

DATE OF DECISION: 5/15/23

DATE OF MAILING: 5/15/23

SPRINGFIELD TOWNSHIP BOARD OF SUPERVISORS

**IN RE: CONDITIONAL USE APPLICATION OF H&K GROUP, INC.
FOR PROPERTIES LOCATED BETWEEN ROUTE 309, SPRINGFIELD STREET,
SALEM ROAD AND MINE ROAD, QUAKERTOWN, SPRINGFIELD TOWNSHIP
IDENTIFIED AS TAX MAP PARCEL NOS. 42-004-075, 42-004-076
42-004-106 AND 42-004-107**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. FINDINGS OF FACT

1. H&K Group, Inc. (the "Applicant") filed a conditional use application with Springfield Township on or about March 6, 2020 requesting approval to permit a G-7 Quarry use on properties located east of Route 309, bounded to the north by Springfield Street and extending south to Mine Road, Springfield Township and identified as Tax Map Parcel Nos. 42-4-75, 42-4-76, 42-4-106 and 42-4-107 (the "Property").

2. Pursuant to Act 15 of 2020 the requirement to hold a hearing within sixty-days of receipt of a conditional use application pursuant to the Municipalities Planning Code was suspended due to the COVID-19 global pandemic. Pursuant to Act 15 of 2020 and the Municipalities Planning Code (MPC) a first hearing in this matter was required to be held within sixty (60) days of May 20, 2020.

3. On or about June 24, 2020, the Applicant supplied a waiver of the requirement that a hearing be held within sixty (60) days of May 20, 2020 and granted the Township an extension of time within which to hold its first hearing until September 17, 2020.

4. The first hearing on the Conditional Use Application of H&K Group, Inc., commenced at the Springtown Community Hall located adjacent to the Springtown Fire Company, 3010 Route 212, Springtown, Springfield Township, Pennsylvania on Tuesday, September 8, 2020 at approximately 7:30 p.m.

5. Additional hearings occurred on the following nights: October 13, 2020, November 10, 2020, December 8, 2020, January 12, 2021, February 9, 2021, February 16, 2021, March 9, 2021, March 16, 2021, April 13, 2021, May 11, 2021, June 8, 2021, July 13, 2021, August 10, 2021, September 14, 2021, October 12, 2021, November 9, 2021, December 14, 2021, January 11, 2022, February 8, 2022, March 8, 2022, April

12, 2022, May 10, 2022, June 14, 2022, July 12, 2022, August 9, 2022, September 13, 2022, October 11, 2022, December 13, 2022, January 10, 2023, February 14, 2023, March 14, 2023 and April 11, 2023. Due to the COVID-19 pandemic, the hearings held on January 12, 2021 through June 8, 2021 were held virtually via the Zoom platform. Starting on July 13, 2021, the hearings returned to in person hearings at the Springtown Community Hall adjacent to the Springtown Fire Company, 3010 Route 212, Springtown, Springfield Township, Pennsylvania. Starting on June 14, 2022, the hearings were moved to the Springfield Township Building, 2320 Township Road, Quakertown and all remaining hearings were held at the Township building.

6. Notice of the September 8, 2020 hearing was published in advance of the hearing in the August 26, 2020 and September 1, 2020 editions of The Intelligencer, a newspaper publication of general circulation in Springfield Township.

7. Notice of the hearing was sent by first class mail to property owners of record within 500 feet of the Property on August 24, 2020 by Donna Lee Eller, Administrative Assistant at Clemons Richter & Reiss, PC.

8. Notice of the hearing was posted on the Property on August 31, 2020 by Jason Wager, the Springfield Township Manager and Zoning Officer.

9. At the time of the first hearing, Liberty Home Development Corporation, Ltd. was the owner of the four parcels that comprise the Property as evidenced by a Deeds recorded at the Bucks County Recorder of Deeds Office at Instrument Numbers 2010085917 and 2010085919. A true and correct copy of the Deeds are contained as part of Exhibit B-1.

10. At the time of the first hearing, the Applicant was an equitable owner of the Property. On or about November 8, 2022, the Applicant purchased the four parcels that comprise the Property as evidenced by a Deed recorded at the Bucks County Recorder of Deeds Office at Instrument Number 2022067504.

11. The Property is zoned PI – Planned Industrial District and the G-7 Quarry use is permitted by conditional use in the PI zoning district pursuant to Section 609.A.2.p of the Springfield Township Zoning Ordinance.

12. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

13. The Applicant was represented by Joseph A. La Flamme, Esquire and Nathaniel Fox, Esquire throughout the proceedings.

14. The following individuals and entities were granted party status:

Gerald and Mary Anne Claire	1574 Salem Road
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John Hufford, Jr. and Julia Hufford	1529 Salem Road
Spear Holdings, LLC	520 Springfield Street
Clean Air Council	Philadelphia, Pennsylvania
Borough of Coopersburg Water Authority	Coopersburg, Pennsylvania
Borough of Coopersburg	Coopersburg, Pennsylvania
Ryan Scheetz and Stephanie Wright	793 Mine Road
Kyle Fliszar	1602 Salem Road
John and Paulo Hitcho	1570 Dry Creek Way
Owen and Penny Jones	1876 Salem Road
Richard and Patti Kalp	1546 Salem Road
Deborah Pfeiffer	669 Mine Road
Susie Premo	1594 Salem Road
Joseph and Chris Daly	652 Mine Road
Diane and Ronald Knoble	2320 Salem Road
Melissa Goad	635 Mine Road
Jonathan Vorchheimer	649 Mine Road
Harold and Ellen Yerkes	1710 Salem Road

15. Scott S. Drumbore, a professional engineer in the Commonwealth of Pennsylvania and the manager of H&K Group's Engineering and Environmental Services Division, testified concerning the conditional use application. The Board found Mr. Drumbore's testimony to be credible.

16. The Property is bounded to the north by Springfield Street, to the east by residential properties located in the Rural Residential Zoning District, to the south by Mine Road and to the west by the Upper Bucks Rail Trail and Pennsylvania S.R. 309.

17. The four parcels comprising the Property have a total combined land area of 196.204 acres.

18. The Property is mostly wooded with an approximate 7.6 acre stoned area in the northwest portion of the site that was previously used to park trucks.

19. An unnamed tributary of the Tohickon Creek traverses the central portion of the Property.

20. The Applicant proposes to commence mining activities in a South Extraction Area located on a portion of the Property near Mine Road.

21. The Applicant proposes to mine this South Extraction Area for approximately twenty years before ceasing active mining operations at the South Extraction Area and commencing operations at a North Extraction Area located on the northern side of the Property adjacent to Springfield Street.

22. The total limit of disturbance for the project is 35.39 acres, with 20.84 acres in the North Extraction Area and 19.43 acres in the South Extraction Area.

23. There is an existing asphalt batching plant located across Springfield Street from the entrance to the proposed quarry. This asphalt plant is known as Coopersburg Materials and is owned and operated by H&K Group, Inc.

24. Springfield Street has had truck traffic traveling on it from Route 309 to the Coopersburg Materials Asphalt Plant entrance for over twenty (20) years and the road base and width of roadway has been sufficient to handle the resulting traffic.

25. The Applicant has agreed to maintain Springfield Street for a distance from the Applicant's driveway entrance to Route 309 (excluding the bridge which traverses the former railroad bed).

26. The locations of the northern and southern extraction areas comply with the non-preempted required resource protection provisions of the Springfield Township Zoning Ordinance and the required setbacks from environmental resources, as well as the setbacks for road rights-of-way, occupied buildings, and other features as required by the Township Zoning Ordinance and the Pennsylvania Non-Coal Surface Mining Conservation and Reclamation Act ("Mining Act").

27. Traffic to and from the proposed use will use approximately one thousand (1,000) feet of Township roads until reaching the signalized intersection at Route 309.

28. All traffic generated from the quarry will be directed away from residential neighborhoods and remain within the Planned Industrial Zoning District except for local deliveries.

29. Improvements to the Property related to the quarry will be limited to the access road, weigh scale, scale house, storage building, internal road, berms, fencing, stormwater management facilities, parking area and the processing equipment and stockpile areas related to each excavation area.

30. There will be approximately ten (10) employees associated with the proposed use on the site.

31. The Applicant is proposing fifteen (15) parking spaces for off-street parking for the employees and any visitors.

32. The Applicant will comply with the hours of operation set forth in the zoning ordinance, with no extraction operation or machinery connected with processing, shipping or crushing between the hours of 10:00 p.m. and 6:00 a.m. During the months of December, January and February, the hours of operation shall be limited to 7:00 a.m. to 5 p.m.

