

Submittal Document I.C. Supplement to Applications for Conditional Rezoning
and Special Land Use Applications that explains applicable laws and ordinances

**D-BAR-A RANCH
NATURAL RESOURCE EXTRACTION PROJECT**

**SUPPLEMENT TO APPLICATIONS FOR
CONDITIONAL REZONING AND SPECIAL LAND
USE APPROVAL APPLICATIONS**

I. INTRODUCTION

American Aggregates of Michigan, Inc. (“AAOM”) owns the 154 acre property identified as the “Guy Parcel” and leases the approximately 570 acre property identified as the “Lease Parcel” from the Detroit Area Council, Boy Scouts of America (hereinafter the “Boy Scouts”). The Guy Parcel and the Lease Parcel consist of approximately 724 acres and are collectively referred to as the “Project Site.” The Guy Parcel, the Lease Parcel and the Project Site are legally described in the Legal Descriptions provided as Item II.A. of the D-bar-A Project Submittal and are shown in the Sealed Boundary Surveys provided as Item III.A. of the D-bar-A Project Submittal. All of the Project Site is located in Metamora Township, Michigan (the “Township”) and is governed by the Metamora Township Zoning Ordinance (the “Ordinance”).

AAOM intends to develop and operate the Project Site as a sand and gravel mine (the “Project”). In order to establish the Project, AAOM is submitting a Conditional Rezoning Application for the Boy Scouts Parcel and Special Land Use Applications for the entire Project Site (collectively the “Applications”). As contemplated by the Ordinance, the Applications are supported by the Community Impact Statement (Item I.D. of the D-bar-A Project Submittal), the Mining and Reclamation Plan prepared by SmithGroupJJR, dated November 10, 2015 (provided as Item III.B. of the D-bar-A Project Submittal and hereafter referred to as the “Mining and Reclamation Plan”) and all of the other information, reports and studies contained in the D-bar-A

Project Submittal (the foregoing information, including the Community Impact Statement and the Mining and Reclamation Plan are hereafter collectively referred to as the “Studies”).

This Supplement compiles facts and information from the Studies and explains how Public Act 113 of 2011 (“PA 113”) applies to the Project, the Ordinance and the Applications. As discussed in this Supplement, PA 113 overrides the Ordinance and constrains Township actions or decisions that are, or would be, inconsistent with PA 113. AAOM is seeking approval of the Project, based on its rights under PA 113, as applied to the Ordinance and the Applications.

II. AAOM AND THE BOY SCOUTS

AAOM is a subsidiary of the Edw. C. Levy Co. (“Levy”). Levy has numerous subsidiary and affiliated businesses and divisions, including American Aggregates of Michigan, Inc., and Liberty Sand and Gravel. Levy has been in the mining, extraction and other businesses since 1918.

Levy, and AAOM, are experts in the mining and extraction business and have substantial mining operations in Michigan and Colorado. Levy is a diversified industrial products and services company, with domestic operations in eight states and international operations in Australia, France, India, Brazil and Thailand. Extensive additional information about Levy, AAOM and their affiliates is available at www.edwclevy.com. AAOM looks forward to discussing its experience, qualifications and commitment to the highest standards of developing and operating mining projects during the public hearing process.

The Boy Scouts own the D-bar-A Ranch which presently consists of over 1,700 acres (the “Ranch”). The Lease Parcel is currently part of the Ranch property. Upon commencement of the Project, the Lease Parcel would be temporarily separated from the Ranch for the term of the lease. The Boy Scouts intend to continue its current use of the remainder of the Ranch while the Project is developed and operated on the Project Site.

After completion of the Project (including completion of reclamation), the lease will expire and possession of the Lease Parcel will be returned to the Boy Scouts. At that time, the Lease Parcel will be re-united with the Ranch and returned to recreational and other uses as more fully set forth in the Community Impact Statement and the Mining and Reclamation Plan.

