on the Phase II Plan of the GDP shall be installed no later than 10 years prior to the commencement of mining north of Chapel Road. The berms shall be landscaped to minimize impacts to the viewshed of the surrounding community. Such landscaping shall consist of a mix of deciduous and coniferous plantings placed in a random manner to be consistent with existing vegetation patterns. The description of the plants to be

installed on the berms are more specifically described in the attached and incorporated "Exhibit 3." The landscaping shall be subject to reasonable approval by the Zoning Administrator of Frederick County and upon consultation with the State Forester. With respect to Berm A, located on Tax Parcel 90-A-2, not owned by the Applicant, the berm will be constructed by the Applicant as the tenant under a 100-year lease of Parcel 90-A-2, with authority under the lease to construct Berm A.

- 2.3 The existing overburden stock pile on the southeast corner of the current Middletown plant site shall be reduced in height to the greater of 30 feet or the height of the adjacent tree line (lying to the east) within 5 years of the approval of the rezoning.

3. Historic Resources

- 3.1 The Applicant shall create an 8 acre historic reserve as shown on the GDP and on Exhibit 1, within which archaeological resources and other historic activities have been identified. Further, the Applicant shall place restrictions on the reserve land for how the reserve will be used by the Properties' owner and future owners. A copy of said restrictions are attached and incorporated as "Exhibit 4." Said reserve land shall be dedicated to the Cedar Creek Battlefield Foundation, Inc. within 60 days of final rezoning. [NOTE: the aforementioned 8 acre historic reserve property is not to be included in the property to be rezoned.]
- 3.2 The Applicant shall complete a Phase I Archaeological Survey of parcels 23 and 109. The Phase I Archaeological Survey of parcel 23 shall be completed within 12 months of the approval of the rezoning. For the remaining tracts of land, the Applicant shall complete a Phase I Archaeological Survey of a particular tract of land before any mining activities commence on that property. The Applicant may commence mining activities on a particular portion of the Properties before the completion of the Phase I survey for all of the Properties, but under any and all circumstances, no mining operations shall commence on any portion of the Properties until after the Phase I Archeological Survey has been completed on said portion of the Properties. Said survey shall locate, identify, and comprehensively record all historic sites, buildings, structures, and objects on the parcels. Such survey shall be conducted in accordance with the guidelines for a Phase 1 Survey as defined in the Virginia Department of Historic Resources "GUIDELINES FOR CONDUCTING CULTURAL RESOURCE SURVEY IN VIRGINIA - Chapter 7: Guidelines for Archaeological Investigations in Virginia," 1999 (Rev. Jan. 2003).
- 3.3 Two cemeteries have been identified on the Properties. The first cemetery is located adjacent to Chapel Road and is in an area that is not designated for mining and is also outside of the berming area. That cemetery is currently undergoing a historical restoration. After the historical restoration, the Applicant will follow the recommendations of the Applicant's historian.

The second cemetery is located in the area where berming is slated to be installed. The Applicant proffers the berming will be located in such a way as to not encroach on the cemetery. This cemetery is also currently undergoing a historical restoration. After the historical restoration, the Applicant will follow the recommendations of the Applicant's historian. In addition, the cemetery is accessed through a right-of-way which is of record providing access to the cemetery from Route 625. The Applicant proffers to improve said right-of-way so that it can be used for access by the descendants of those in the cemetery within 12 months of completion of the cemetery restoration. Once said right-of-way has been improved, the Applicant will provide continued maintenance and have use of same.

4. Rights to Water Supply

4.1 The Applicant shall guarantee the Frederick County Sanitation Authority ("FCSA") rights to the water resources available on the Properties in accordance with the existing agreements between the Applicant and FCSA.

5. Ground Water

5.1 The Applicant shall install a minimum of three monitoring wells to effectively establish and monitor the groundwater level in order to avoid detrimental impacts to surrounding properties. Said wells shall be installed prior to any land disturbance of the portion of the Properties identified as parcel 109 by the GDP, and shall be located within 500 feet of the Properties' boundaries. A minimum of one monitoring well shall be installed within 500 feet of the parcel 109 Properties' boundary. The exact location of the monitoring wells is depicted on the Overall Plan of the GDP.

5.2 Subject to and consistent with the provisions of paragraph 9.2, the Applicant shall remediate any adverse impacts to wells located on surrounding properties caused by mining operations on the Properties. Costs associated with any required remediation shall be borne by the Applicant.

Furthermore, the Applicant agrees to participate in a pre-blast survey and well monitoring survey, as further described herein. The intent of the aforementioned surveys is to provide a mechanism to remediate any adverse impacts to wells and/or structures which are caused by the mining operations on the Properties.

6. Dust Control

6.1 Dust from drills, muck piles, material handling, screens, crushers, conveyors, feeders, hoppers, stockpiles, load-outs, and traffic areas shall be controlled by wet suppression or equivalent, and controlled by and consistent with the terms of the Department of Environmental Quality ("VDEQ") general air permit. The Applicant shall remediate any adverse impacts to surrounding properties caused by dust associated with the mining operations on the Properties.

7. Blasting Control

7.1 All blasting associated with mining operations on the Properties shall be limited by the mining permit approved by the DMM of the VDMME. Peak Particle Velocities (PPV) associated with blasting on the Properties shall not exceed the levels stipulated by said permit. In addition, the Applicant agrees to have an approved blasting plan in place at all times. An example of the current blasting plan is attached. Further, in addition, the Applicant agrees that there will be no block holing or adobe blasting conducted on the Properties. Any damage to surrounding properties caused by blasting on the Properties shall be remediated at the Applicant's expense.

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8.1 The Applicant's current number of truck loads leaving the site on a daily basis is approximately 63, and the Applicant has had higher numbers of recorded truck loads leaving the plant to a total of 114 truck loads per day. The Applicant, in its proffer, is agreeing to restrict truck traffic to the Properties to 86 truck loads per day averaged over the prior 30 days, but intends to also have an ability to increase the number of truck loads in the event of an emergency or circumstances, which could be caused by issues driven by the Applicant's customers, suppliers, and/or carriers. Examples of such shall include, but are not limited to, an interruption of rail service to the site and/or any sites that are serviced by rail from the Applicant's Properties and/or any other interruption of the ability to deliver materials at the Applicant's site or any other sites which are owned, controlled, or by business relationship connected with the Applicant's site. To that end, and in any circumstance, the Applicant agrees to restrict truck traffic to the Properties to a maximum of 200 truck loads per day averaged over the prior 30 days through the scale house hauling mined materials on and/or off the proposed quarry site from the existing quarry entrance. The maximum number of truck loads will be regulated by the Applicant and its successors and/or assigns. A record of the actual number of truck loads per day shall be kept current (and maintained for one year) by the Applicant at its scale house office. Said record shall be made available in a form which confirms the number of trips and the form will be produced to Frederick County officials upon demand with reasonable notice. The Applicant proffers there will be no truck loads from the Properties on Sundays and the hours of truck loading on Saturdays will be no later than 7:00 p.m. The Applicant further proffers it will instruct all truckers as to the proper route of travel from the Properties to Route 11, which shall exclude both Belle Grove and Chapel Roads.

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to document and survey the pre-blast condition of the party's well following the procedures set forth in the attached and incorporated "Exhibit 6A and 6B." A record of these pre-mining conditions will be kept by the independent well drilling firm, with copies retained by the Applicant and the participating property owner. In the event a change of condition is alleged by the property owner as a result of mining operations, the Applicant will provide an interim replacement water supply as necessary to supply the property owner with water. The well drilling firm will then conduct a follow-up visit and investigation and use pre-blast information as a control and basis for subsequent analysis. If it is determined that the status of the neighboring property owner's well has deteriorated from the condition it was in at the time of the pre-blast survey, then the Applicant agrees to restore the well to its condition existing at the time of the pre-blast survey and/or provide the adjoining property owner a replacement well of the same condition (or better) of that which existed at that time of the pre-blast survey.

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commencing with the approval of the rezoning for a period of time which is estimated to be twenty years.