33. The Applicants appeared before the Springfield Township Planning Commission on February 2, 2020 and subsequent meetings. At the conclusion of the Applicant's presentation, the Planning Commission recommended denial of the conditional use application, unless the Applicant could establish satisfactory stormwater management measures and how the water detained in the stormwater management facility would be used.

34. The Township's Environmental Advisory Council reviewed the conditional use application at its February 2022 meeting and provided the Board of Supervisors with the comments contained in Exhibit T-7.

35. Upon completion of mining activities in each extraction area, reclamation of the extraction areas will occur.

36. The Applicant proposes to grade the highwalls to a 35 degree slope to support a post mining land use of unmanaged natural habitat with a water filled impoundment or to fill the excavation area to the approximate original contour or to a contour that would allow for a future land use permitted in the PI zoning district.

37. The Applicant is proposing to mine to a depth of approximately 400 feet above mean sea level in both the north and south extraction areas. The existing high point in the extraction areas is approximately 620 feet above mean sea level. Therefore, the Applicant will be removing about 220 feet of material at the highest point.

38. During the initial stages of surface mining activity, the Applicant will remove overburden and create berms with a minimum height of fifteen feet (15') around portions of the perimeter of the Property where wetlands do not exist as depicted on the Exhibit A-2 the Revised Overall Site Plan. The slope of the sides of the berm will not exceed a 3:1 ratio.

39. The berms serve to reduce noise and dust emissions off site and also provide a visual screen to the operation. The berms will be planted with evergreen plantings of a size and species to provide a visual screen of at least eight (8) feet in height within three (3) years.

40. The northern extraction area will be screened to the north and west with a type 2 buffer and screening berm. Adequate buffer based on mature vegetation exists in the other direction of the northern extraction area.

41. The southern extraction area will be screened to the south with the installation of a Type 1 buffer and screening berm. The area to the east of the southern extraction area will be screened with a minimum of 500 feet of an existing stand of mature vegetation, which will not be removed.

42. The excavation areas are a minimum of 125 feet from site boundaries in all locations in accord with the zoning ordinance.

43. Applicant will install a chain link fence at least eight feet (8') in height with barbed wire that will surround the extraction areas.

44. Applicant will also install warning signs on the fence at intervals of no more than 100 feet.

45. Applicant has proposed an adequate internal driveway to allow access to the northern and southern extraction areas, as well as to the processing areas.

46. Mark A. Roth, P.E. of McMahon Associates was qualified as an expert in the field of traffic engineering and provided the opinion that efficient access to and from the proposed quarry use along Springfield Street can be provided and that site generated traffic can be accommodated along Springfield Street, Route 309, and at the intersection of these roads.

47. The Board found Mr. Roth's testimony to be credible.

48. The proposed quarry is expected to add no more than 52 trips to the weekday morning peak period and no more than 10 trips to the afternoon peak period.

49. The Applicant will be ceasing its operation at the Naceville Materials quarry after it commences operations at the Property.

50. Currently, the trips from Naceville Quarry to the Coopersburg Materials asphalt plant account for 16 trips during the weekday morning peak period and 4 trips during the weekday afternoon peak period. These trips will become nonexistent after the Naceville Materials quarry operations are terminated.

51. The Applicant will provide for adequate sight distance at the proposed access point for the Property.

52. The available sight distances for the available movements at the access/exit for the site all exceed PennDOT's sight distance requirements contained in Pennsylvania Code, Chapter 41, Access to and Occupancy of Highways by Driveways and Local Roads.

53. The proposed quarry use will not have a detrimental impact on the overall levels of service for the intersection at Bethlehem Pike and Springfield Street/Hilltop Road.

54. The proposed quarry use will not have a detrimental impact on the overall queue lengths for the intersection at Bethlehem Pike and Springfield Street/Hilltop Road.

55. The Bethlehem Pike and Springfield Street/Hilltop Road intersection could benefit from road widening in the northeast portion of the intersection. Currently, larger trucks have difficulty maintaining their lane of travel due to a lack of turning radii when making a right turn from Springfield Street onto northbound Bethlehem Pike.

56. All trucks carrying stone on public roads will be covered to prevent stones from spilling onto and damaging public roads.

57. The Applicant will install signs at the egress for the property requiring that all loaded trucks be tarped prior to leaving the site.

58. Lighting for the site will be limited to the driveway entrance onto Springfield Street and security lighting at the storage building and scale house.

59. There will be lighting for operational purposes at the stockpile and processing area.

60. All lighting will be installed to direct light toward the interior of the Property and will be shielded to direct light in a downward direction to minimize any light from emanating off the property.

61. The site will be served by two on-site wells. The first well will be necessary to supply water to the scale house for employee restroom facilities. The second well will be used in conjunction with the processing plant and stockpile areas and will supply a yield of fifteen gallons per minute to sustain dust suppression systems.

62. Sewage disposal will be addressed with on-lot systems or holding tanks to collect and treat sewage flows associated with restroom facilities at the scale house.

63. All buildings and structures on the Property will meet local fire code standards, be equipped with fire extinguishers and all necessary safety equipment related to the proposed use.

64. All storage vessels for fuel will comply with the Department of Environmental Protection standards.

65. The Applicant will prepare and file a Spill Prevention and Counter Control Measure (SPCC) Plan for the Property.

66. The proposal complies with the natural resource protection standards contained in the zoning ordinance with the exception of a portion of the internal access driveway crossing floodplain and wetlands area. The Applicant must obtain a special exception pursuant to Section 509.2.A.3.d of the Zoning Ordinance related to this crossing.

67. The underlying geologic formation of the property is diabase.

68. The diabase has intruded into, and is surrounded by, the Brunswick Formation.

69. Diabase has a low primary porosity and permeability as it relates to groundwater. It is a stable rock mass having limited fractures and faults.

70. Groundwater in diabase is ordinarily stored in and conducted through fractures within the rock. The fractures in diabase are more common in the shallow bedrock and decrease with depth.

71. The Applicant will monitor data collected as part of a proposed monitoring program to avoid impacts to springs, seeps, vernal pools and similar natural features.

72. Additionally, groundwater will be monitored based on a well monitoring program.

73. Val F. Britton, was called by the Applicant and was qualified as an expert in the areas of hydrogeology, groundwater, groundwater movement and groundwater modeling.

74. Mr. Britton is a professional geologist and was retained by the Applicant to perform preliminary groundwater modeling for the project. The Board found Mr. Britton's testimony to be credible.

75. Mr. Britton has over 37 years of experience in hydrogeology, has performed over 150 groundwater models and has been involved in more than 50 noncoal surface mining projects.

76. Mr. Britton opined that a shallow water table exists at the Property based on the poorly draining diabase geology which results in perched wetland areas.

77. The purpose of the preliminary groundwater model was to establish initial predictive evaluation of the groundwater elevation and the zone of influence associated with the proposed mining operations.

78. Mr. Britton's opinions are based on published hydrogeological data rather than installation and monitoring of wells. Site-specific data will be collected at the stage that the Applicant applies for its State Mining Permit.

79. To perform the modeling, Mr. Britton relied upon certain assumptions relative to the site's geologic and hydro-geologic characteristics. All assumptions were based on sound and accepted geologic and hydro-geologic theory.

80. Due to the fact that the northern extraction area is very close to the northern boundary of the regional groundwater divide, the model domain was expanded in a northern direction into the neighboring watershed. This was done to prevent the dewatering simulation performed by the modeling from interacting with the model boundary.

81. Mr. Britton utilized a software package known as MODFLOW to perform the preliminary groundwater modeling. He performed dewatering simulations for both the northern and southern extraction areas with a final bench elevation of 400 feet mean sea level for each. The configuration he used allowed the model to simulate the proposed pit configurations under the maximum dewatering scenario.

82. The model established that very little dewatering impact will occur due to the low permeability of the diabase material.

83. The northern and southern extraction areas will have less than 1,000 feet of radial expansion to the 10-foot drawdown mark.

84. As the depth of the pits increase, tighter and less fractured diabase will be encountered which results in very little water-bearing capacity.

85. Mr. Britton estimated that the northern extraction area is estimated to yield an average 21 gallons per minute during the maximum dewatering process and the southern extraction area is estimated to yield an average of 17 gallons per minute during the dewatering process.

86. Mr. Britton concluded that vertical expansion of the quarry pits is not likely to increase the zone of influence since the water-bearing capacity of the diabase material decreases with depth. There is almost no water-bearing capacity below 100 feet in diabase geologic material.

87. The majority of the dewatering will occur during excavation of the upper 50 feet.

88. The Applicant will respond to all well water complaints related to quantity or quality issues for properties within 1,000 feet of the limits of the Property.