The Boy Scouts support the Project and need the income from the lease to continue funding the Ranch and other operations. In the absence of the revenue from the lease, the Boy Scouts may be compelled to consider other development possibilities with regard to the Ranch, which might result in the permanent loss of the D-bar-A Ranch for recreational use.

III. THE PROJECT

The Project involves developing and operating a new sand and gravel mine on the Project Site. As indicated above, the Project and its actual and potential impacts are described in detail in the Studies¹. The Project will include extraction activities on the identified portions of the Project Site, establishment of a plant, processing facilities, conveyors, internal roads and infrastructure, preservation areas, buffer areas and open space. The activity will not involve blasting or emit excessive or unreasonable noise. Extensive additional information related to the Project is also available at www.edwclevy.com.

As described in the Community Impact Statement and Mining and Reclamation Plan, the extraction activity will occur in five distinct phases. The specific phases and a detailed description of the specific activities are set forth in the Mining and Reclamation Plan. As described in the Community Impact Statement, all of the mining, extraction and reclamation activity is expected to

¹ The information and conclusions contained in this Supplement are derived from the Studies. In the event of a discrepancy or inconsistency between any information or conclusions contained in this Supplement and any information, conclusions or results contained in the Studies, the information contained in the Studies should be utilized until any such discrepancy can be explained or otherwise addressed.

occur over a thirty (30) year period (subject to the conditions described in the Community Impact Statement and the Mining and Reclamation Plan). Although the entire Project Site consists of approximately 724 acres, the actual mining will occur on approximately 473 acres of the Project Site. The remaining 251 acres of the Project Site will not be disturbed by extraction activity and will consist of preservation areas, buffer areas and setbacks.

As described in the Community Impact Statement and the Mining and Reclamation Plan, AAOM will undertake reclamation throughout the course of the Project on an ongoing basis. After completion of the reclamation, the Project Site will be returned to the Boy Scouts in the condition described in the Community Impact Statement and will be available for recreational activities and other uses. In addition to the uses proposed in the Community Impact Statement and the Mining and Reclamation Plan, AAOM and the Boy Scouts are willing to consider alternative uses of the Project Site as conditions for approval of the Project.

As the Township is well aware, the Project Site has been the subject of litigation because of opposition to use of the Project Site for mining purposes. AAOM anticipates similar opposition to this submittal. However, the current requests are significantly different because they are being made within a new statutory regime. The prior applications (and the litigation that followed) all occurred before PA 113 became the law in Michigan. The enactment of PA 113 in 2011 made eligible mining activities directly and clearly protected. As discussed below, AAOM hopes the clear legal protection of mining activities set forth in PA 113 will be honored and that litigation (of any kind) will be unnecessary.

IV. PA 113 LIMITS THE IMPOSITION OR ENFORCEMENT OF TOWNSHIP ORDINANCES OR DECISIONS THAT WOULD PREVENT MINING

Michigan law has established clear and strong protections of certain mining activities. The Michigan Zoning Enabling Act was amended in 2011 to add PA 113 (which is now incorporated into MCL §125.3205). PA 113 codified *Silva v Ada Township*, 416 Mich 153 (1982) and established very strict limitations on ordinances and governmental actions that might prevent certain mining activities. In short, PA 113, and the case law it adopts, provide that a local government cannot enforce an ordinance, or impose a decision, that would prevent mining of valuable natural resources where that mining would not result in very serious consequences.

As will be addressed, PA 113 can be relied upon to negate, override, enjoin and limit enforcement of ordinances or decisions that do not meet its standards. Such ordinances, decisions or actions include those related to re-zoning applications, special land use approvals, mining ordinances and the standards and requirements that may be contained therein (such as setbacks, buffers, slopes, screening, compatibility, traffic and other requirements). PA 113 does permit local governments to impose and enforce “reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures and traffic.” However, even then, such regulation is strictly limited and must be “reasonable in accommodating customary mining operations.”