For the newly zoned area, which is north of the existing EM zoned property, and south of Chapel Road, mining activities will commence no earlier than ten years from the date that the rezoning referenced herein is approved.

For the newly zoned area, which lies north of Chapel Road, mining will commence no earlier than twenty years from the date that the rezoning referenced herein is approved.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

Respectfully submitted,

O-N MINERALS (CHEMSTONE) COMPANY

By: Spencer C. Stinson

Its: General Manager

Spencer C. Stinson

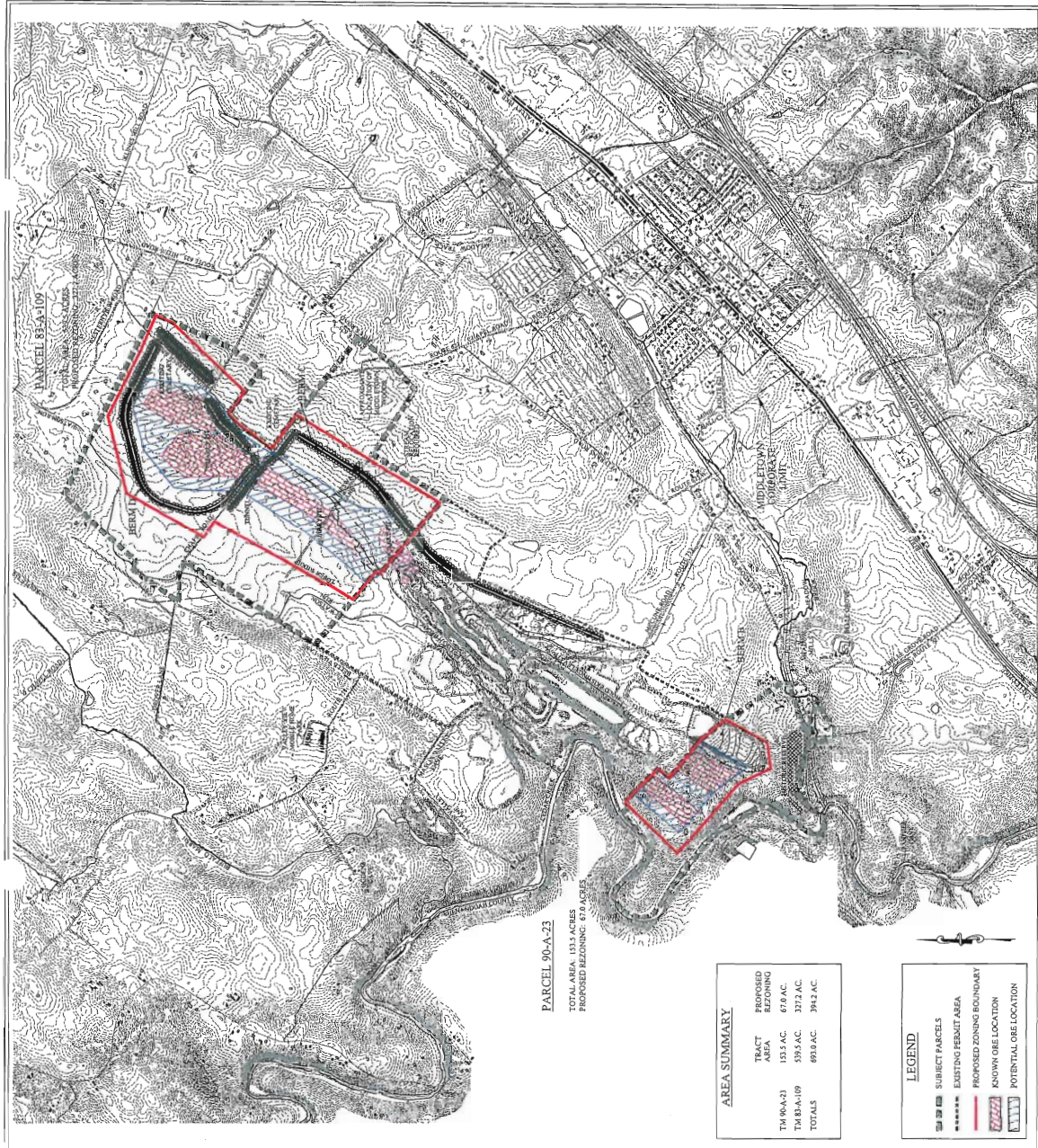
COMMONWEALTH OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this 28th day of May,
2008, by Spencer C. Stinson.

Jennifer M. K. Kittlaus
NOTARY PUBLIC

My commission expires:
Registration number:





PARCEL 90-A-23
TOTAL AREA 153.4 ACRES
PROPOSED REZONING 67.6 ACRES

AREA SUMMARY

| TRACT | PROPOSED REZONING AREA |
|-------------|------------------------|
| TM 90-A-23 | 153.4 AC. |
| TM 81-A-109 | 595.3 AC. |
| TOTALS | 693.0 AC. |

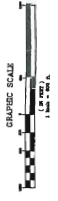
LEGEND

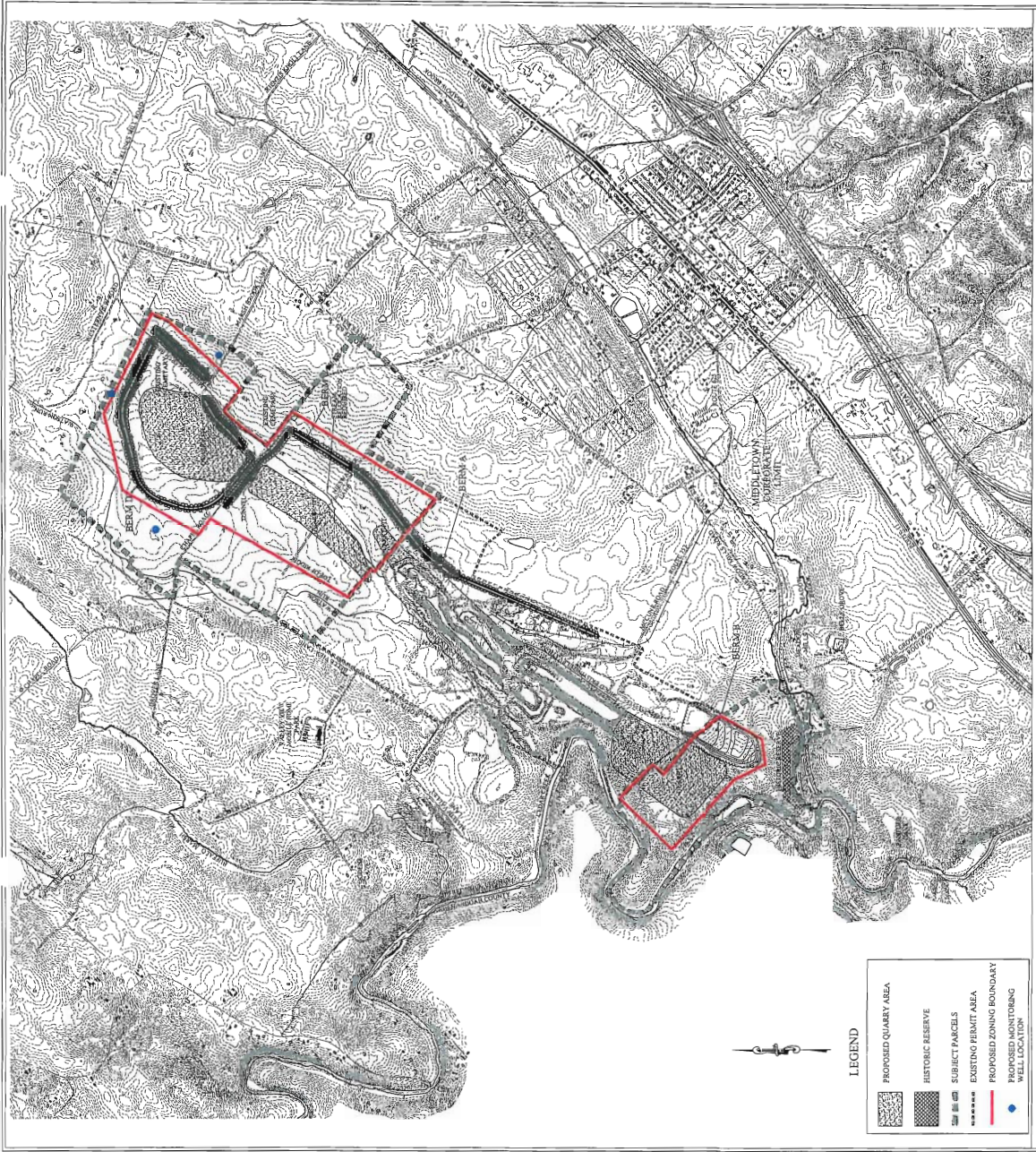
- SUBJECT PARCELS
- EXISTING PERMIT AREA
- PROPOSED ZONING BOUNDARY
- KNOWN ORE LOCATION
- POTENTIAL ORE LOCATION