89. Amy Parrish, P.G., a hydrogeologist, testified on behalf of the Clean Air Council concerning the groundwater modeling report prepared by Val F. Britton.

90. Ms. Parrish admitted that she has no prior experience addressing non-coal surface mining operations in Pennsylvania. While she has some experience with coal mining in Maryland, it did not involve diabase material.

91. Ms. Parrish was only qualified once before as an expert. The prior time involved an administrative hearing in Maryland.

92. Ms. Parrish also admitted she has never utilized the MODFLOW program employed by Mr. Britton.

93. MODFLOW has been recognized by the U.S. Geological Survey as the most widely used code for solving groundwater flow problems.

94. Ms. Parrish collected field data from areas surrounding the Property, but not the Property itself.

95. Ms. Parrish provided the opinion that Mr. Britton's groundwater model was not reliable and that neighboring wells and hydrology features such as wetlands are at risk of an adverse impact.

96. Ms. Parrish did not prepare a preliminary groundwater model of her own.

97. Based on her lack of experience with MODFLOW and her failure to perform her own preliminary groundwater model, Ms. Parrish's opinion that wetlands and other hydrology features are at risk of adverse impact is based on speculation and conjecture. As a result, her opinion is not reliable.

98. The Applicant will restore and replace any public or private water supply that is contaminated, interrupted or diminished by the Applicant's surface mining activities with an alternate source of water, adequate in quantity and quality for the purpose served by the supply.

99. For well loss claims that are caused by the Applicant, the Applicant may deepen a property owners' well or drill a new well. In some instances, the Applicant may hydrofrac the well to restore the wells functionality.

100. The Applicant will supply temporary water supply to residents who suffer quantity or quality issued as a result of the Applicant's surface mining activities.

101. Charles Lloyd Myers, P.E. of Barry Isett and Associates testified on behalf of the Borough of Coopersburg.

102. Mr. Myers is an engineer for the Municipal Authority of the Borough of Coopersburg.

103. He testified that the Municipal Authority's wells are outside of the mapped zones of influence.

104. The Applicant will implement erosion and sediment control measures and stormwater controls in conformance with the Mining Act and other state laws to ensure the protection of the water quality in the Township's streams and other bodies of water.

105. Collection channels, sediment traps and sediment basins will be utilized to capture water within the excavation area.

106. Pit sumps will be installed at the low point of the quarry floor to collect site runoff and store it.

107. Water will be released after the sediment has settled. Once settlement of the solids occurs, water will be pumped directly to the tributary for the Tohickon Creek that runs through the property in accordance with a National Pollutant Discharge Elimination System (NPDES) permit.

108. A surface water monitoring program will be implemented that will require submission of samples to the State on a quarterly basis to ensure that the water quality of the tributary to the Tohicken Creek is maintained and protected.

109. Blasting operations will be conducted in accordance with an approved blasting plan in accordance with 25 Pa. Code Chapter 77 and 25 Pa. Code Chapter 211.

110. Blasting will occur in the Northern and Southern Extraction areas where the minerals are being extracted.

111. The Applicant will install seismographs at the Property to monitor blasting activities. The Applicant will remediate any damage caused as a result of its blasting activities at the Applicant's expense.

112. The Applicant will comply with the Mining Act with respect to all surface mining activities.

113. The stockpiles will not exceed 75 feet in height and all stockpiles will comply with Township and State regulated setbacks.

114. Dust will be controlled through the use of water cannons at the site via a water truck to wet the stockpiles as needed.

115. Spray bars will be used within the processing plants where material is transferred or discharged to piles to manage dust emissions from the plant.

116. Sweeper/vac trucks will be utilized on the access roads and public roads to suppress dust.

117. Daniel P. Dix was qualified as an expert witness in the area of air quality modeling emissions and air dispersion modeling.

118. Mr. Dix is employed by All4, LLC as a technical director and the leader of the company's air quality modeling and ambient monitoring technical team.

119. All4, LLC was hired by the Applicant to perform air quality modeling of emissions related to the quarry operation.

120. The Applicant advised Mr. Dix that the Applicant is proposing a maximum throughput of 350 tons per hour, 5,600 tons per day and 500,000 tons per year for the rock crushing plant.

121. The operation will be regulated by a Portable Nonmetallic Mineral Processing Plant General Air Permit known as a (GP-3). While not required by the GP-3 permit, air quality modeling was performed to determine whether the operation will meet the National Ambient Air Quality Standards (NAAQS) for matter less than ten microns in diameter (PM₁₀) and 2.5 microns in diameter (PM_{2.5}).

122. Air quality modeling was performed related to emissions from haul trucks operating on internal roads and loaders operating around the plant, as well as emissions from the crusher, secondary crusher, tertiary crushers, screen decks and conveyors.

123. The air quality modeling demonstrated that the proposed emissions from the operation will be below the PM₁₀ and PM_{2.5} NAAQS by itself or in combination with the existing background concentration levels for the north and south quarries.

124. Mr. Dix utilized a conservative approach to modeling including, but not limited to the following variables: the plant operates every day of the year, at its maximum production rate at all times, for the full permitted hours of operation.

125. Mr. Dix prepared a revised model to properly account for the length of the internal access driveway, to quantify the number of trips and weights of customer vehicle traffic. He also included additional emission sources for drilling and blasting, as well as additional emissions from reclamation activities. The reclamation activities included dumping of fill and moving fill, as well as bulldozing fill throughout the reclamation area.

126. Considering these revised variables, Mr. Dix supplied the opinion that with a plant operating at 3,500 tons per day, 7 days a week, 16 hours a day March 1 through November 30 and 10 hours per day December 1, to February 28 with an annual production not to exceed 1,277,500, the air quality modeling still demonstrated that the proposed emissions from the operation will be below the PM₁₀ and PM_{2.5} NAAQS by itself or in combination with the existing background concentration levels for the north and south quarries.

127. The Applicant will employ the use of various machinery to quarry, transport and crush the material at the site. A rock drill and blasting will be used to excavate the material. Rock trucks and loaders will then transport the material to the processing area where crushers, screens and conveyors will reduce the rock into different sizes and separate it.

128. The operation will comply with the noise levels set forth in Section 508.B of the Zoning Ordinance.

129. The Applicant will post a surety bond prior to the issuance of the Large Non-Coal Surface Mining Permit in an amount determined adequate for reclamation costs.

130. The Upper Bucks Rail Trail is located just to the west of the Property.

131. The trail is used for active recreation including walking, running and bike riding.

132. The length of the trail in Springfield Township is approximately 1.2 miles long. The trail crosses Mine Road to the south of the Property and traverses under Springfield Street to the north of the Property.

133. Bucks County installed an approximate 800-foot boardwalk section in an area of the trail located to the west of the Property.

134. The trail does not constitute a park as pursuant to the Zoning Ordinance or Mining Act and the corresponding regulations.

135. The lease between the Township and SEPTA describes the Upper Bucks Rail Trail as an interim trail.

136. Similarly, the Township's adopted Parks and Recreation Management Plan dated May 14, 2018 identifies the Upper Bucks Rail Trail as a trail, as opposed to a park.

137. The Parks and Recreation Board attempted to modify how the trail was identified during the hearing process, but the Board of Supervisors did not adopt a new Parks and Recreation Management Plan during the time the hearings were ongoing.

138. The trail exists pursuant to the Pennsylvania Rails to Trails Act. The purpose of the act is to acquire available railroad rights-of-way for public recreational *trail* use.

139. Timothy Woodrow, P.E., of Woodrow & Associates, Inc. was qualified as an expert in the area of civil engineering, hydrologic studies, hydraulic studies and flood plain identification.

140. Mr. Woodrow testified concerning hydrologic and hydraulic calculations and analysis that he performed to ensure that the proposed development design complied with the Township's design criteria and standard engineering practice.

141. Mr. Woodrow provided the opinion that the calculated 100-year floodplain will have no impact on the proposed use of the property.

142. Jason J. Mease, PWS of Valley Environmental Services, Inc., was qualified to testify as an expert in the area of wetlands delineation.

143. Valley Environmental Services completed a preliminary wetland evaluation on May 29, 2018 and May 30, 2018.

144. Valley Environmental Services performed a detailed wetland evaluation on June 10, 2019 through June 13, 2019.

145. Valley Environmental Services reevaluated the site on February 10, 2022 concerning wetland identification.

146. These evaluations were performed by entering the site and performing on-site inspections.

147. The evaluations performed by Valley Environmental Services were completed in accordance with the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and the Eastern Mountains and Piedmont Regional Supplement (Version 2.0, April 2012).

