

BOARD OF ZONING APPEALS FINDINGS OF FACT

APPLICATION(S): BZNA-0070-2023

PROPERTY ADDRESS: Parcel #10-10-11-00-00-002.002 and
10-10-02-00-00-024.003, Noblesville, Indiana

A Variance of Use application was submitted to the Noblesville Planning Department for the above referenced location. The application submitted by Nelson & Frankenberger on behalf of Beaver Gravel requested that approval be granted to a Variance of Use application pursuant to Unified Development Ordinance §8.B.2.B and Appendix C to permit sand, gravel, and mineral extraction on approximately 68 acres in the R1 (Low Density Single Family Residential) zoning district. The Noblesville Board of Zoning Appeals conducted a hearing regarding this application on September 5, 2023 and held a subsequent meeting on the application on October 2, 2023. After testimony was given and evidence was presented to the Board, a motion to APPROVE was made, and the motion carried 3-2.

VARIANCE OF USE FINDINGS

In its deliberations, the Noblesville Board of Zoning Appeals weighed the evidence associated with the following criteria and made the following findings in granting the request for a Variance of Use. Consistent with Indiana Code §36-7-4-918.4 the Noblesville Board of Zoning Appeals hereby makes a determination in writing that the following are true:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

The proposed variance will not be injurious to public health, safety, and general welfare of the community. The evidence indicates that the petitioner will employ construction dust control on the site, and will employ a water truck to limit fugitive construction dust. The site is located within Zone 2 according to Noblesville's wellhead protection maps. The petitioner will follow the regulations in the wellhead protection ordinance regarding excavation techniques. During testing the petitioner did not encounter any ground water in the full depth of the drilling, but applicant has committed to not using dewatering techniques. Concerns were raised regarding blasting, but the applicant indicated no blasting will occur on the site. The petitioner has committed to using excavators and loaders but has agreed not to conduct any blasting as part of its operations. In addition to those factors, the petitioner has also put in place operational standards to lessen their impact on surrounding property owners. The Board has considered and adopted conditions/commitments, which are adopted in detail below and incorporated herein by reference (the "Conditions/Commitments").

Additionally, mining and extraction activities occur on numerous parcels adjacent to, and in the vicinity of, the subject Real Estate, including parcels generally located south of 171st Street and north of 160th Street and parcels east and west of Cherry Tree Road. This variance would permit extraction activities which are already consistent with the use on properties in the vicinity and neighborhood of the subject Real Estate.

Based on the totality of the record evidence and the Conditions/Commitments, approval of the request is not injurious to the public health, safety, morals, and general welfare of the community.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

The use and value of real estate adjacent to the subject site will NOT be affected in a substantially adverse manner by allowing the requested variance. Mining and extraction activities occur on numerous parcels adjacent to, and in the vicinity of, the subject Real Estate, including parcels generally located south of 171st Street and north of 160th Street and parcels east and west of Cherry Tree Road. This variance would permit extraction activities which are already consistent with the use on properties in the vicinity and neighborhood of the subject Real Estate. Accordingly, neighboring properties which are already adjacent to mining operations will not be affected in a substantially adverse manner by additional mining in this area for a ten (10) year period. In fact, a map presented by the petitioner shows that the vast majority of property in and around the proposed location are already subject to mining.

Various members of the public indicated concerns about blasting, but the petitioner has committed to not using any blasting on the subject Real Estate. There were also concerns about processing of gravel, but petitioner has committed to processing gravel off-site at another location.

Based on the totality of the record evidence and the Conditions/Commitments, the use and value of the area adjacent to the property included in this variance will not be affected in a substantially adverse manner. In fact, evidence presented shows this use is consistent with how other properties in the area are already used.