DAVID HARRIS RUSSELL & ASSOCIATES, P.C.
Geological Engineers & Geologists
117 East Piedmont Drive
Winchester, VA 24391
P: 540-666-0443

PHRA

O-N Minerals Chemstone
GENERALIZED DEVELOPMENT PLAN
FREDERICK COUNTY, VIRGINIA
MAY 2008





O-N Minerals Chemstone

OVERALL PLAN
 FREDERICK COUNTY, VIRGINIA
 MAY 2008

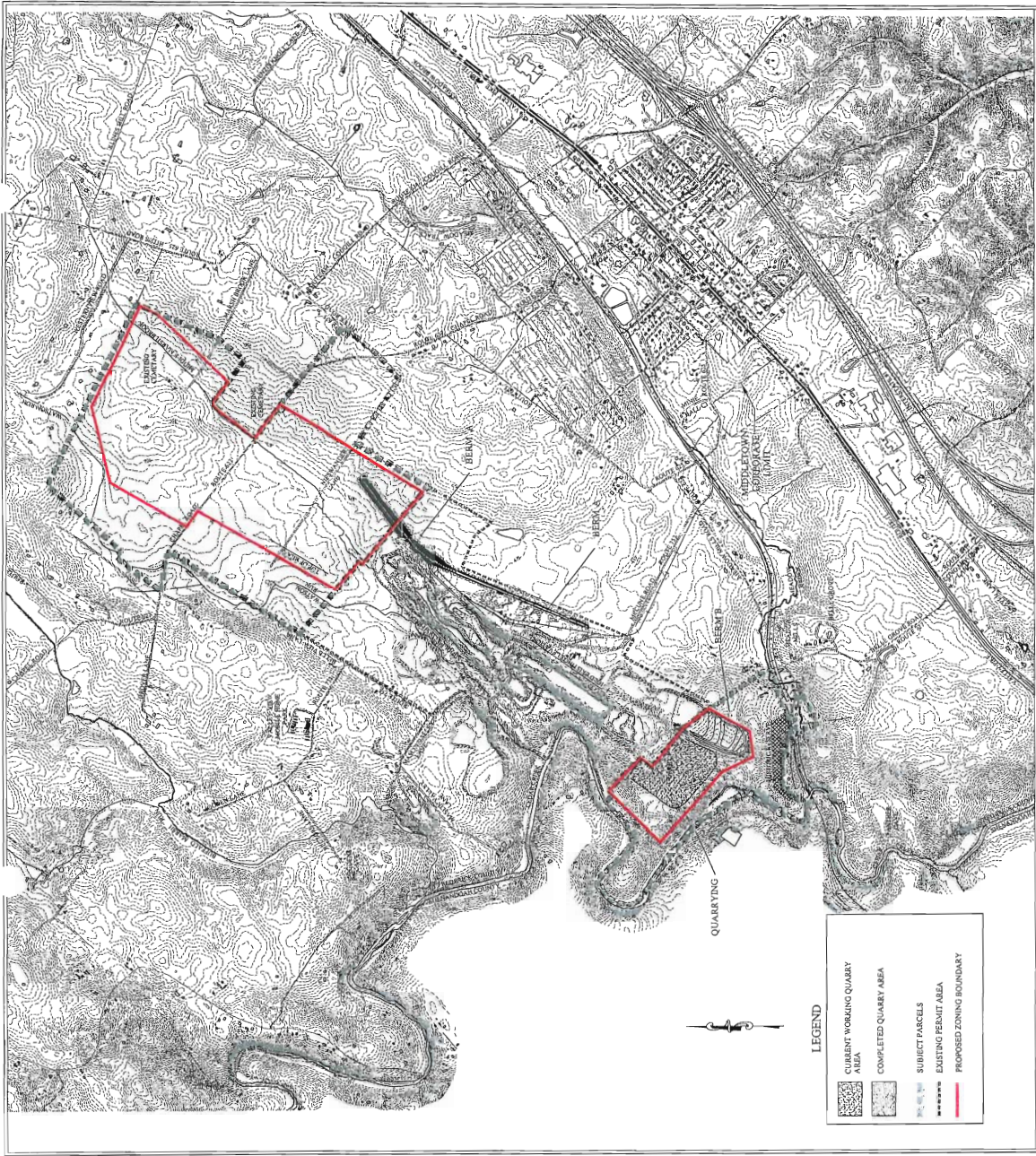


LEGEND

- PROPOSED QUARRY AREA
- HISTORIC RESERVE
- SUBJECT PARCELS
- EXISTING PERMIT AREA
- PROPOSED ZONING BOUNDARY
- PROPOSED MONITORING WELL LOCATION

PAULSON SURVEYING, INC. & ASSOCIATES
 Civil, Survey, Planning, Landscape Architecture
 17 East Piedmont Street
 Frederick, VA 22031
 P: 540-585-9143



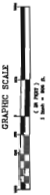
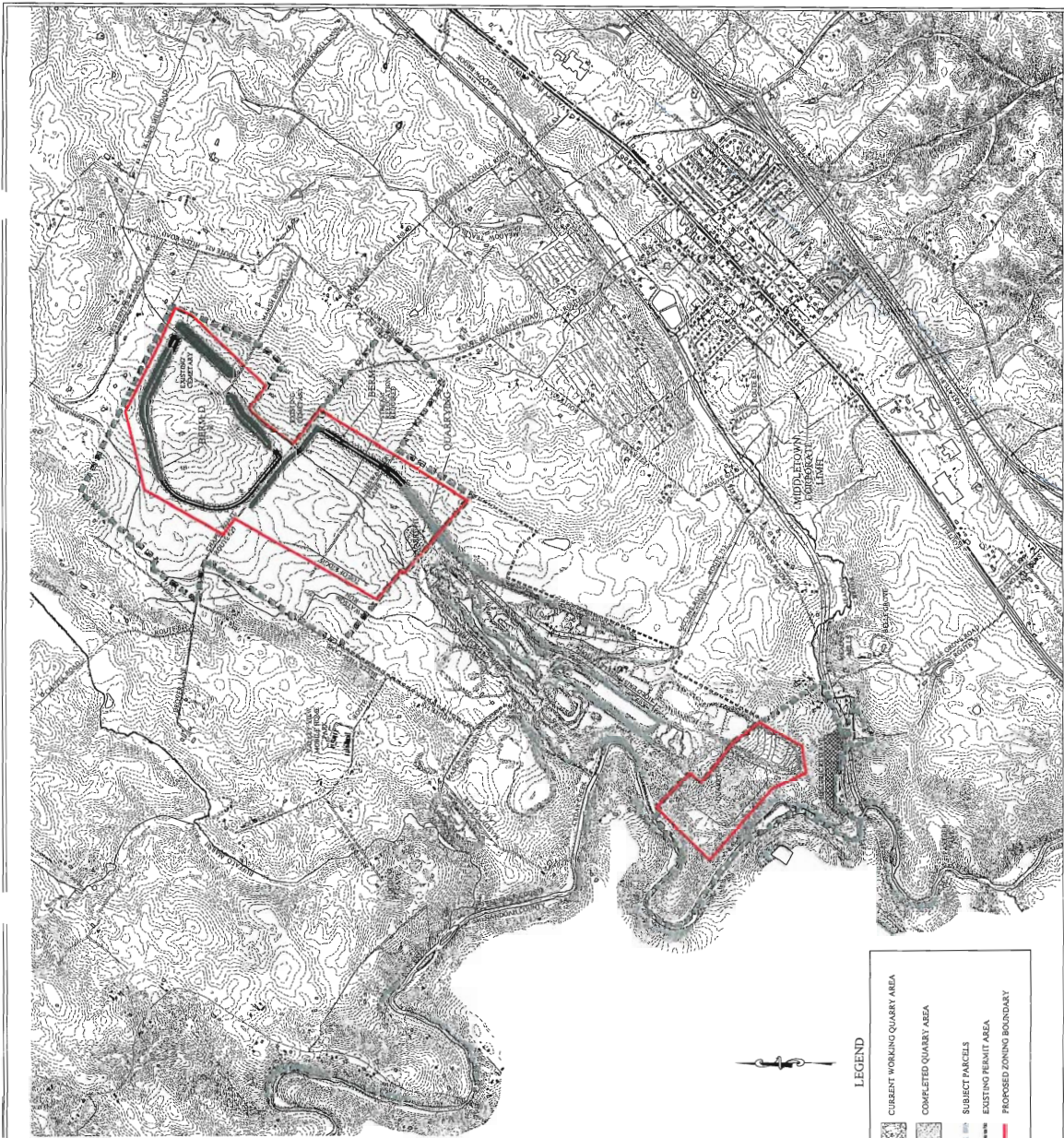