148. Mr. Mease identified ten (10) wetland features throughout the Property which are identified in Exhibit A-31.

149. A large, contiguous area of wetland habitat was identified along the low-lying east-central portion of the study area. This wetland area is identified as Wetland A in Exhibit A-32.

150. There are also adjacent wetland habitats extending to the north, south, and west of Wetland A. These wetland areas are identified as Wetlands B-J in Exhibit A-32.

151. Forested wetland habitat exists in areas throughout the Property and areas of emergent and scrub-shrub wetland habitats were also encountered.

152. Valley Environmental Services identified four (4) unnamed tributaries to Tohickon Creek on the Property.

153. Mr. Mease also noted the presence of a drainage ditch along the southwestern property line. He did not identify this as a natural watercourse as it lacked the geomorphic, hydrologic, and biological attributes commonly associated with naturalized watercourses.

154. Mr. Mease determined that it was installed for the purpose of conveying stormwater.

155. With the exception of a portion of the internal access driveway that will cross the floodplain and wetlands area, Mr. Mease did not identify any wetlands that would be disturbed by the proposed surface mining activities.

156. The Board found Mr. Mease's testimony to be credible.

157. Clean Air Council called Dr. James A. Schmid as an expert in the areas of ecology and geography.

158. Dr. Schmid provided an opinion that the conditional use application and testimony and exhibits introduced by the Applicant did not provide a sufficient basis for identifying impacts to wetlands and other resources.

159. He further opined that Applicant's plan *appears* to propose major impacts to floodplains, streams, wetlands, and other environmental resources in violation of the Township Zoning Ordinance and state law.

160. Dr. Schmid relied on an analysis of Springfield Township Zoning Ordinance Section 510.2.B which does not apply to industrial uses.

161. Dr. Schmid also relied on Section 509.2.D(4) of the Zoning Ordinance in supplying an opinion that the conditional use plans did not comply with the ordinance. However, this section only requires that springs or seeps ". . . be shown on any

subdivision, land development or building plan submitted to the Township.” This portion of Section 509.2.D(4) requiring seeps and springs to be shown on a plan does not apply to a conditional use application.

162. Dr. Schmid’s opinions were not based on on-site analysis of wetlands or other environmental resources.

163. Several parties and property owners, including Owen Jones, Chris Spear, Mary Ann Clair and Heather Lloyd, who reside or have a business in the immediate area of the Property testified about their concerns related to the proposed use.

164. Matthew Mercuri testified on behalf of the Township concerning Val F. Britton’s preliminary groundwater modeling report.

165. Timothy Fulmer, P.E. of Wynn Associates testified on behalf of the Township intersection issues at Route 309 and Springfield Street.

166. The Board received a significant amount of public comment at the hearing and by way of written materials.

II. CONCLUSIONS OF LAW

1. A conditional use is a use that is permitted in a particular zoning district pursuant to the Municipalities Planning Code (MPC). 53 P.S. §10107(a).

2. The Applicant’s proposed G-7 quarry use is a permitted use in the PI – Planned Industrial District pursuant to conditional use approval.

3. An applicant for conditional use approval has the burden of establishing compliance with the specific, objective criteria of the zoning ordinance. In re Thompson, 896 A.2d 659 (Pa. Commw. Ct. 2006).

4. “A conditional use proceeding concerns only a proposed *use* of land, not particular design details of the proposed development.” Joseph v. N. Whitehall Twp. Bd. of Sup’rs, 16 A.3d 1209, 1215 (Pa. Commw. Ct. 2011), citing, In re Thompson, 896 A.2d 659 (Pa. Commw. Ct. 2006).

5. Once an applicant for conditional use approval establishes the specific, objective criteria for the conditional use contained in the zoning ordinance, the applicant has “made out a prima facie case and must be granted a conditional use, unless the objectors present sufficient evidence that the proposed use will have a detrimental effect on the public health, safety and welfare.” Joseph v. N. Whitehall Twp. Bd. of Sup’rs, 16 A.3d 1209, 1215 (Pa. Commw. Ct. 2011).

6. The evidence presented by objectors must show a high probability that the use will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community. Greaton Properties v. Lower Merion Twp., 796 A.2d 1038, 1046 (Pa. Commw. Ct. 2002).

7. Section 802 of the Springfield Township Zoning Ordinance contains the specific and objective criteria for approval of a conditional use.

8. Section 802 of the Zoning Ordinance provides as follows:

1. The Board of Supervisors shall determine that access to the site is safe and may refuse to permit a conditional use where insufficient distance between a curb cut and a street intersection is provided, or require combining of access with an adjoining land use. The Board of Supervisors may require off-site traffic improvements where a hazardous condition would otherwise be created, if authorized by State law.

2. The Board shall require that the proposed use be developed in a manner that is compatible with the surrounding existing uses. Conditions controlling planting of shade trees, evergreen buffers, and planted berms may be imposed to create a buffer beyond the normal requirements of this Ordinance.

3. The Board shall impose conditions on lighting and signs to insure that glare does not disrupt residential areas, distract motorists, or intrude in the background near traffic lights.

4. The application shall not be approved unless the Board shall make favorable findings on all of the following:

A. The proposal is appropriate to the tract in question and will not disrupt or destroy the character of stable residential neighborhoods.

B. The proposal provides for adequate access to public roads, without creating hazardous conditions at intersections or areas of poor road alignment, and without creating undue congestion. Where a Traffic Impact Analysis is required by the Subdivision and Land Development Ordinance, it shall be submitted with the conditional use application.

C. The applicant has provided credible evidence that the proposal conforms to all applicable requirements of this Ordinance.

D. The proposed water supply and sewage systems will be adequate and meet applicable requirements. Where applicable, a certificate of adequacy of sewage and water facilities shall be provided. Where a utility or stormwater

matter will be required to be addressed under the Township Subdivision and Land Development Ordinance, Stormwater Ordinance or another Township ordinance, the Board of Supervisors may defer detailed consideration of such matters and instead place a condition on the conditional use approval to require evidence of compliance with such ordinances to be provided when such matters will be before the Township.

E. The effects of the proposed change will result in the most appropriate use of land, the conservation of the value of buildings, safety from fire, panic and other dangers; adequacy of light and air, the prevention of overcrowding of land and congestion of population, and the adequacy of public and community services.

F. The proposed use will be suitable for the site, considering the disturbance of steep slopes, mature woodland, wetlands, floodplains, lake, pond, watercourse or wetland buffers, springs, seeps, vernal pools, and other important natural features, and considering measures that the applicant proposes to conserve such features as a condition of approval.

G. The proposed use shall not result in a change in water quality designation or special protection status of any water body in the Township.

9. So long as the Applicant complies with the conditions imposed upon the approval, the proposal is appropriate to the tract in question and will not destroy the character of surrounding residential neighborhoods.

10. So long as the Applicant complies with the conditions imposed upon the approval, the proposal provides for adequate access to public roads, without creating hazardous conditions at intersections and without creating undue congestion and access to the site is safe.

11. So long as the Applicant complies with the conditions imposed upon the approval, the proposed use is compatible with the surrounding uses.

12. So long as the Applicant complies with the conditions imposed upon the approval, the effects of the proposed change will not result in safety risks from fire, panic and other dangers.

13. So long as the Applicant complies with the conditions imposed upon the approval, the proposed use will not result in overcrowding of land or congestion of population.

14. So long as the Applicant complies with the conditions imposed upon the approval, the proposed use will facilitate the adequacy of public and community services.

15. So long as the Applicant complies with the conditions imposed upon the approval, the proposed use will be suitable for the site with respect to the conservation of natural resources.

16. So long as the Applicant complies with the conditions imposed upon the approval, the Applicant provided credible evidence that the proposal conforms to all non-preempted applicable requirements of the Zoning Ordinance.

17. Objectors failed to present sufficient evidence to prove to a high degree of probability that the proposed use will have a significantly greater effect on any residential area than any other non-coal surface mine operation of a similar size and nature located on the Property.

18. After reviewing all of the testimony and exhibits, the Board concludes that Objectors failed to establish that the grant of conditional use approval for a G-7 Quarry Use at the Property will have a detrimental effect on the public health, safety and welfare.

19. Objectors offered speculation and conjecture concerning potential impacts associated with operational aspects of the proposed operation. "Mere speculation of possible harm is not sufficient." Kretschmann Farm, LLC v. Township of New Sewickley, 131 A.3d 1044, 1053 (Pa. Cmwlth. 2016).

20. "... [E]xpressions of concern do not constitute probative evidence of harm." Kretschmann Farm, LLC v. Township of New Sewickley, 131 A.3d 1044, 1054 (Pa. Cmwlth. 2016).