3. The need for the variance arises from some condition peculiar to the property involved:
The need for the variance does arise from a condition peculiar to the property involved: namely that the property contains sand and gravel materials which are a natural resource, cannot be manufactured, and must be mined if they are to be extracted. Not all property contains this type of sand and gravel. Providers of these materials must go to the areas where the deposits exist and extract the material for processing. These materials are an important component to construction projects of all varying degrees. The subject Real Estate has geological characteristics that are peculiar to the property, and (consistent with mining in and around the property currently) is uniquely situated to provide the important natural resources. Accordingly, approval allows for the important mining and extraction activities to occur in an area that already has such operations, as opposed to new locations where mining may not be occurring currently. Further, the demand in Hamilton County and the central Indiana area for aggregate materials continues to be strong, such that these resources (which are uniquely present on this property) is important to the growing Hamilton County and surrounding area.

Based on the totality of the record evidence, the need for the variance arises from some condition peculiar to the property involved.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:
The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought, because the zoning ordinance does not permit mining. Accordingly, without the variance, the important natural resource which is peculiarly located on this property could not be extracted.

Notably, excluding the single-family residential parcels along Cherry Tree Road, the majority of the parcels touching the subject Real Estate have or are being used for some type of mining, quarrying, or gravel/sand extraction. The properties to the west and south are part of the underground mine being operated by Martin Marietta with the entrance to the mine located approximately 2400 feet southwest of this property. On the east side of Cherry Tree Road there are a few residences, but east of them along both sides of River Road there are numerous sites that have been mined. The first signs of mining/excavation appear on the 1956 aerial photographs and the area east and to the south have shown mining operations since. The subject property has to this point been used for agricultural uses, but both 161st Street and Cherry Tree Road are in need of extensive repair due to poor soils in the area that have caused subsidence of the road that is resulting in constant repairs/patches. The condition is so poor that it is unlikely that a residential neighborhood in compliance with the zoning ordinance would be allowed to begin construction without significant investment in the road.

The Conditions/Commitments account for the processing of materials offsite and the transport of materials in a manner that is consistent with the existing infrastructure (and coordination with the county on the same).

Based on the totality of the record evidence, the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought, because the natural minerals could not be extracted under the zoning ordinance.

5. The approval does not interfere substantially with the comprehensive plan adopted by the Noblesville Plan Commission and Council:

The approval does not interfere substantially with the comprehensive plan. The property is shown on the future land use map as a preservation/natural area. This is the same future land use designation that appears on all the property along River Road and Cherry Tree Road, and yet numerous of those parcels include current mining or mineral extraction. Thus, mining and/or mineral extraction are not inconsistent with the preservation/natural area designation. In addition, the petitioner's proposed use would only be on the site for the next ten years leaving the site open to development or use as preservation/natural area following the completion of the excavation. It is anticipated that the future use of the southern portion of the site would be for an open space, recreational, agricultural, or natural space.

Moreover, petitioner introduced its planned reclamation efforts after extraction activities have been completed. Pursuant to that plan, the subject Real Estate would be placed back into a natural condition at the conclusion of the ten-year period approved by these findings of fact.

The Conditions/Commitments account for additional parameters that will help to make the area appear natural including: (i) perimeter landscaping and buffering treatment; (ii) entirety of the Real Estate will not be used for extraction activities (including areas closest to denser residential being left un-mined); (iii) transport and hauling of extracted materials from the Real Estate can only occur across Cherry Tree Road to the east and transport and hauling of materials from and to the subject Real Estate is prohibited on 161st Street and along Cherry Tree Road; and (iv) gravel processing (i.e. blasting, crushing, or wet processing) is prohibited on the Real Estate.

Based on the totality of the record evidence, approval of the variance does not interfere substantial with the provisions of the Comprehensive Master Plan.

The findings of fact contained herein are adopted by the Noblesville Board of Zoning Appeals on November 6, 2023.

CONSIDERATIONS

In addition to the findings of fact, the Board consider the following factors when deliberating over this variance request:

Hardship – the BZA considered the peculiar hardship in that without the variance sand and gravel deposits could not be extracted from the land under a strict application of the Zoning Ordinance.

Unique Physical Condition – the BZA considered the unique physical condition of the subject lot, particularly its deposits of sand and gravel that could not be extracted under the strict adherence to the zoning ordinance.