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PHASE I PLAN
FREDERICK COUNTY, VIRGINIA
MAY 2008

PAULSON, JEFFERIS, RUST, & ASSOCIATES, PC
117 East Potomac Street
Winchester, VA 22601
P: 540-885-5343
F: 540-885-5343






PHRA



O-N Minerals Chemstone

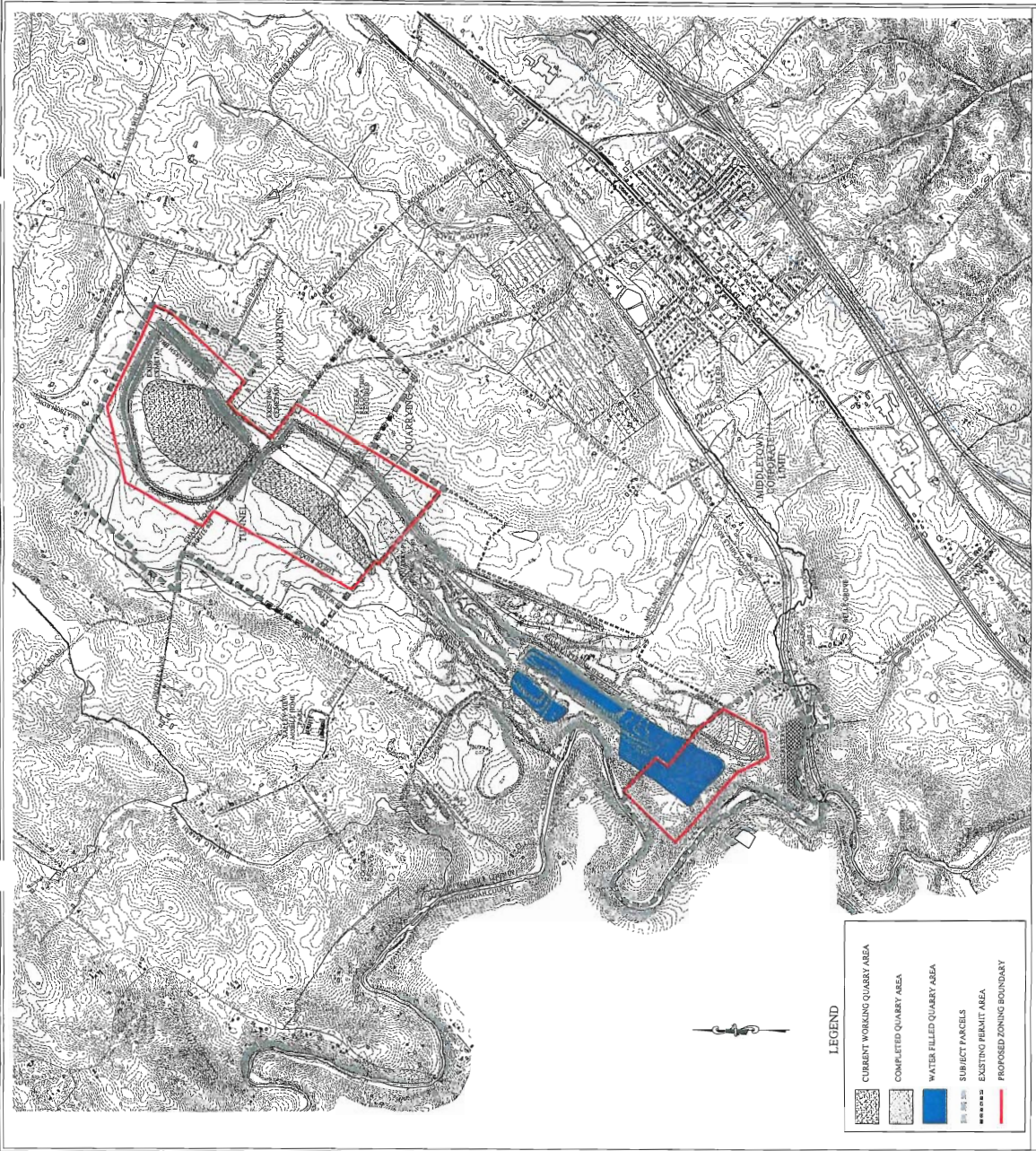
PHASE II PLAN
 FREDERICK COUNTY, VIRGINIA
 MAY 2008







LEGEND

-  CURRENT WORKING QUARRY AREA
-  COMPLETED QUARRY AREA
-  SUBJECT PARCELS
-  EXISTING PERMIT AREA
-  PROPOSED ZONING BOUNDARY

PAUL HARRIS RUST & ASSOCIATES, PC
 Engineers, Surveyors, 117 East Franklin Street
 Frederick, MD 21701
 Phone: 301-671-1100
 Fax: 301-671-1103





- LEGEND**
-  CURRENT WORKING QUARRY AREA
 -  COMPLETED QUARRY AREA
 -  WATER FILLED QUARRY AREA
 -  SUBJECT PARCELS
 -  EXISTING PERMIT AREA
 -  PROPOSED ZONING BOUNDARY