By way of background, PA 113 was enacted to protect the mining of valuable natural resources from local government ordinances, regulation and decision making. PA 113 incorporated long standing case law that distinguished the treatment of mining activity from other uses. The authority recognized that mining is a unique endeavor. Natural resources can only be extracted where they exist. This differs from other land uses (such as commercial, residential or industrial) that can be located, directed or steered to places that are planned and zoned by local

governments. The legal authority also emphasized the dangers of subjecting access to natural resources to the consent and approval of local authorities and pointed out that, in addition to the interests of the private land owner and local government, the interests of the public at large are at stake.² Simply put, PA 113 is intended to ensure that the interests of a smaller subset of property owners and stakeholders do not outweigh the needs and economic interests of the public at large, the region as a whole, or the entire State.

Ultimately, this approach converts the analysis of potential mining activities from an “ordinance based” analysis to a “project based” analysis. In the ordinance based approach, the ordinance is used to determine what uses are permitted in a certain zoning district, what process must be followed, and what standards must be satisfied in order to establish the use. Mining situations are different. In a mining situation, the analysis begins with the project itself (rather than the ordinance). If the project satisfies the “valuable natural resources” and “no very serious consequences” standards of PA 113, then ordinances and governmental decisions must be enjoined, overridden, limited or negated to the extent they would prevent mining or are not “so-called” reasonable regulations. As such, following a showing that the Project satisfies the PA 113 standards, the Township is prevented from enforcing its Ordinance, or making decisions, that would deny or unreasonably limit mining activities. As discussed below, the Project satisfies the standards of PA 113, and therefore should be approved.

² See *Silva v Ada Township*, 416 Mich 153 (1982), *France Stone Company v Monroe Township*, 802 F.Supp 90 (1992), *Certain-Teed Products Corporation v Paris Township*, 351 Mich 434 (1957).

**V. PA 113 APPLIES TO THE PROJECT AND PREVENTS
THE TOWNSHIP FROM ENFORCING ANY
ORDINANCE THAT WOULD PREVENT MINING**

As discussed above, the Michigan Zoning Enabling Act was amended in 2011 to add PA

113. The terms of PA 113 are incorporated into MCL §125.3205. The pertinent portions of MCL §125.3205 are as follows:

(3) An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources. (hereinafter “Subpart 4”)

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in Silva v Ada Township, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

- (a) The relationship of extraction and associated activities with existing land uses.
- (b) The impact on existing land uses in the vicinity of the property.
- (c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
- (d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.
- (e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.
- (f) The overall public interest in the extraction of the specific natural resources on the property. (hereinafter collectively “Subpart 5”)

(6) Subsections (3) to (5) do not limit a local unit of government’s reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations. (hereinafter “Subpart 6”)

The Silva case, which is incorporated into PA 113, makes clear that “very serious consequences” equates to “some dire need” to enforce an ordinance in a way that precludes mining. Silva, 416 Mich at 159 (quoting Certain-teed Prods Corp v Paris Twp, 351 Mich 434, 467 (1958)).

In short, if the elements of Subpart 4 above are present, then the Township’s ordinances and decisions shall not prevent AAOM from developing and operating the mine. The Township continues to have the right to reasonably regulate certain aspects of the mining operation pursuant to its rights under Subpart 6. However, such regulations must be “reasonable in accommodating customary mining operations.”

As discussed below, AAOM has undertaken exhaustive studies and analyses of the Project and the impacts that may occur throughout the life of the Project. The results and following discussion make clear that the Project satisfies the elements of Subpart 4 and would not result in very serious consequences with regard to any of the factors set forth in Subpart 5.

**A. THERE ARE VALUABLE NATURAL RESOURCES LOCATED
ON THE PROJECT SITE AND THERE IS AN IMMEDIATE NEED
FOR THOSE NATURAL RESOURCES**

As will be discussed at the public hearing, and as more fully disclosed in the Community Impact Statement and other Studies, the Project Site contains an abundance of valuable natural resources. As set forth in the Community Impact Statement and the Mining and Reclamation Plan, AAOM estimates that approximately 30 million tons (or approximately 22,000,000 cubic yards) of sand and gravel can be extracted from the Project Site.