Not self-created – the BZA considered that the unique physical condition of the location of sand and gravel on the subject property was not the result of any action or inaction of the applicant.

Denied Substantial Rights – the BZA considered that the carrying out of the strict letter of the provision from which the variance is sought would deprive the owner of the subject lot of substantial rights commonly enjoyed by owners of other lots as neighboring lots are permitted to mine the sand and gravel to extract the same whereas the strict letter of the zoning ordinance would not permit that on the subject Real Estate absent the variance;

Not Merely Special Privilege – the BZA considered that the hardship discussed above is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision as the mining of sand and gravel must take place where the deposits exist, and surrounding properties in the vicinity are allowed to extract those sand and gravel deposits whereas without the variance this lot would not be permitted to.

Ordinance and Plan Purposes – the BZA considered that the variance would not result in a use or development of the subject lot that would not be in harmony with the general and specific purposes for which the zoning ordinance and the provision from which a variance was sought were enacted or the general purpose and intent of the Comprehensive Plan. Specifically, as outlined in the findings of fact, the use is not in disharmony with the Comprehensive Plan, is consistent with other properties similarly identified in the comprehensive plan and, will only be used for the variance purpose for a short period of time (ten years). After the ten year period, the property will no longer be used for mining, and will be reclaimed in a manner that continues to preserve the natural area.

No Other Remedy – the BZA considered that the variance was the appropriate remedy to remedy the situation to the degree sufficient to permit a reasonable use, in particular, a rezone would not have as much flexibility in imposing a term of years limit whereas the variance allowed the BZA to impose conditions on the development of the land, and to limit the variance to a term a years, thus the appropriate remedy here was the variance which provides for control over the continued development in a way that provides additional safeguards, and that limits the mining use to only ten years.

Minimum Required – The requested variance provides the minimum measure of relief necessary to alleviate the mining hardship by limiting the mining to only ten years, requiring berming and other safeguards for the neighbors, and imposing strict compliance requirements not otherwise available under the zoning ordinance but which are conditions permitted under the zoning ordinance and state law.