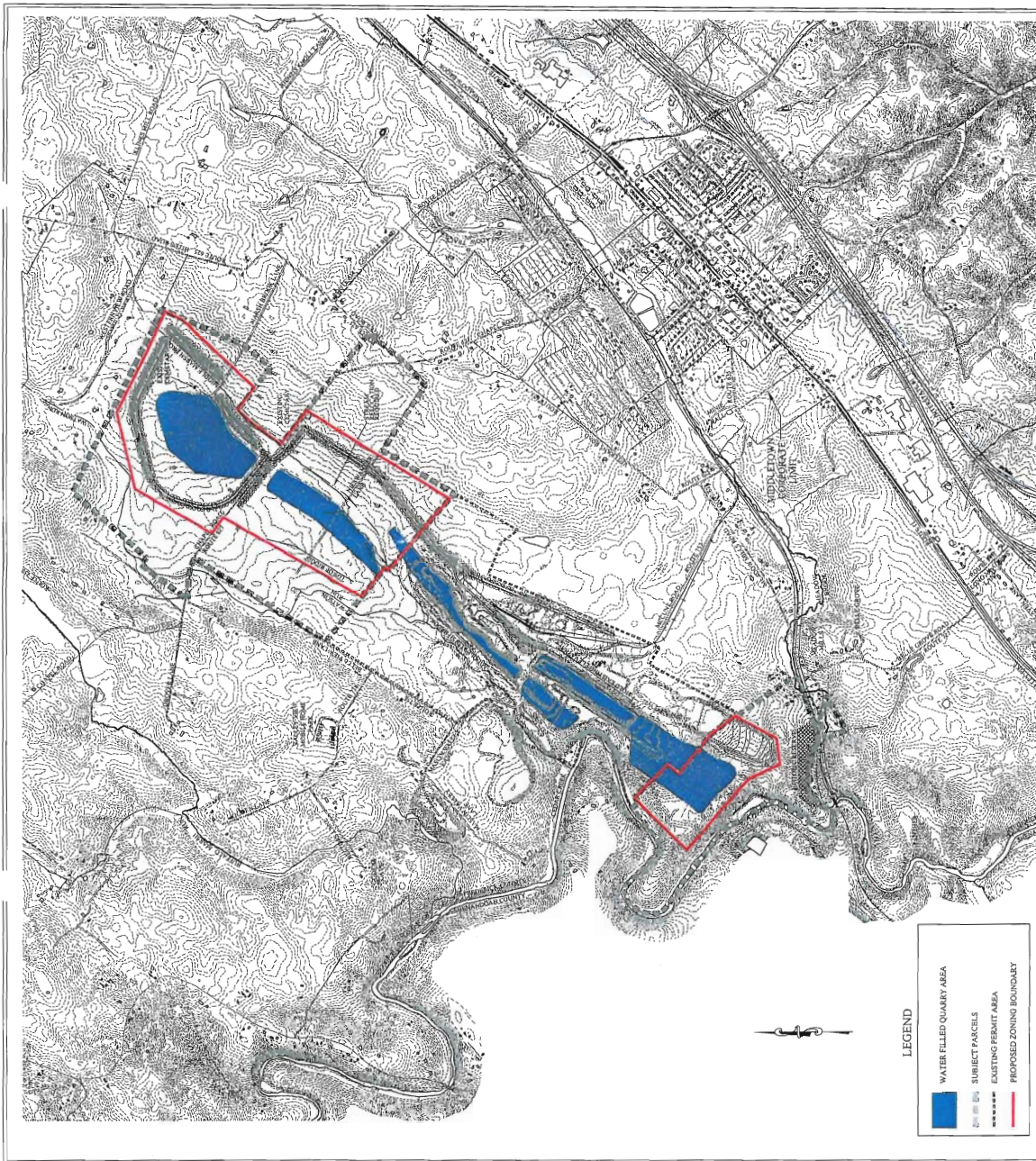
PRADCO WORLDWIDE HOLDINGS, INC.
 117 East Pecos Street
 Suite 100
 Fort Collins, CO 80501
 P: 970-221-1111
 F: 970-221-1113



O-N Minerals Chemstone

PHASE III PLAN
 FREDERICK COUNTY, VIRGINIA
 MAY 2008

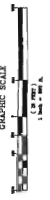




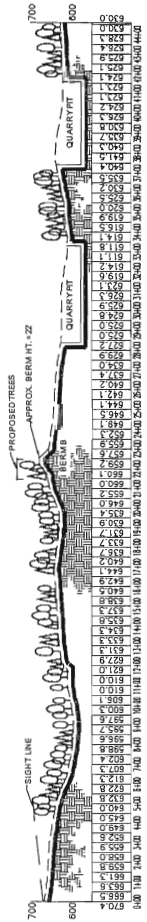
LEGEND

- WATER FILLED QUARRY AREA
- SUBJECT PARCELS
- EXISTING ZONING BOUNDARY
- PROPOSED ZONING BOUNDARY

PETER HOFFER, P.E. & ASSOCIATES, PC
 ENGINEERS, ARCHITECTS & PLANNERS
 117 East Freedom Street
 Frederick, MD 21701
 P 301-661-0100
 F 301-661-0103

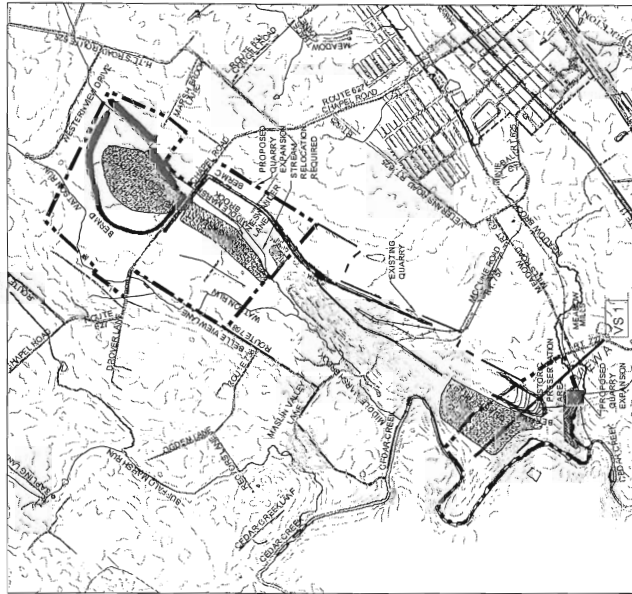


O-N Minerals Chemstone
PHASE IV PLAN
 FREDERICK COUNTY, VIRGINIA
 MAY 2008



VIEW SHED 1A

HORIZONTAL SCALE: 1" = 600'
 VERTICAL SCALE: 1" = 300'



KEY MAP

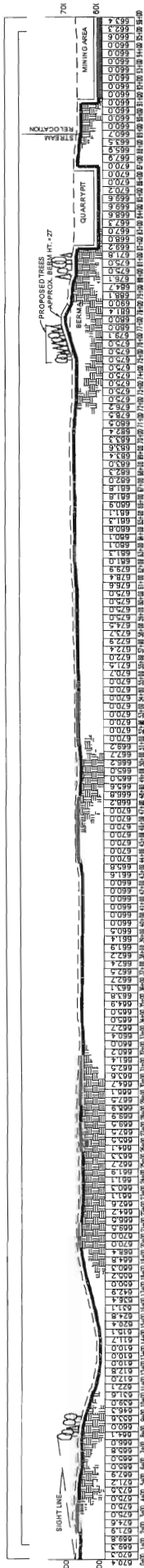
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O-N Minerals Chemstone

Frederick County, Virginia

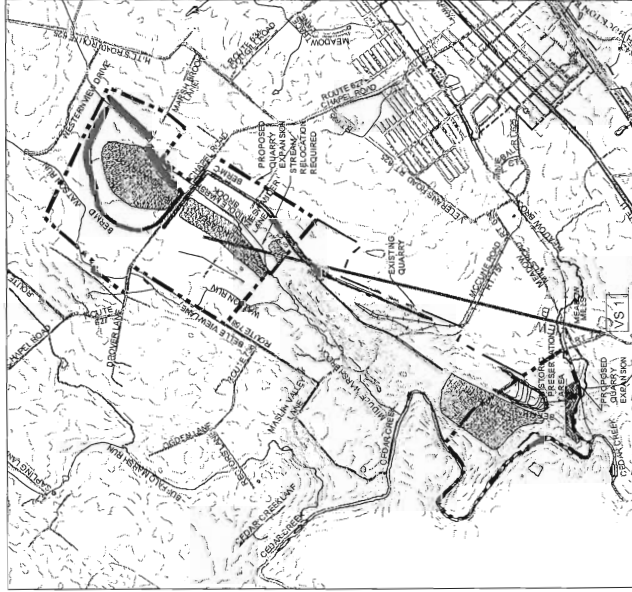
MAY 2008

Patricia N. Little, P.E. & Associates, P.C.
 Engineers, Surveyors, Planners, Landscape Architects
 117 East Main Street
 Martinsburg, VA 26001
 T 540-867-2138
 F 540-865-0463



VIEW SHED 1B

HORIZONTAL SCALE: 1" = 600'
 VERTICAL SCALE: 1" = 300'