As described in the Community Impact Statement and the Southeast Michigan Aggregate Market Study dated November 10, 2015 (provided as Item II.B. of the D-bar-A Project Summittal and hereafter referred to as the “Aggregate Market Study”), there is a rapidly growing need for the specific types of resources that will be produced by the Project. These resources will be used for

important public and private uses such as roads, bridges, buildings, infrastructure and other improvements that will serve the entire region. The need, and value, are presently intensified by recent demand for extensive road and bridge repairs across the region and other large construction projects. This need was reinforced in the last two weeks by new legislation enacted by the State of Michigan to fund extensive road and bridge repairs, replacements and improvements. As shown in the Sand and Gravel Reserves vs Demand graph that is included in the Aggregate Market Study, AAOM estimates that the need for such resources will reach a critical point in 2023 and demand will actually surpass reserves in 2024; this analysis does not take into account the recent action of the Michigan State Legislature and the significant additional demand for aggregate it will create.

In addition to the need for the resources to serve the region, the resources would also serve significant internal need and demand from affiliates of AAOM and Levy. As set forth in the Community Impact Statement, AAOM estimates that internal need may range from 1,500,000 tons to 2,000,000 tons per year (subject to market conditions).

Moreover, as described in the Aggregate Market Study, and as will be discussed throughout the public hearing process, the sources of aggregates and the reserves from presently active mines are diminishing across Southeastern Michigan. Identifying and permitting new reserves for extraction takes years, making this problem acute even today. The combination of rising demand and dwindling reserves creates a tenuous situation which could become critical in the next several years. The increasing scarcity of resources and the growing demand for them will combine to make both public and private construction projects more costly if significant additional resources are not made available in the near term.

If approved, the Project would have the size, scale and capacity to partially alleviate the critical need and serve the region for years to come. The resources at the Project Site are

strategically located to minimize transportation costs to primary markets throughout the region. The volume of resources are so substantial that accessing them will reduce the need for additional mines in the region.

Ultimately, there is no doubt that 1) the Project Site contains valuable natural resources, 2) there is a significant need for the resources, and 3) that the resources would produce revenue and profit for AAOM and the Boy Scouts. At the same time, production of the resources from the Project Site will mitigate a critical public need, serve projects throughout the region and can be extracted and delivered in a manner that is sensitive to the Project Site and the surrounding area.

B. THE PROJECT WILL NOT RESULT IN VERY SERIOUS CONSEQUENCES

MCL §125.3205(5) sets forth the factors that may be considered in determining whether, in the aggregate, “very serious consequences” would result. Under Silva, only a “dire need” to enforce an ordinance amounts to very serious consequences. Some courts have further explained that the greater the need or value of the natural resource to be mined, the more extreme a condition must be in order to constitute a very serious consequence. As discussed above, there is a significant and growing need for the resources which justifies an even more extreme impact to constitute a “very serious consequence.” In any case, as will be discussed in more detail throughout the process, the development and operation of the Project will not result in “very serious consequences” under any legal standard or measure – much less a heightened standard because of mounting needs.

**a. THE EXTRACTION AND OTHER ACTIVITIES WILL
NOT CAUSE VERY SERIOUS CONSEQUENCES
WITH EXISTING LAND USES**

The Project Site is currently vacant and unimproved. The Lease Parcel is used for hiking, camping and similar activities in connection with the Ranch. The Guy Parcel is currently used for agriculture. The establishment of the Project will not require removal or relocation of any buildings, roads, public infrastructure (such as gas lines, water mains or sewer lines) or homes. It will not encroach into any public property, preservation areas, parks or conservation areas. Following completion, the Project Site will be returned to its prior use and will be reclaimed, restored and improved as contemplated by the Community Impact Statement and the Mining and Reclamation Plan. As indicated in those Studies, the resulting land forms will include agricultural fields, re-forested wetlands, rolling hillsides and wet meadows. They will also allow for a variety of open spaces which will be utilized for recreational amenities, both passive and active, as more thoroughly detailed in the Community Impact Statement. The mining of the Project Site will only temporarily interrupt the low intensity recreational use on the site. The mining will not cause any serious consequences with respect to existing land use.