21. While the Applicant did not submit a specific environmental impact assessment report, the Applicant provided reports and testimony concerning the topics listed in Section 404(G)(7)(d)(12) of the Zoning Ordinance, including, groundwater and surface water, air quality, noise and odor, vehicle traffic and soil quality.

22. Said reports and testimony established that the proposed use will not harm the health or environment, as long as the Applicant complies with the conditions attached to this approval.

Preemption

23. Quarrying is governed by the Noncoal Surface Mining Conservation and Reclamation Act (hereinafter "the Mining Act").

24. The Mining Act contains specific preemption language as follows:

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code, all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth, by this enactment, hereby preempts the regulation of surface mining as herein defined.

52 P.S. §3316.

25. Municipal ordinances that address where mining may take place are permissible whereas zoning ordinances that attempt to regulate the operation of a mine, are not permissible.

26. A municipality may regulate the locational aspects of a quarry, but not the operational aspects of a quarry. See, East Rockhill Township v. Pierson Materials Corp., 364 F.Supp.3d 436 (E.D. Pa. 2019).

27. “[O]ne way to know if a regulation is truly a zoning ordinance [and therefore not preempted] is whether the violation will take place before the operation begins or sometime later.” Geryville Materials, Inc. v. Planning Commission of Lower Milford Township, 74 A.3d 322 (Pa. Cmwlth. 2013).

28. Restrictions on the *operation* of a mine fall within the exclusive jurisdiction of DEP. However, requirements concerning setbacks are not preempted. See id.; see also, Pennsy Supply, Inc. v. Zoning Hearing Board of Dorrance Township, 987 A.2d 1243 (Pa. Cmwlth. 2009) (holding setbacks of 200 feet from any building or road, or 100 feet from any public or semi-public use are not preempted); Hoffman Mining Company v. Zoning Hearing Board of Adams Township, 32 A.3d 587 (Pa. 2011) (holding that an ordinance requiring all mining, excavating, and blasting activities maintain a 1,000-foot setback from residential structures was not preempted).

29. In addition, the designation of uses permitted by special exception or conditional use approval are traditional land use regulations and are not preempted.

30. In contrast, ordinances that regulate surface mining activities are preempted.

31. For instance, an ordinance regulating buffers and berms, overburden storage, reclamation, and drainage structures was deemed preempted as these are issues already addressed by the Mining Act and the DEP permit and are not subject to local control. Warner Co. v. ZHB of Tredyffrin Township, 612 A.2d 578 (Pa. Cmwlth. 1992).

32. While the timing of installation of berms is not preempted, provisions that regulate the height or location of berms are preempted as they relate to surface mining activity. See, In re Gibraltar Rock, Inc., 2013 WL 5614244, at *9 (Pa. Commw. Ct. Oct. 11, 2013).

33. Township ordinances attempting to regulate blasting are preempted. Tinicum Township v. Delaware Valley Concrete, Inc., 812 A.2d 758 (Pa. Cmwlth. 2002). The appellate courts have held that blasting ordinances are preempted because blasting is an integral operation in surface mining and the extraction of minerals.

34. Pennsylvania appellate courts have also held that the DEP possesses exclusive authority to regulate wetlands, groundwater, surface water, and streams pursuant to the Mining Act. Geryville Materials, Inc. v. Planning Commission of Lower Milford Township, 74 A.3d 322 (Pa. Cmwlth. 2013).

35. Ordinances that focus on how to manage stormwater that is generated from quarry regulated “construction” and “surface activities” that are connected with surface mining are also preempted. Gilbraltor Rock v. New Hanover Township, 118 A.3d 461 (Pa. Cmwlth. 2015).

36. In Gilbraltor, the Court held that New Hanover Township’s ordinance regulating stormwater was preempted to the extent that it applied to the construction and operations of the quarry itself.

37. The application of the stormwater ordinance to the office/scale area, entranceway, and employee parking lot was prohibited as such improvements relate to or were being constructed to effectuate surface mining¹ endeavors.

38. Regardless of whether an ordinance applies specifically to a quarry or is neutral on its face, it will be preempted as an operational regulation if it regulates “surface mining.”

39. As a result, those portions of the Springfield Township Zoning Ordinance that seek to regulate surface mining activities are preempted.

40. The requirement to install berms with a minimum height of 15 feet surrounding the entire property pursuant to Section 404.G.(7)(a)1a) of the Zoning Ordinance is preempted. This requirement does not relate to the timing of the installation of berms, but instead regulates the height and location of berms. As a

¹ “Surface Mining” is defined as the extraction of minerals from the earth, from waste or stockpiles or from pits or from banks by removing the strata or material that overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip mining, auger mining, dredging, quarrying and leaching and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto; but it does not include those mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. 53 P.S. §3303.

result, it relates to regulation of surface mining activity and is preempted. See, In re Gibraltar Rock, Inc., 2013 WL 5614244, at *9 (Pa. Commw. Ct. Oct. 11, 2013).

41. Applicant has satisfactorily proven compliance with the applicable non-preempted criteria for the proposed G-7 Quarry use.

42. Objectors' assertion that the Applicant has failed to establish the environmental protection standards contained in Section 509 of the Zoning Ordinance is mistaken. While it is true that the zoning ordinance requires all activities and uses to comply with specifically enumerated environmental protection standards, these protection standards are preempted by the Noncoal Surface Mining Act. See, Geryville Materials, Inc. v. Planning Commission of Lower Milford Township, 74 A.3d 322 (Pa. Cmwlth. 2013); Gilbraltor Rock v. New Hanover Township, 118 A.3d 461 (Pa. Cmwlth. 2015); Warner Co. v. ZHB of Tredyffrin Township, 612 A.2d 578 (Pa. Cmwlth. 1992); and East Rockhill Township v. Pierson Materials Corp., 364 F.Supp.3d 436 (E.D. Pa. 2019).

43. The Applicant has complied with the applicable natural resource mapping and site capacity calculations as set forth in Section 510.3 of the Zoning Ordinance.

44. The issue concerning emissions of dust and dirt is preempted as such emissions relate to performance standards associated with the operational aspects of quarrying. Notwithstanding it being preempted, the Applicant presented sufficient evidence to establish that the proposed operation complies with the National Ambient Air Quality Standards established by the Environmental Protection Agency.

45. The Applicant established that operation will comply with Springfield Township's noise ordinance requirements contained within the Zoning Ordinance.

46. Objectors failed to establish that the proposed use will destroy the character of stable residential neighborhoods. It is the objectors' burden to prove this based on the burden shifting analysis set forth by our appellate courts. See, Joseph v. N. Whitehall Twp. Bd. of Sup'rs, 16 A.3d 1209, 1215 (Pa. Commw. Ct. 2011).

47. The objectors failed to present evidence that there is a "high probability that the use will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community." See, Greaton Properties v. Lower Merion Twp., 796 A.2d 1038, 1046 (Pa. Commw. Ct. 2002).

48. While objectors presented concerns and speculation of detrimental impacts with respect to noise, dust, blasting, vibrations, traffic and related issues, no evidence was presented that this particular quarry proposal would pose a more significant threat to the health and safety of residents than the impacts normally associated with a quarry. Furthermore, as noted above, speculation of potential harm or expressions of concern are not sufficient evidence to deny a conditional use.

Kretschmann Farm, LLC v. Township of New Sewickley, 131 A.3d 1044, 1053-54 (Pa. Cmwlth. 2016).

49. Objectors also presented evidence concerning groundwater and surface water, as well as wetland concerns. Again, Objectors failed to meet their burden to show a high probability of adverse impacts to the health and safety of the community.

50. Dr. Schmid's testimony challenged the Applicant's sufficiency of evidence related to the identification of impacts to wetlands and other resources.

51. However, Dr. Schmid's opinion states that the Applicant's plan *appears* to propose major impacts to floodplains, streams, wetlands, and other environmental resources in violation of the Township Zoning Ordinance and State Law. Dr. Schmid's opinion was not based on on-site analysis.

52. Dr. Schmid also relied on Section 509.2.D(4) of the Zoning Ordinance in supplying an opinion that the conditional use plans did not comply with the ordinance. However, this section only requires that springs or seeps ". . . be shown on any subdivision, land development or building plan submitted to the Township." This portion of Section 509.2.D(4) requiring seeps and springs to be shown on a plan does not apply to a conditional use application.

53. Dr. Schmid's opinions were not based on on-site analysis of wetlands or other environmental resources.

54. The Board found Jason Mease's testimony more convincing as his conclusions were based on sound analysis and site-specific inspections.