KEY MAP

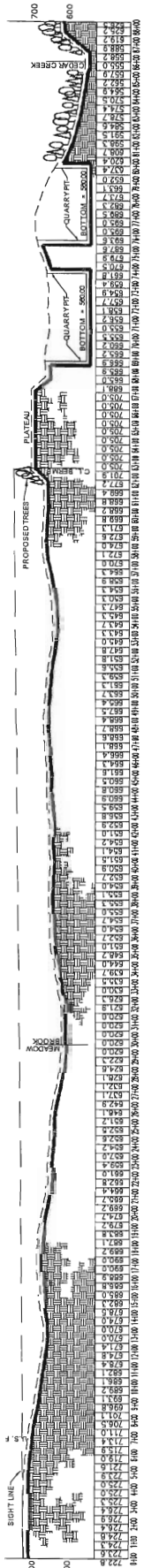
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O-N Minerals Chemstone

Frederick County, Virginia
 MAY 2008

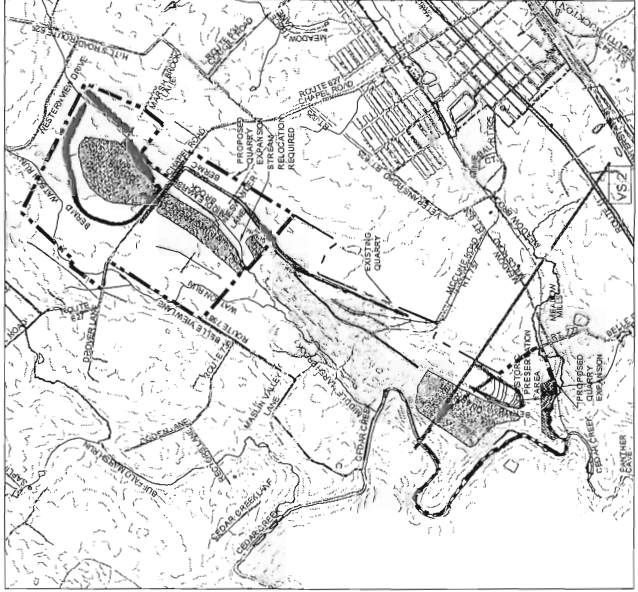
Patton Harris Rust & Associates, PC
 Engineers, Surveyors, Planners, Landscape Architects
 117 East Fowling Street
 Frederick, Maryland 21701
 T 301-667-7139
 F 301-667-0983





VIEW SHEED 2

HORIZONTAL SCALE: 1" = 600'
 VERTICAL SCALE: 1" = 300'



KEY MAP

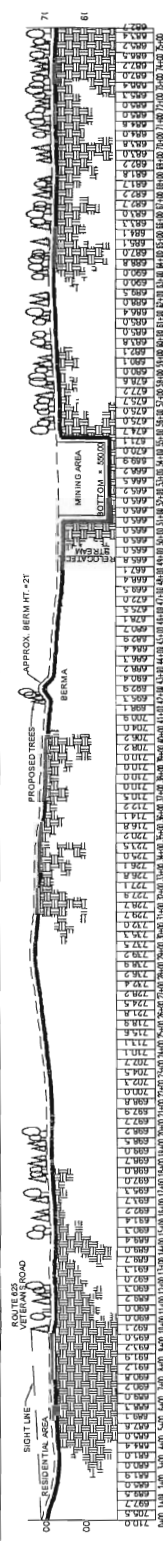
NO SCALE

O-IN Minerals Chemstone

Frederick County, Virginia
 MAY 2008

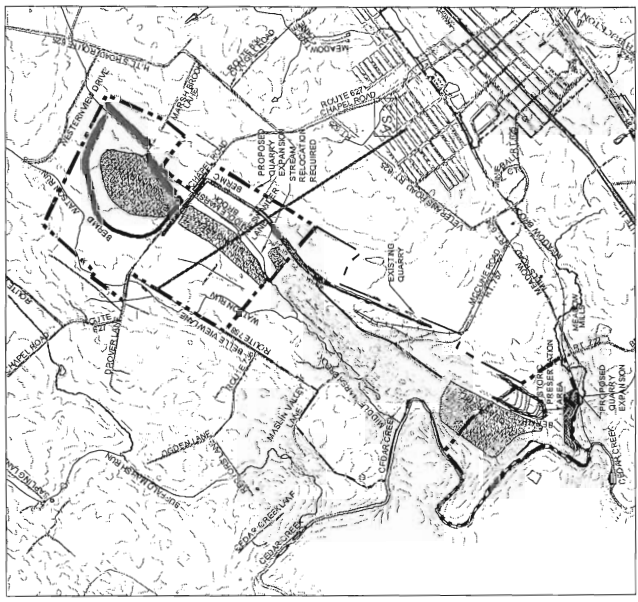
Patton Harris Rust & Associates, PC
 Engineers, Surveyors, Planners, Landscape Architects
 117 East of Romney Street
 Frederick, MD 21701
 T 540-467-2130
 F 540-666-0983

* VEGETATION SHOWN IS EXISTING UNLESS OTHERWISE NOTED.



VIEW SHEET 3
 HORIZONTAL SCALE: 1" = 600'
 VERTICAL SCALE: 1" = 300'

* VEGETATION SHOWN IS EXISTING UNLESS OTHERWISE NOTED.




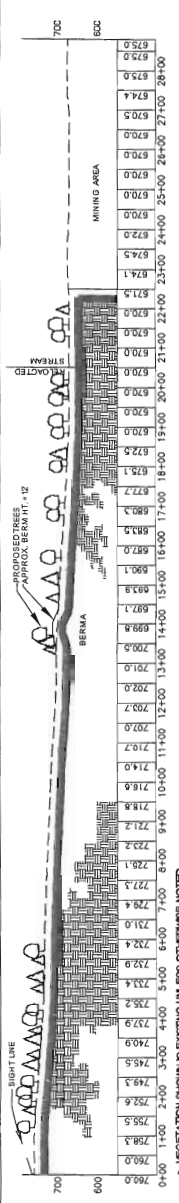
KEY MAP
 NO SCALE

O-N Minerals Chemstone

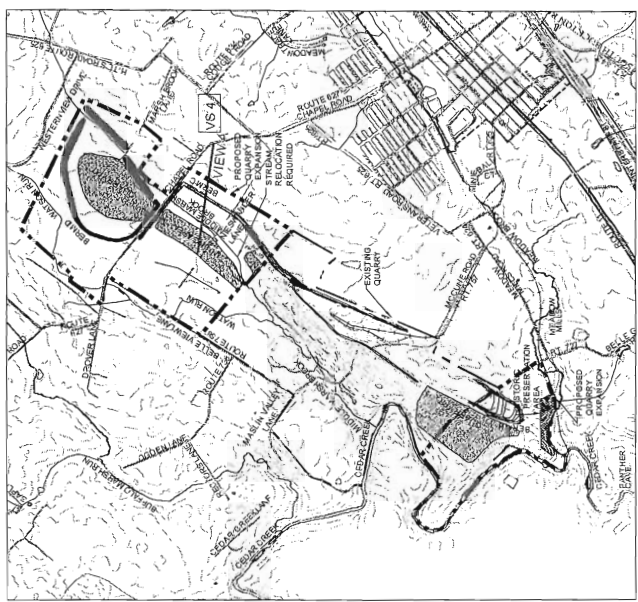
Frederick County, Virginia
 MAY 2008

Patton Harris Ruit & Associates, P.C.
 Engineers, Planners, Landscapes Architects
 117 East Fincastle Street
 Frederick, MD 21701
 T 301-467-2131
 F 301-465-0493



VIEWSHED 4A
SCALE: 1" = 300'