CONDITIONS/COMMITMENTS

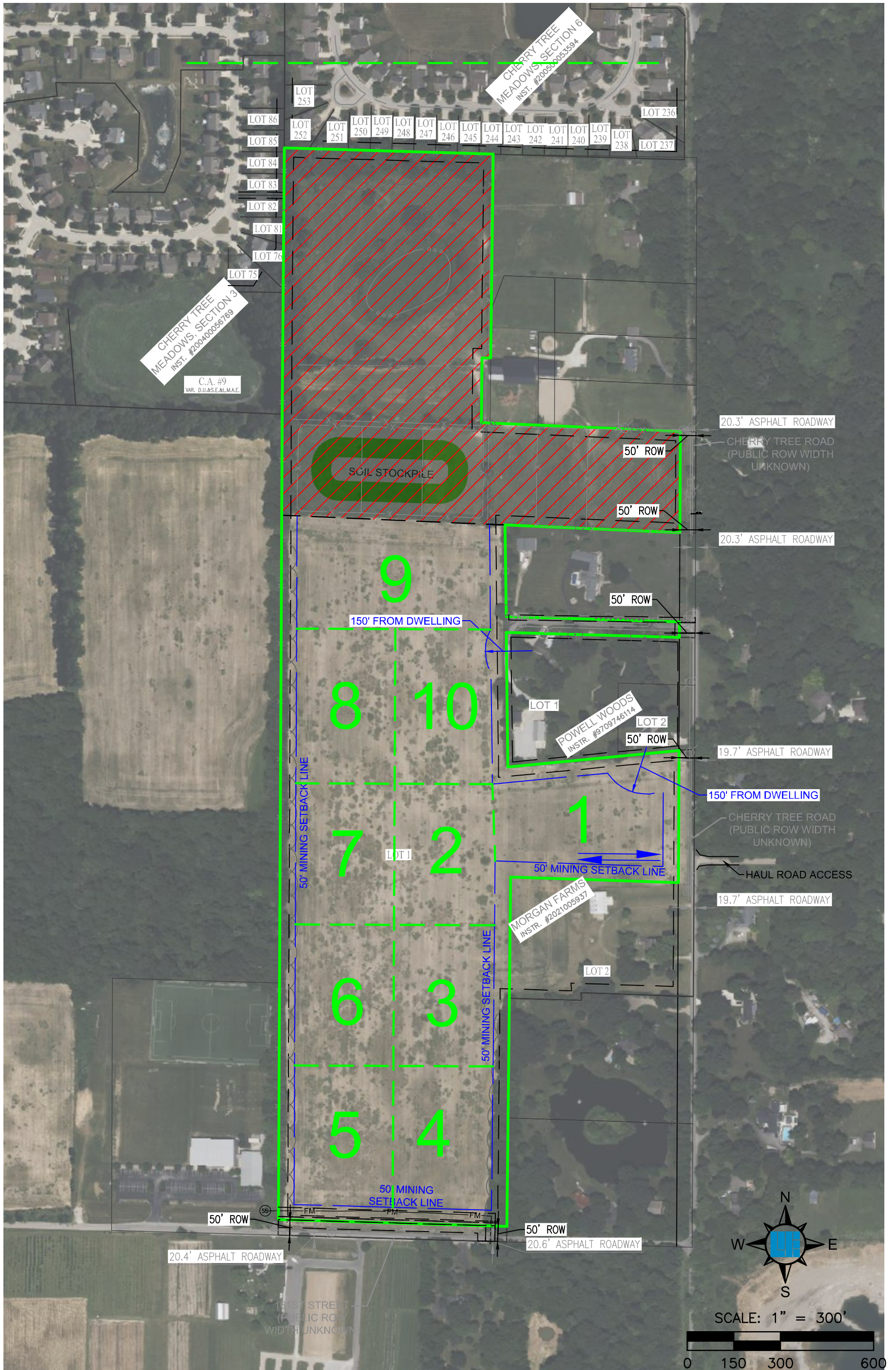
In addition, the Board of Zoning Appeals hereby adopts the following conditions to its approval with the petitioner must adhere by; failure to adhere by any of these conditions is a violation of this variance and could subject petitioner to additional action permitted by law:

1. Operation under the terms of this variance is contingent upon the approval of a permit by Hamilton County Highway Department for the Cherry Tree Road crossing or drivecut.

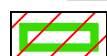
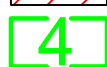

2. The Applicant shall comply with all 15 Conditions/Commitments offered in Exhibit F of the Applicants application packet. (A COPY OF WHICH IS ATTACHED AND INCORPORATED HEREIN BY REFERENCE)
3. Upon completion of Phase 1 which is defined in Exhibit 4 of the Staff Report (a copy of which is attached), the Applicant shall install a site entrance driveway at least 150 feet in length to help prevent the dirt, mud, and debris from leaving the site. If it is found that dirt, mud, and debris are leaving the site five or more times in a year a wheel wash be installed.
4. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
5. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.
6. Haul Trucks only with no tail gates will bring material to or remove material from the site.
7. No screening or processing of materials will be conducted on this property. All screening will be done at the main plant located at 16101 River Road, Noblesville, Indiana 46062.

Mike Field, Chairman

Caleb Gutshall, Secretary



LEGEND

-  SOIL STOCKPILE AREA AND NOT TO BE MINED
-  ESTIMATED PHASE YEAR
-  PROPOSED HAUL ROAD

0 CHERRY TREE PHASING PLAN
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NOBLESVILLE, IN
 DATE: JULY 14, 2023

EXHIBIT “F”

CONDITIONS OF APPROVAL FOR VARIANCE OF LAND USE REQUEST

The applicant, Beaver Gravel Corporation dba Beaver Materials (“Beaver”) makes and agrees to the following Conditions of Approval as part of its Variance of Land Use Request:

1. **Hours of Operations:** The permitted hours of operations for the Real Estate/site are limited to the following:

Monday-Friday: 7:00am-5:00pm.

Saturday: 7:00am-12:00pm.