55. Objectors also raised concerns related to detrimental impacts to groundwater quantity and quality.

56. The Board found Val Britton's testimony concerning potential impacts to groundwater to be credible.

57. In comparison to the testimony supplied by Val Britton, the Board did not find Amy Parrish's testimony to be reliable as she has little experience with diabase material, has no prior experience addressing non-coal surface mining operations in Pennsylvania, has only been qualified as an expert one prior time in her career, has never utilized the MODFLOW program utilized by Val Britton, and did not prepare a groundwater model of her own for the Property.

58. In addition, Ms. Parrish's opinion that Mr. Britton's groundwater model was not reliable and that neighboring wells and hydrology features such as wetlands are at risk of an adverse impact does not meet the standard that objectors have the burden of meeting. Specifically, Ms. Parrish failed to opine that this particular proposed quarry, has a high probability of generating adverse hydrogeological impacts not normally

generated by this type of use and that the impacts will pose a substantial threat to the health and safety of the community.

Environmental Rights Amendment

59. Approval of the G-7 Quarry Use does not violate the Pennsylvania Environmental Rights Amendment.

60. *Article I, Section 27 of the Pennsylvania Constitution*, known as the Environmental Rights Amendment (“ERA”) was adopted on May 18, 1971, and provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. Art. I, § 27.

61. Section 27 of Article I grants two rights. The first right is the right of citizens to clean air and pure water, and the preservation of natural, scenic, historic and esthetic values of the environment. Robinson Twp. v. Commonwealth, 83 A.3d 901 (Pa. 2013) (*Robinson II*). The second right is the common ownership by the people, including future generations, of Pennsylvania's public natural resources. Robinson Twp. v. Commonwealth, 83 A.3d 901 (Pa. 2013), and *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017).

62. The Supreme Court recognized a public trust created by the ERA, pursuant to which the commonly owned public natural resources of the Commonwealth are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries. Robinson Twp. v. Commonwealth, 83 A.3d 901, 955-56 (Pa. 2013), and *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 931-32 (Pa. 2017).

63. The second right contained in the ERA applies to “public” natural resources. Robinson Twp. v. Commonwealth, 83 A.3d 901, 955 (Pa. 2013).

64. The concept of public natural resources includes not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna that are outside the scope of purely private property. Robinson Twp. v. Commonwealth, 83 A.3d 901, 955-56 (Pa. 2013).

65. The ERA does not preclude development. It also does not cause a sacrifice of fundamental property rights. “It is axiomatic that a zoning ordinance must balance the public interests of the community with the due process rights of private property owners.” Frederick v. Allegheny Twp. Zoning Hearing Bd., 196 A.3d 677, 695 (Pa. Commw. Ct. 2018).

66. “Zoning accounts for the ‘natural, scenic, historic and esthetic values of the environment . . . by placing compatible uses in the same zoning district.” Frederick, 196 A.3d at 695.

67. “A municipality balances the interest of landowners in the use and enjoyment of their property with the public health, safety and welfare of the community when it enacts land use regulation.” Frederick, 196 A.3d at 700-01.

68. The Commonwealth, not the Township has the power to regulate *how* noncoal surface mining is conducted to protect Pennsylvania’s waters and air. Frederick, 196 A.3d at 700-01. The Township can only regulate *where* the activity is conducted. Frederick, 196 A.3d at 701.

69. The Township’s decision to allow for quarrying in the planned industrial district was based on consideration of the public health, safety and welfare of the Township’s citizens.

70. No specific evidence was introduced to establish a violation of the ERA. Mere speculation and conjecture concerning potential impacts is not sufficient to raise a claim that the ERA is being violated by the approval of this quarry.

71. Objectors’ statements and voiced concerns that their property may become polluted and that their property values would decrease are insufficient to establish the requisite harm. Frederick, 196 A.3d at 698. The objectors’ “expressed concerns” are no more than speculation of possible harm and are insufficient to show that the proposed quarry will be detrimental to the health, safety and welfare of the neighborhood. Frederick, 196 A.3d at 689.

72. Objectors have the burden of proof to show that the Township’s zoning ordinance “unreasonably” impaired their rights under the ERA. Because the objectors have presented no credible evidence of harm, their claims of violations of the ERA are unsupported and without merit.

Upper Bucks Rail Trail

73. The Upper Bucks Rail Trail does not constitute a park.

74. The Springfield Township Zoning Ordinance requires an applicant for a proposed quarry to depict all “parks, schools and places of worship” that are within a half mile radius of the site. Springfield Township Zoning Ordinance §404.G.(7)(a)2a)vi.

75. The Zoning Ordinance does not contain a definition for the term park or trail.

76. The Mining Act contains a requirement that “. . . no person shall conduct surface mining operations . . . within 300 feet of a public park . . .” 52 Pa. Stat. Ann. § 3311.

77. The Mining Act does not contain any restriction concerning conducting surface mining operations within a certain distance of a trail.

78. The Mining Act does not contain a definition for the term “public park.”

79. With respect to the interpretation of words and phrases, the Pennsylvania Rules of Statutory Construction provide that “[w]ords and phrases shall be construed . . . according to their common and approved usage . . .” 1 Pa.C.S. §1903(a).

80. When the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent. Commonwealth v. Cullen-Doyle, 640 Pa. 783, 787, 164 A.3d 1239, 1242 (2017); 1 Pa.C.S. §1921.

81. Any doubts as to the interpretation of an undefined term “must be resolved in favor of the landowner and the least restrictive use of the land.” Nicholas Enterprises, Inc. v. Slippery Rock Twp. Zoning Hearing Bd., No. 1340 C.D. 2014, 2015 WL 5444941, at *4 (Pa. Commw. Ct. June 8, 2015).

82. In addition the Municipalities Planning Code provides: “[i]n interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.” 53 P.S. § 10603.1.

83. The Pennsylvania Code definitions associated with noncoal surface mining activities define a public park as follows: “[a] *park* area formally designated as a public park by statute or otherwise dedicated or designated by a governmental agency or nonprofit organization for long-term, public recreational use, whether or not the use is limited to certain times or days, and which is part of the public domain for future generations, including land which is leased, severed or held open to the public for that long-term use.” 25 Pa. Code §77.1 (emphasis added).

84. The Upper Bucks Rail Trail was not formally designated as a public park by statute, ordinance or otherwise.

85. The lease between the Township and SEPTA identifies the Upper Bucks Rail Trail as an interim trail.

86. The Springfield Township Park and Recreation Management Plan of 2018 contains separate and distinct sections for parks and trails.

87. The Township's Park and Recreation Management Plan dated May 14, 2018 defined the Upper Bucks Rail Trail as a trail, not a park.

88. The Pennsylvania Rails to Trails Act, which governs the Upper Bucks Rail Trail lease, advises that the purpose of the act is to "...acquire, operate, maintain, and develop available railroad rights-of-way for public recreational *trail* use." 32 P.S. § 5613 (emphasis added).

89. The Board finds that it is common practice to differentiate between trails and parks as was done by the Springfield Township Park and Recreation Board.

90. While the Township sought to revise the Park and Recreation Management Plan during the time the conditional use hearings were occurring, no formal adoption of a new Park and Recreation Management Plan occurred.

91. Furthermore, the Applicant is only required to comply with Township ordinances and requirements that are in existence at the time of the filing of a conditional use application. 53 P.S. § 10917.

92. The Springfield Township Park and Recreation Board's attempt to modify the Park and Recreation Management Plan during the hearing process to recategorize the Upper Bucks Rail Trail as a park, as opposed to a trail, is an indication that there is doubt as to whether the Rail Trail constitutes a park or a trail.

93. Based on the Upper Bucks Rail Trail constituting a trail rather than a park, the setback for parks set forth at Section 3311 of the Mining Act does not apply. 52 P.S. §3311.

94. Likewise, based on the Upper Bucks Rail Trail constituting a trail rather than a park, the Applicant was not required to depict the trail on the conditional use plan.

III. DECISION

AND NOW, this 15th day of May, 2023, the application of H&K Group, Inc. which requests conditional use approval to permit a G-7 Quarry Use on the following Properties TMP No. 42-004-075, TMP No. 42-004-076, TMP No. 42-004-106 and TMP No. 42-004-107 is **APPROVED** subject to compliance with the following conditions:

1. The G-7 Quarry use shall be operated consistent with the conditional use Application materials, and the testimony and exhibits presented in support thereof, as well as the conditions contained herein, with the following conditions applying in any instances of an inconsistency.

2. Applicant shall consolidate the above listed Tax Map Parcels by executing and recording a Deed of Consolidation to be approved by the Township Solicitor that consolidates the previously listed TMP Numbers. Said Deed of Consolidation shall be recorded prior to the commencement of any surface mining activities occurring.