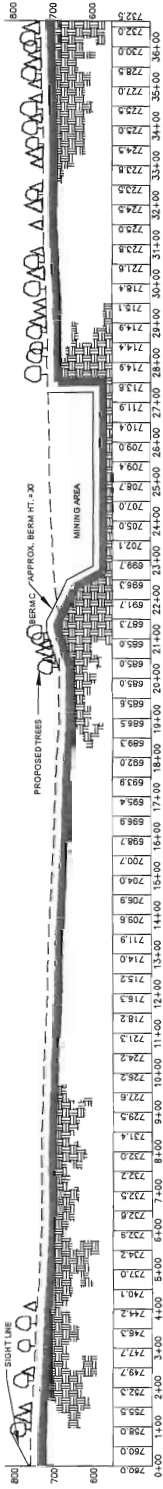


KEY MAP
NO SCALE

O-N Minerals Chemstone

Frederick County, Virginia
MAY 2008

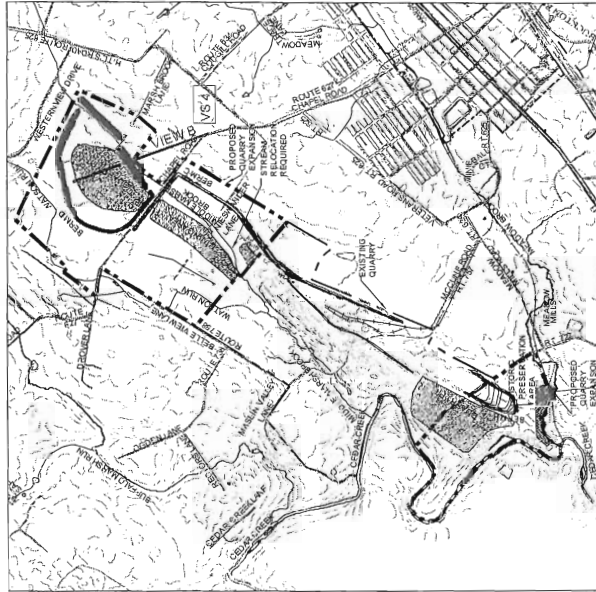
Patton Harris Rust & Associates, PC
Engineers, Surveyors, Planners, Landscape Architects.
117 East Poplar Street
Frederick, Maryland 21701
T 301-667-2135
F 301-667-0883



VIEWSHED 4B

SCALE: 1" = 300'

* VEGETATION SHOWN IS EXISTING UNLESS OTHERWISE NOTED.



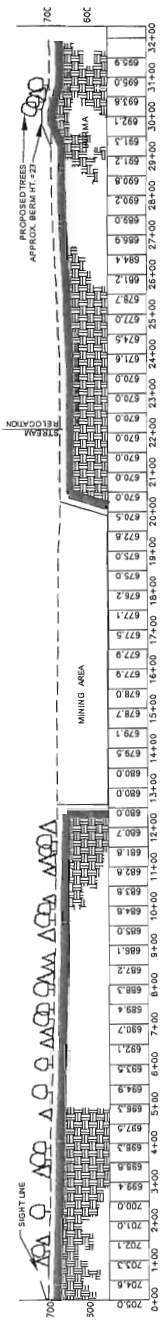
KEY MAP

NO SCALE

O-N Minerals Chemstone

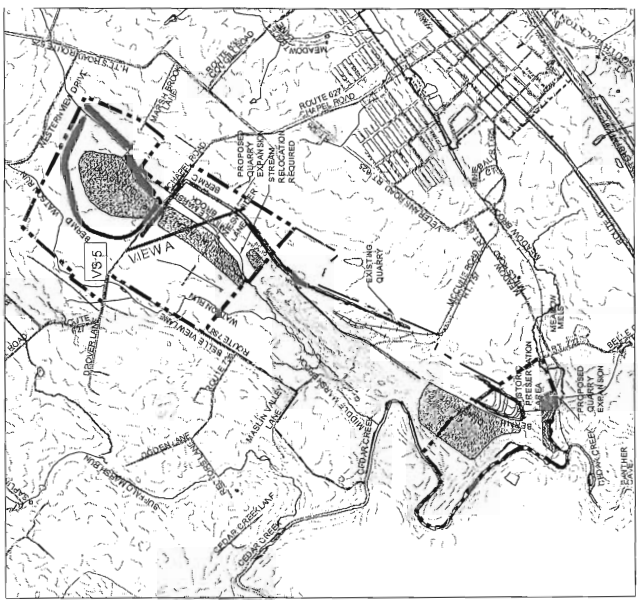
Frederick County, Virginia
MAY 2008

Patten Merrill Rust & Associates, Inc.
 Engineers, Surveyors, Planners, Landscape Architects
 1100 Park Street
 Winchester, VA 22601
 T 540-667-2139
 F 540-665-0463



VIEWSHED 5A

SCALE 1" = 300'




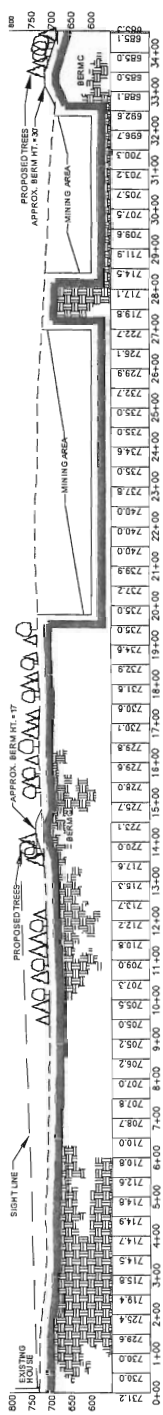
KEY MAP

NO SCALE

O-N Minerals Chemstone

Frederick County, Virginia
MAY 2008

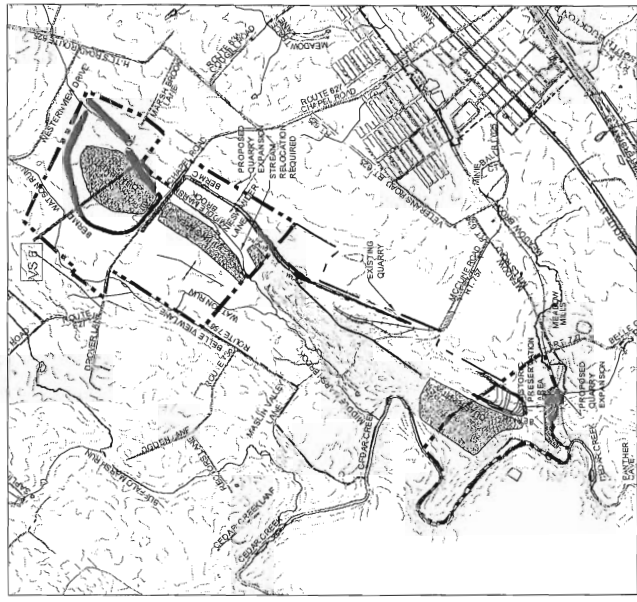
Patton Harris Rust & Associates, PC
 Engineers, Surveyors, Planners, Landscape Architects

 117 East Poolesville Street
 Poolesville, MD 21001
 T 301-867-2139
 F 301-865-0923



• VEGETATION SHOWN IS EXISTING UNLESS OTHERWISE NOTED.

VIEWSHED 6

SCALE: 1" = 300'




KEY MAP

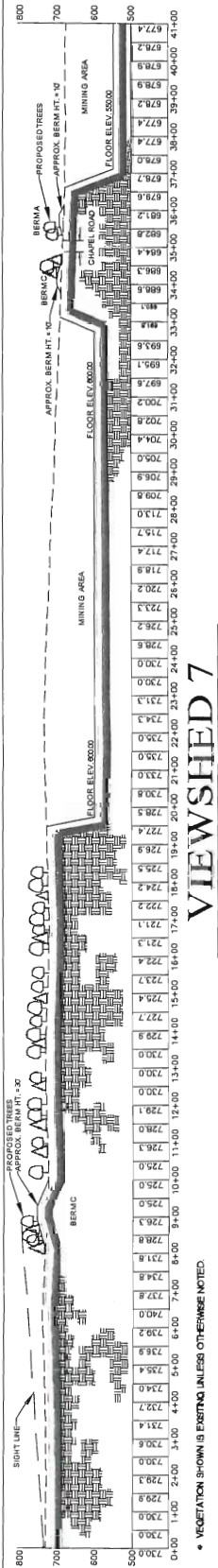
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O-N Minerals Chemstone