Sunday and/or National Holiday operations are prohibited.

2. **Extraction and Reclamation Time Period:** The Variance of Land Use on the Real Estate shall only be effective for a period of ten (10) years to allow Beaver to appropriately and effectively complete the extraction and reclamation activities on the Real Estate. Further the Extraction Plan exhibit shall set forth the only permissible areas of extraction on the Real Estate and the Extraction Plan indicates that the northern portion of the Real Estate will only be used as a soil stockpile area and that northern area is prohibited from having any extraction activities. Any changes or modifications to the Extraction Plan exhibit shall require approval by the City of Noblesville Board of Zoning Appeals.

3. **Phasing of Extraction:** The Phasing Plan exhibit shall require the following and any changes or modifications to the Phasing Plan exhibit shall require approval by the City of Noblesville Board of Zoning Appeals:

Phase 1: Phase 1 begins with installation of silt fencing for erosion control around the perimeter of the phase area. After silt fencing is installed, Beaver will install an entrance drive per a “drive permit” that must be obtained through Hamilton County Highway Department. After the entrance drive has been completed, Beaver will begin berming areas, as needed. After the required berming has been installed, Beaver will begin the extraction process. After the sand and gravel is extracted from Phase 1, it will be used as the only entrance and exit until Phase 10.

Phase 2-9: Phase 2 through 9 will begin with installation of any required erosion control methods around the perimeter of particular phase area, as that specific phase begins activity. Once any required erosion control methods have been installed, Beaver will berm that phase, as needed, and begin the extraction process. After the sand and gravel are extracted, the reclamation process will simultaneously begin. Phases 1 through 10 may be working simultaneously as the process develops.

Phase 10: Phase 10 will repeat the above Phase 2 through 9, however, will end with Beaver exiting the parcel. Exiting the parcel during Phase 10 includes reclamation of Phase 1 while removing temporary drives and any berming that is located adjacent to other landowners along the perimeter of the Real Estate who may want that berming removed.

4. **Landscape and Bufferyard Plan:** The Landscape Bufferyard Plan exhibit shall require the landscaping and buffering shown on that exhibit. Any changes or modifications to the Landscape and Bufferyard Plan exhibit shall require approval by the Planning and Development Department; and if determined by the Planning and Development Department to be a significant change or modification, also approval by the City of Noblesville, Board of Zoning Appeals.
5. **Hauling of Material:** Beaver shall only transport extracted material from the Real Estate to the east across Cherry Tree Road to land currently owned by Beaver on the east side of Cherry Tree - see Hauling Route exhibit. Beaver shall work in cooperation with the Hamilton County Highway Department to ensure that any necessary pavement/road preparation work for crossing the affected segment of Cherry Tree Road adjacent to the Real Estate is completed prior to transporting any material from the Real Estate (on the west side of Cherry Tree Road) to the east side of Cherry Tree Road. Traffic associated with reclamation activities shall also follow the hauling route and not access the Real Estate directly from Cherry Tree Road or 161st Street. Any changes or modifications to the Hauling Route access location shall require approval by the Planning and Development Department; and if determined by the Planning and Development Department to be a significant change or modification, also approval by the City of Noblesville, Board of Zoning Appeals.
6. **Potential Future Uses of Parcel:** After the reclamation of the Real Estate is complete and at the end of the ten (10) year time period that Beaver is requesting for its operations on the Real Estate, the use of the Real Estate may likely be for agricultural purposes – as the Real Estate is used for currently. However, after reclamation Beaver is willing to explore as potential future uses on the Real Estate: (i) agriculture business endeavors and partnerships; (ii) sports uses on the Real Estate similar to some of the adjacent sports uses surrounding and adjacent to the Real Estate; and, (iii) for the northern portion of the Real Estate that is shown on the Extraction Plan as an area that shall prohibit extraction, Beaver may consider developing this area for future residential uses.
7. **Regulatory Compliance:** Beaver shall comply with all applicable Indiana Department of Transportation (INDOT) requirements and regulations for the transport of materials from the Real Estate. Beaver shall comply with all Mine Safety and Health Administration (MSHA) requirements and regulations. Beaver is a member of the Indiana Mineral Aggregate Association (IMAA) and the Environmental Stewardship Council and shall remain a member of these organizations during the 10-year period for mining activities on the Real Estate, as long as those organizations continue to exist.
8. **Air Quality / Dust Control:** Any dust that is fugitive wind-blown dust from roadways and any excavation areas, shall be mitigated by wet suppression. Beaver shall use a water truck to wet the ground on an as-needed basis as operations occur. Additionally, Beaver shall maintain and wet aggregate piles on an as-needed basis. These practices will minimize any fugitive dust emissions into the air and will mitigate the potential for potential dust to leave the construction site.
9. **Prohibited Extraction Activities on the Real Estate:** There shall be no gravel processing on the Real Estate (i.e., no blasting, no crushing or wet processing) which shall result in no high-volume dust sources.

