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VIA HAND DELIVERY

Rachel Hudson
Zoning Administrator
Stafford County Department of Planning and Zoning
1300 Courthouse Road
Stafford, Virginia 22554

RE: Request for Ordinance Interpretation of Stafford County Zoning Ordinance
§28-57, Flood Hazard Overlay District

Dear Ms. Hudson:

The purpose of this letter is to request an interpretation on the applicability of the Flood Hazard Overlay District, §28-57 of the Stafford County Zoning Ordinance (the "FHOD") on behalf of Vulcan Construction Materials, LP ("Vulcan"). I am requesting this interpretation to aid Vulcan in the planning process for their proposed enlargement of the current quarry pit onto adjacent property (Tax Map Parcels 19-64, 19-65, and 19-67T)¹ in North Stafford allowing its operations to continue.

Background

As previously stated Vulcan plans to enlarge its quarry operations. It has obtained a rezoning and Conditional Use Permit in order to accomplish this. Part of the continued mining involves the proposed diversion of a stream within an area designated CRPA, contingent on approval of a variance by the BZA. This diversion will be accomplished by means of a new channel being excavated that in effect will intercept the waters associated with the current stream² approximately 2400' prior to the point the stream becomes perennial, and create a new water flow path. Conceptually the project is a "replacement channel" for the stream's current waters to continue downstream and return to Aquia Creek as before. FEMA maps the current location of the stream as floodplain

¹ The current quarry pit is located on Tax Map Parcel 19-65.

² Tributary #4 to Aquia Creek.

A, or “approximated floodplain district,” which equates to flood-fringe³ under the FHOD. No part of the stream is currently designated as a Floodway.

Once the stream is diverted all downstream flow will have been moved from the location of the original stream; thus it will no longer qualify as a Floodplain A. As part of the permitting process for the quarry a Conditional Letter of Map Revision (“CLOMR”) will be obtained from FEMA, indicating the status of the old stream as no longer being part of the floodplain. Of course once the new diversion is established the floodplain map will be permanently changed to coincide with the CLOMR design submitted and will remove completely the floodplain associated with the old stream through a Letter of Map Revision (“LOMR”). In this context questions have arisen concerning the applicability of the FHOD to the area of the old stream.

Once CLOMR and LOMR Approved FHOD No Longer Applicable

The entirety of the FHOD is defined in relation to the mapping done by and approved by FEMA. Section 28-57(e)(1) states that

[t]he floodplain districts shall include areas subject to inundation by waters of the one-hundred-year flood. The basis for the delineation of these districts shall be the *flood insurance study (FIS) for Stafford County, Virginia, prepared by the Federal Emergency Management Agency dated February 4, 2005, as amended* (emphasis added).

Accordingly, in order for any of the requirements of the FHOD to be applicable to a property, it must be designated as one of the flood hazard zones under the FEMA mapping. If a property carries no such designation the FHOD is not implicated. Under, the CLMOR and LOMR process the floodplain designations associated with the original stream will be removed and will cease to exist. Accordingly, it is our opinion that the FHOD will not be applicable to the area formerly associated with the old stream.

As a result, Vulcan seeks to verify that all its permitted uses can occur in the area formerly classified as a floodplain without the need to comply with any provisions of the FHOD, at least as it pertains to the present area designated as Approximate Floodplain.⁴

³ Under §28-57(i) the same standards for development are applicable to flood-fringe as are applicable to the Approximated Floodplain, except for some additional mapping required for the Approximated Floodplain.

⁴ The channel for the new stream is designed to completely contain the 100 year flood, thus it is not anticipated that there will be any floodplain associated with the new stream beyond the new channel being constructed.

**Status of Property as Approximated
Floodplain Presents No Bar to Proposed Use**

Notwithstanding the CLMOR and LMOR process, it is our view that the area currently designated as the floodplain associated with the old stream is developable under its current FHOD status for the uses proposed by Vulcan. As noted above, the entirety of the floodplain is mapped by FEMA as Approximated Floodplain District. As such under §28-57(i) any use otherwise permitted in the underlying zoning district is allowed so long as it does not utilize fill.

Section 28-57(i) of the Flood Hazard Overlay District provides, in pertinent part, that:

Flood-fringe and approximated floodplain districts. In the flood-fringe and approximated floodplain districts the development and use of the land shall be permitted in accordance with the regulations of the underlying zoning district **provided that no placement of fill is proposed** for any use except; utilities, public facilities and improvements, such as railroads, streets, bridges, transmission lines, pipelines, water and sewage treatment plants, stormwater management structures, shoreline protection measures and water dependent uses located within or adjacent to tidal water bodies where there would be no increase in the one hundred-year flood elevations, and other similar or related uses (emphasis added).

Thus, §28-57(i) very clearly permits development and use of the land in the event that no fill is proposed.⁵ Vulcan's engineers indicate that the proposed development and use of the area formally designated as the floodplain associated with the old stream will not utilize any fill.

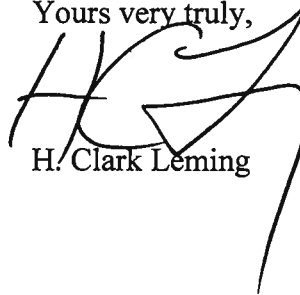
Thus, even if the current FHOD designations remain in place development of the property is not hampered by the FHOD provided no fill is placed in this area.

⁵ While §28-57(i) does provide for the applicant to delineate any floodway in the approximated flood plain such is done on the basis that "all existing and future development not increase the one hundred-year flood elevation more than one foot at any point." There is not anticipated to be any development that would increase the elevation in the slightest, in fact the construction of the proposed quarry pit would actually lower the flood elevation.

Conclusion

In conclusion, I respectfully request that you confirm the above interpretation of the applicability of the FHOD to the proposed Vulcan Quarry vis-a-vis the diverted stream. If you have any questions or need any additional information or assistance, please let me know.

Yours very truly,

A handwritten signature in black ink, appearing to be 'H. Clark Leming', written over a printed name. The signature is stylized with a large 'H' and a long, sweeping line that extends downwards and to the right.

H. Clark Leming

Enclosure

cc: Vulcan Construction Materials, LP