3. Applicant shall enter into a Well Loss Protection Agreement with the Township that addresses both water quality and water quantity issues caused by H&K Group's surface mining activities on the property. The Agreement shall cover those properties located within 1,000 feet of the property limits to ensure appropriate remediation of any water quality and quantity issues caused by H&K and to require a temporary water source until the issue is resolved. Parties shall enter into good faith negotiations concerning the terms of the Well Loss Protection Agreement.

4. Applicant shall comply with the Pennsylvania Mining Act, and all other applicable local, state, and federal laws.

5. Applicant shall comply with the applicable provisions of the Zoning Ordinance that are not preempted by the Mining Act, including but not limited to those which are requirements of future submissions (i.e., zoning permit, renewals) and not yet applicable to the Application.

6. Applicant shall modify the sequence of its operations to commence extraction operations in the northern extraction area first in reverse order of what was proposed in its conditional use Application. Following the termination of quarrying at the northern extraction area which is predicted to last for approximately twenty (20) years, Applicant may commence quarrying at the southern extraction area. This change in the sequence of operations is conditioned upon the following:

- a. the Applicant being able to relocate existing utility supports related to overhead power lines to facilitate quarry activity in the north extraction area prior to issuance of the State Mining Permit associated with this project.
- b. the Applicant being permitted to access the entire site and construct berms and remove overburden in the southern extraction area that are located east of the extraction areas.
- c. The extraction areas being in conformance with the Conditional Use Application Overall Site Plan; and
- d. The DEP approving this sequence of operations.

7. Applicant shall apply to the Zoning Hearing Board for and obtain a special exception pursuant to Section 509.2.A.3.d to permit the watercourse crossing with the internal access/haul road that connects the south extraction area and the north extraction area as depicted on Exhibit A-2 – Conditional Use Application Overall Site Plan, Sheet 3 of 8, dated March 13, 2020 and last revised on March 5, 2021. Applicant shall relocate the internal access/haul road such that it remains at least 100' from the Applicant's lot line that is adjacent to, and runs parallel with, the rail trail. Relocation of the internal access/haul road will result in the need to cross additional wetlands. Therefore, Applicant shall include this additional area of wetlands in Applicant's application for a special exception pursuant to Section 509.2.A.3.d to permit the watercourse crossing. The relocation of the internal access/haul road is contingent upon DEP and or the Army Corp of Engineers approval and approval of the special exception.

8. Applicant shall apply for a Floodplain Permit issued pursuant to Chapter 151 of the Township Code of Ordinances to permit the watercourse crossing with the internal access/haul road. Issuance of the permit shall not be unreasonably withheld, delayed or conditioned.

9. Should the Applicant lease any portions of the Property to a different occupant for any use other than a G-7 Quarry Use, the Applicant shall obtain Land Development approval.

10. Applicant shall comply with the Township's Act 537 Plan concerning its method of sewage disposal for the site, as well as the Township's Ordinances related to on lot sewage disposal operation and maintenance, DEP and BCDH regulations.

11. Applicant shall install a chain link fence with signage around the perimeter of the north and south extraction areas in accordance with Section 404.G.7.a.1.b of the Zoning Ordinance.

12. Applicant shall provide the Township with a copy of pre-blast surveys prior to commencement of initial blasting activities, to the extent Applicant is allowed to conduct such surveys on adjacent properties.

13. Applicant shall allow the Township to inspect any extraction operation at the property. Such inspection or inspections, as the Township may deem necessary, may be conducted on any working day of the year, during regular business hours. Township shall provide Applicant with forty-eight (48) hours advanced notice of any inspections. Mine Safety and Health Association regulations require that Township personnel when on the Property shall at all times be escorted by Applicant personnel.

14. Applicant shall comply with the hours of operation set forth in the zoning ordinance at the time the Application was filed, with no extraction operation or machinery connected with processing, shipping or crushing between the hours of 10:00

p.m. and 6:00 a.m. During the months of December, January and February, the hours of operation shall be limited to 7:00 a.m. to 5 p.m.

15. The Applicant will provide a surety bond in the amount of adequate restoration costs as part of Applicant's Large Non-Coal Surface Mining Permit.

16. Applicant will be financially responsible for any PennDOT required alterations and intersection upgrades to the intersection of Route 309 and Springfield Street that are specifically related to Applicant's Large Non-Coal Surface Mining operation as a G-7 Quarry use.

17. Applicant shall provide an annual contribution of \$1,500 to Springfield Township to defray the Township's costs associated with the operation, maintenance and repair for the stop lights located at the intersection of Route 309 and Springfield Street.

18. All quarry related traffic shall be restricted to that portion of Springfield Street west of the proposed quarry entrance and east of PA S.R. 309 except for local deliveries.

19. Applicant shall take measures including installation of signage on the Property and providing operational directions to direct truck traffic away from Mine Road and shall direct trucks to use Springfield Street to Route 309 except for local deliveries.

20. Applicant shall provide safety measures along the Upper Bucks Rail Trail at its sole cost and expense, as required by the Pennsylvania Department of Environmental Protection as outlined by the approved Blast Plan under Applicant's Large Non-Coal Surface Mining Permit.

21. Applicant shall maintain the plantings and berms as shown in the Application, and subject to any required revisions by Pennsylvania Department of Environmental Protection under Applicant's large non-coal surface mining permit, at all times to mitigate any impacts of noise and dust associated with its use of the Property.

22. Applicant shall install improvements that will mitigate noise and dust in the areas along the Property boundaries located on the south and west sides of the Property where a berm is not constructed to reduce the effects of noise and dust from the quarry operation. Specifically, the improvements shall be installed adjacent to the southern terminus of the berm parallel to the rail trail and extending parallel to the rail trail to Property 19 and then along the northern property line of Property 19 and along the northwest portion of Property 14 as depicted on Exhibit A-2 – Conditional Use Application Overall Site Plan, Sheet 3 of 8, dated March 13, 2020 and last revised on March 5, 2021, where permitted.

23. All site lighting shall be positioned to direct illumination to the interior of the project site and be equipped with shielding to direct light downward, to meet the requirements of Springfield Township Zoning Ordinance Section 502(3)(C).

24. Applicant shall be responsible for maintenance of Springfield Street from the driveway entrance to its Property west to Route 309 excluding the bridge. Applicant shall post a bond with the Township to cover any such maintenance no less than once every three years. To the extent that any maintenance of the bridge is required, Applicant and Township will enter into good faith discussions with regard to maintenance to be performed and responsibilities for performance and costs associated therewith.

25. No municipal bio-solids or Hatgro shall be utilized on the project site.

26. All vehicles carrying aggregate onto a public road shall be covered to prevent spillage of rock onto the road.

27. Applicant shall be required to obtain an annual renewal permit in accordance with the applicable non-preempted provisions of Section 404(G)(7) of the Zoning Ordinance. The following will be forwarded to the Township and considered as part of annual renewals:

a. All pre-blast surveys and blasting complaints, whether formally submitted to the Commonwealth of Pennsylvania Department of Environmental Protection ("DEP") or informally reported to Applicant. These records shall be kept on file with the Township. Electronic submission is acceptable.

b. All dust, noise and groundwater/surface water test results and dust, noise and groundwater/surface water complaints, whether formally submitted to DEP or informally reported to Applicant. These records shall be maintained on file with the Township. Electronic submission is acceptable.

c. Records of each blast shall be digitally provided to the Township as soon as available to Applicant, along with seismographic readings taken at the time of each blast.

d. Updated traffic projections, in the form of traffic counts, will be submitted no less than once every three years.

28. If the abandoned pits are to be filled, to the extent possible, they shall be filled only with clean earth, stone and concrete, that being consistent with the Pennsylvania Department of Environmental Protection definition of reclamation fill.

29. Applicant shall post a Surety Bond with the Commonwealth of Pennsylvania or DEP and provide a copy of the Bond to the Township prior to issuance

of the Large Non-Coal Surface Mining Permit aimed at covering the cost of reclamation activities.

30. Applicant shall make an annual voluntary contribution to Springfield Township during the years of active surface mining and reclamation by the Applicant at the Property for the Township to utilize for fire and emergency medical services due to the increased demand on such services as a result of the new quarry use.

31. Applicant shall assign a project manager to this project who will receive and address complaints of Township residents and others associated with quarry operations. Applicant shall supply a telephone number and other contact information for the project manager which may be made available to the public for purposes stated herein.

32. Applicant shall place a permanent seismograph in the owned location nearest to the existing pipelines on the southern end of the project site, regardless of whether the pipeline constitutes the closest non-owned structure. Applicant shall provide data obtained from the seismograph to the Township engineer on a semiannual basis.