- 10. Noise:** Beaver shall comply with the Hamilton County, Indiana noise regulations and Beaver shall periodically monitor the decibel (noise) level of activities occurring on the Real Estate to ensure that the Noblesville noise regulations are adhered to. Additionally, gravel processing (i.e., blasting, crushing or wet processing) is prohibited on the Real Estate.
- 11. Water Protection Efforts:** Beaver shall work closely with the Indiana Department of Environmental Management (IDEM), the Indiana Department of Natural Resources (IDNR) and the U.S. Army Corp of Engineers (USACE) and shall be required to obtain all necessary permits from these agencies, as required, as water protections efforts. Beaver shall diligently comply with conditions set forth in all applicable permits described above. The exact details/conditions of proposed permits will be made available to the public during the statutory public comment periods for the above described permits. Further, since the activities on the Real Estate will consist of clearing, grading, excavation and other land-disturbing activities, which result in the disturbance of one (1) acre or more of total land area, the Real Estate shall be subject to the requirements of the IDEM Construction Site Run-Off general permit (327 IAC 15-5 or “Rule 5”). Beaver shall obtain a Rule 5 permit which entails: (1) submitting a construction storm water pollution prevention plan (SWPPP) to the local entity with jurisdiction for approval; and, (2) submitting a Notice of Intent (NOI) to the IDEM. The SWPPP specifically lists the potential pollutants and the specific measures (berms, silt fences, temporary construction entrance, temporary and permanent soil stabilization, wheel wash station) to limit any water pollution and contain all stormwater discharge onsite.
- 12. On-Site Lighting Requirements:** Lighting shall be limited to portable lighting that shall not exceed six feet (6’) in height which lighting shall be downward directed and oriented toward the Real Estate and not oriented to adjacent residential uses.
- 13. Permitted Height of Soil Stock Piles:** Soil stock piles shall be a minimum of one-hundred fifty feet (150’) feet from any adjacent residential uses and shall not exceed twenty feet (20’) feet in height. Beaver shall comply with industry required soil stabilization standards and procedures. The Extraction Plan exhibit denotes the permitted location for the soil stock piles. Any changes or modifications to the permitted location of the soil stock piles shall require approval by the Planning and Development Department; and if determined by the Planning and Development Department to be a significant change or modification, also approval by the City of Noblesville, Board of Zoning Appeals
- 14. De-Watering Prohibition:** Wet excavation techniques and de-watering shall be prohibited and shall not occur on the Real Estate.
- 15. Reclamation Efforts:** As the material has been extracted from the Real Estate, Beaver’s reclamation plan shall be initiated simultaneously. Beaver’s reclamation efforts shall consist of returning the Real Estate to its pre-extraction, natural condition. Beaver’s reclamation plan includes accepting natural construction debris from various job sites across Hamilton and surrounding counties which may include, but is not limited to: (i) basement dirt; (ii) broken up concrete; (iii) construction dirt removal; (iv) natural materials from vacuum trucks; and, (v) other materials that meet the requirements and regulations of IDEM’s criteria for construction and demolition waste which IDEM criteria has been submitted with the request.