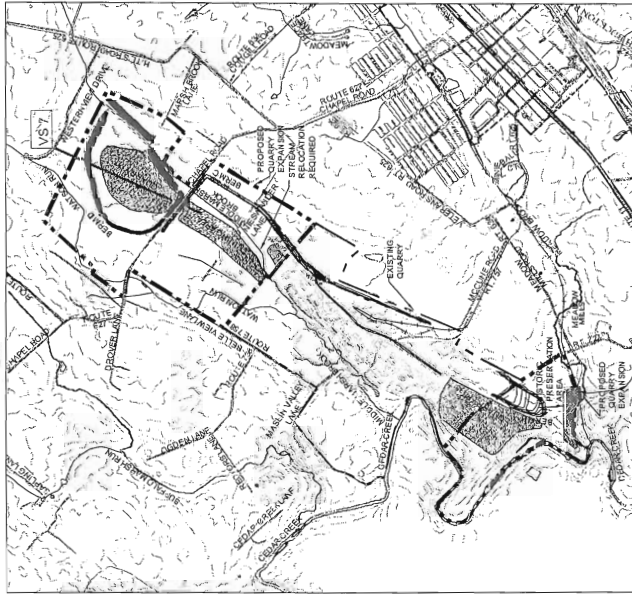
Frederick County, Virginia
MAY 2008

Patton Harris Rust & Associates, Inc.
 Engineers, Surveyors, Planners, Landscape Architects
 117 East Riverside Street
 Winchester, VA 22601
 T 540-667-2139
 F 540-665-0483





SCALE: 1" = 300'



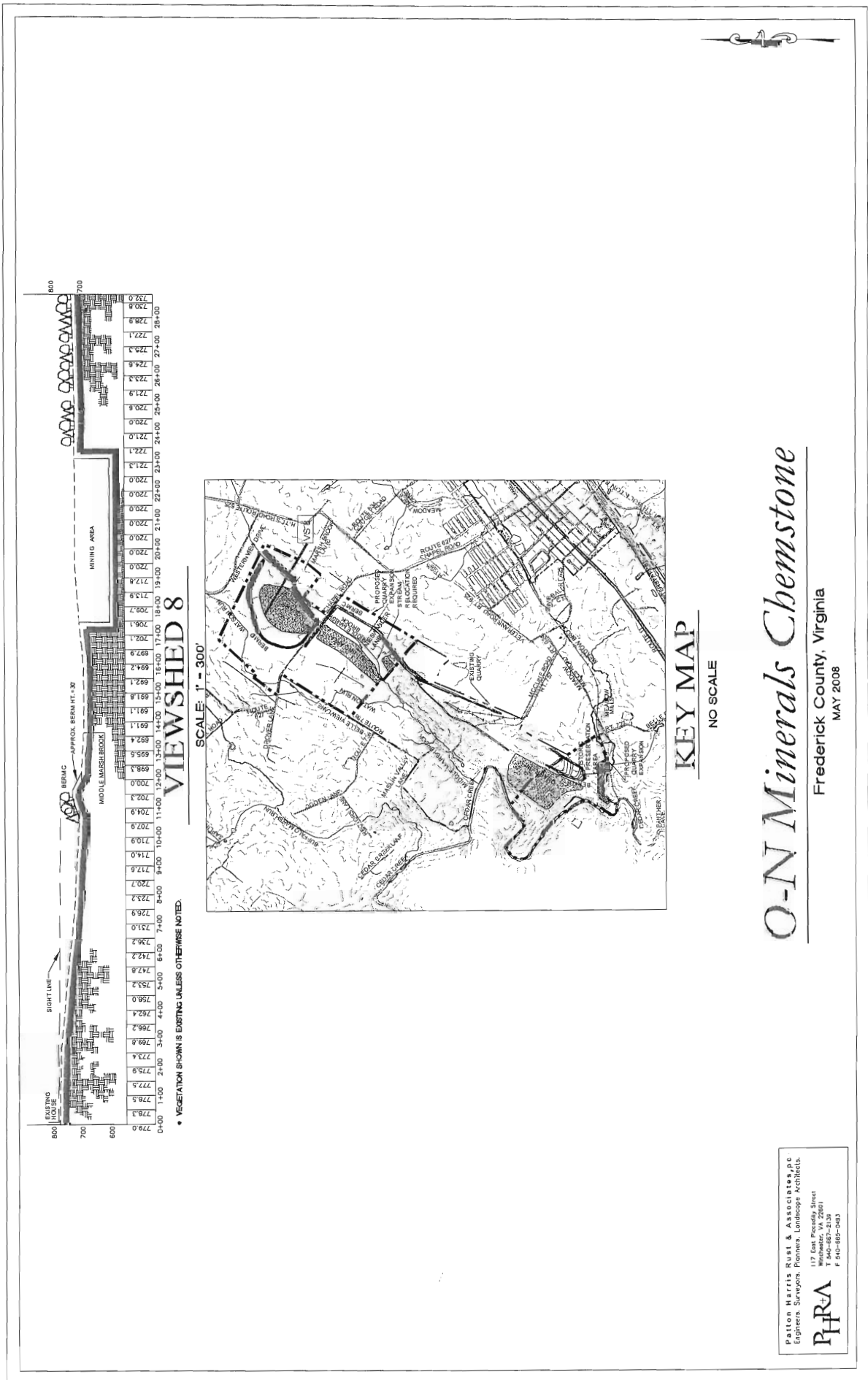
O-N Minerals Chemstone

Frederick County, Virginia

MAY 2008

Patton Harris Rust & Associates, PC
 Engineers, Surveyors, Planners, Landscape Architects
 117 East Riverside Street
 Winchester, VA 22601
 T 540-667-2139
 F 540-665-0493





KEY MAP

NO SCALE

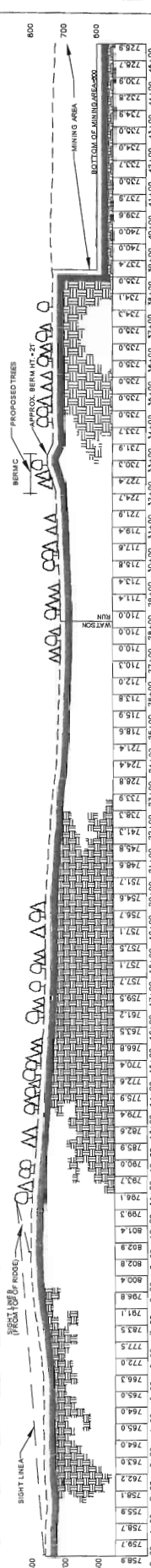
O-N Minerals Chemstone

Frederick County, Virginia
MAY 2008

Patton Harris Rust & Associates, PC
Engineers, Surveyors, Planners, Landscape Architects.

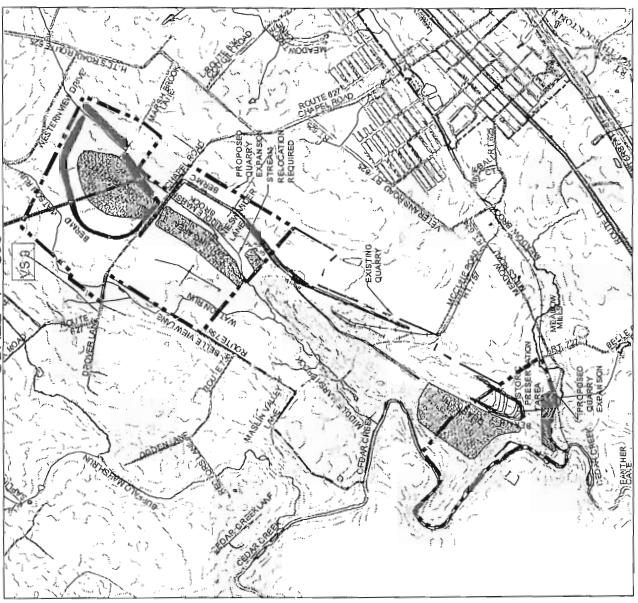
P+H+R+A

117 East Proccody Street
Frederick, Maryland 21701
T 301-467-2125
F 301-467-2128



VIEW SHED 9

SCALE: 1" = 300'



KEY MAP

NO SCALE

O-N Minerals Chemstone

Frederick County, Virginia
MAY 2008

Patton Harris Rust & Associates, PC
Engineers, Surveyors, Planners, Landscape Architects
117 East Pocomoke Street
Pocomoke, Maryland 20686
T 410-867-2139
F 410-865-0483