33. The Applicant shall limit its production of crushed materials processed through the crushing plant to 3,500 tons per day. The Applicant shall limit its overall outside sales of materials obtained from the site to 500,000 tons per year. Should the Applicant need to exceed this limit, Applicant shall obtain approval from the Township.

34. Applicant will perform widening of the northeast corner of Route 309 and Springfield Street as indicated in the drawing prepared by Wynn Associates, Inc., entitled "Quarry Vehicle Turning Study" dated November 23, 2021 (Hearing Exhibit T-5) subject to the following conditions:

a. Subject to and provided that the Pennsylvania Department of Transportation ("PennDOT") issues the appropriate Highway Occupancy Permit ("HOP"). If PennDOT does not issue an appropriate HOP permit, then there is no obligation to perform any widening.

b. All work is to be performed within the existing right-of-way on eastern side of northbound Route 309 from Springfield Street extending no more than 50 feet along the existing right-of-way and the existing right-of-way on the northern side of westbound Springfield Street between the bridge abutment closest to Route 309 and Route 309.

c. If permitted by PennDOT, Applicant will relocate the existing traffic light mast arm and support if required, but will not perform any work on or connected with the Springfield Street bridge.

**BOARD OF SUPERVISORS
SPRINGFIELD TOWNSHIP**

DATE: 5/15/2023

/s/ Anthony Matzura
Anthony Matzura, Chair

DATE: 5/15/2023

/s/ Raymond Kade
Raymond Kade, Vice Chair

DATE: 5/15/2023

/s/ William Ryker
William Ryker, Member

DATE: 5/15/2023

/s/ James Hopkins
James Hopkins, Member

DATE: 5/15/2023

/s/ James Nilsen
James Nilsen, Member

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Application for Conditional Uses dated March 6, 2020 with attachments
B-2	Act 15 of 2020 Notice letter dated 5/6/2020 to Scott S. Drumbore, P.D.
B-3	Waiver dated 6/24/2020 signed by H. Christian Budenz, Executive VP, H&K Group extending time to hold first hearing until 9/17/2020
B-4	Letter 6/12/20 from Scott MacNair to BCPC, Coopersburg Borough and Richland Township advising of Conditional Use Application
B-5	Letter to Applicants attorney, Joseph A. LaFlamme, Esquire dated 8/25/20, providing Notice of Hearing
B-6	Letter to Intelligencer dated 8/20/20 to advertise Public Notice of hearing
B-7	Public Notice of Hearing on Tuesday, September 8, 2020 at 7:30 pm and copy of Confirm dated 8/24/20 from the Intelligencer
B-8	Proof of Publication – attesting that public notice appeared in the August 26, 2020 and September 1, 2020 editions of Intelligencer
B-9	Affidavit of Mailing to property owners by Donna Lee Eller of Clemons Richter & Reiss, dated 8/24/20 with copy of Public Notice and letters sent to property owners within 500 feet
B-10	List of property owners within 500 feet used for mailing of letters to property owners
B-11	Affidavit of Posting Notice of property by Jason Wager, Township Manager dated 8/31/20
B-12	Letter dated 7/10/20 from BCPC regarding the Upper Bucks Rail Trail
B-13	Township Engineer Review Letter dated 6/9/20
B-14	Springfield Township Planning Commission Recommendation Letter to Board of Supervisors re: CU Application pursuant to §801 of Springfield Township Zoning Ordinance

Exhibit	Description
B-15	Letter dated 2/4/2021 from PPL Electric Utilities to Liberty Home Development Corporation and H&K Group, Inc. concerning Right of Way Use Guidelines, Blasting Standards and Encroachment Application
B-16	Applicant's Letter dated October 18, 2022 to Township regarding wavier of 45 Day Hearing Requirement
A-1	H&K Group, Inc. Response Letter to Springfield Planning Commission dated June 29, 2020
A-2	Conditional Use Application Overall Site Plan dated 3/13/20 and revised 3/5/2021, sheet 3 of 8
A-3	McMahon Traffic Impact Study for Proposed Quarry
A-4	Acknowledgement and Consent of Landowner for H&K Group's use of Property
A-5	Conditional Use Application Cover Sheet, dated March 13, 2020 – Sheet 1 of 8
A-6	Conditional Use Application, Plan of General Area, dated March 13, 2020 – Sheet 2 of 8
A-7	Conditional Use Application, Overall Site Plan, dated March 13, 2020 – Sheet 3 of 8
A-8	Conditional Use Application, South Extraction Area Operations Plan, dated March 13, 2020 – Sheet 4 of 8
A-9	Conditional Use Application, South Extraction Area Reclamation Plan, dated March 13, 2020 – Sheet 5 of 8
A-10	Conditional Use Application, North Extraction Area Operations Plan, dated March 13, 2020 – Sheet 6 of 8
A-11	Conditional Use Application, North Extraction Area Reclamation Plan, dated March 13, 2020 – Sheet 7 of 8
A-12	Conditional Use Application, Detail Sheet, dated March 13, 2020 – Sheet 8 of 8
A-13	Springfield Township Parks and Recreation Management Plan dated May 14, 2018
A-14	ALL4 – Air Dispersion Modeling Report dated December 7, 2020
A-15	Columbia Gas Pipeline Easement dated December 4, 1998 and recorded in the Bucks County Recorder of Deeds Office at Book 1971 and Page 1074
A-16	Pipeline Easement granted to The Manufacturers Light & Heat Company dated March 29, 1947 and recorded in the Bucks County Recorder of Deeds Office

Exhibit	Description
A-17	Real Estate Property Summary Values
A-18	H&K Group, Inc. – Naturally Occurring Asbestos Report
A-19	Revised ALL4 Air Dispersion Modeling Report dated June 8, 2021
A-20	ALL4 Air Dispersion Modeling Report based on 3,500 tons of material per day
A-21	Photographs of representative equipment to be used on site
A-22	Revised Plan Set dated September 10, 2021 and cover letter dated December 10, 2021
A-23	Val F. Britton Preliminary Groundwater Model Report
A-24	CV of Val F. Britton
A-25	Lease Agreement between SEPTA and Springfield Township regarding Upper Bucks Rail Trail
A-26	Photograph of Tunnel that travels underneath old railroad line
A-27	Photograph of Tunnel that travels underneath old railroad line with fence railing around a catch basin
A-28	CV of Timothy Woodrow, P.E.
A-29	Floodplain Study
A-30	Curriculum Vitae of Jason Mease, PWS
A-31	Wetland Report prepared by Jason Mease, PWS
A-32	Deed concerning conveyance of properties from Liberty Home Development Corporation to H&K Group, Inc.
CAC-1	Affidavit of Eric Touchstone
CAC-2	2005 Agreement Between Hilltown Township and H&K Group
CAC-3	Packet of Photographs of Owen Jones' Property
CAC-4	Conservation Easement Application for Owen Jones' Property
CAC-5	Baseline Documentation Prepared by Heritage Conservancy
CAC-6	Report Prepared by Amy Parrish

Exhibit	Description
CAC-7	Photographs
CAC-8	Report Prepared by James Schmid
CAC-9	Salford Township Certification, 1/17/02 Meeting Minutes, Schetter Environmental letter to Salford Township
CAC-10	Tails of Valor Video
CAC-11	Tails of Valor Card
CAC-12	Tails of Valor Photos and Materials
CAC-13	Tails of Valor Video
CAC-14	Quakertown Active Transportation Plan
CB-1	Coopersburg Borough Altered Val F. Britton Map
Spear-1	Zoning Map
Spear-2	Blown Up Version of Zoning Map
Daly-1	Photograph of Daly Property
Daly-2	Photograph of Daly Property
Daly-3	Photograph of Daly Property
Daly-4	Photograph of Daly Property
Daly-5	Photograph of Daly Property
Daly-6	Photograph of Daly Property
Daly-7	Photograph of Daly Property
Daly-8	Photograph of Daly Property
Daly-9	Photograph of Daly Property
Daly-10	Feasibility Study for the Pennsylvania Highlands Trail Network in the Quakertown Region

Exhibit	Description
Daly-11	Parks and Recreation Plan, 2013 to 2022
Daly-12	Resolution 2014-15
Daly-13	2021 Parks and Land Management Plan
Daly-14	North Railroad Evaluation Map 1, Mile Marker 44.5 and 44.75
Daly-15	Photograph
Daly-16	Spillway Culvert Flowing
T-1	CV of Matthew Mercuri, PG, CPG
T-2	RMS Environmental Report dated 1/17/2021
T-3	CV of Timothy Fulmer, P.E., Township Engineer
T-4	November 23, 2021 Township Engineer Letter to Jason Wager
T-5	Route 309 and Springfield Street Intersection Schematic