**b. THE IMPACT ON EXISTING LAND USES IN THE VICINITY
WILL NOT CAUSE VERY SERIOUS CONSEQUENCES**

The Project Site is an ideal location for the Project. It is located in a rural, low density area with low population. The Project Site is isolated and primarily surrounded by compatible or supporting uses. The Project is self-contained and isolated within the Project Site. It allows large portions of the Project Site to serve as buffer areas, setbacks and natural areas. The significant space, scale and distances, together with the berms and buffers that will be developed as part of the Project, mitigate or entirely eliminate impacts of noise, dust and view from neighboring properties.

The surrounding uses are compatible with the Project. There are no urban or active commercial areas in the vicinity of the Project Site. The Village of Dryden is located approximately 6 miles to the east of the Project Site and the Village of Metamora is located approximately 1 mile to the west of the Project Site. Most of the surrounding uses consist of agriculture, wetlands, fields and open space, and active mining. All of the land surrounding the Project Site (including the Guy Parcel) is currently in the A-2 zoning district which expressly **permits mining** as a special land use. As such, it should come as no surprise to landowners in the vicinity of the Project Site that mining and related activities are an accepted land use within their particular area.

Beyond the notice to the public of potential mining contained in the Ordinance, it is notable that there are currently four active and operating sand and gravel mining operations within a half mile from the Project Site. Three of the mining operations use Dryden Road as their haul route. The presence of other mining operations within one half mile of the Project Site illustrates the compatibility of the Project with surrounding uses. Unfortunately, the existing mines are not sufficient to satisfy needs in the region. As discussed above, and in the Aggregate Market Study,

such needs are increasing in part because of recent State funding of transportation improvements that expressly address major shortfalls in transportation infrastructure.

As discussed below, the Project is also compatible with, and particularly sensitive to, abutting properties. The adjacent areas are thoroughly discussed in the Community Impact Statement and shown in the Mining and Reclamation Plan. The following identifies and discusses possible impacts and mitigation along Project Site boundaries.

- Northern Boundary – The remainder of the Ranch, over 1,100 acres, serves as the northern boundary of the Project Site. It is the longest and most extended contiguous boundary to the Project Site. As discussed above, the remainder of the Ranch is owned by the Boy Scouts and will continue to be used for its current purposes. As such, this area complements the Project and serves as a large buffer to any other land uses to the north.

- Southern and Eastern Boundaries – The southern and eastern boundaries also complement the use of the Project Site for the Project. Portions of the southern and eastern boundaries are currently used for mining by another operator. Dryden Road forms the remainder of the southern boundary and Wilder Road forms the remainder of the eastern boundary.

- Western Boundary - The westerly boundary of the Project Site consists of several uses, including a former “illegal” landfill that has become a Superfund clean-up site, an active mining operation and ten residences. The non-residential uses obviously complement the location of the Project. All of the ten residences are located a significant distance from the proposed operation and would not be materially impacted by the presence of the Project. Six of the homes are at least 250 feet from the Project Site boundary and the remaining four are at least 125 feet from the boundary. As discussed in the Community Impact Statement and shown in the Mining and Reclamation Plan, the area is heavily wooded, which further buffers the residences

from the Project. In addition, there will be a 150 foot setback between the westerly boundary and the Project. The first fifty (50) feet of the setback area will be preserved woodlands. The remaining 100 feet will be utilized for a large berm that is more fully discussed in Section VI, B.c. of this Supplement.

- Roads – As mentioned above, the Project Site is bounded by three roads. Dryden Road extends along the southern boundary of the Project Site and complements and supports the Project. It is a Lapeer County, Class A, all weather haul route. It will be used to support truck traffic to and from the Project (as it serves other mining operators in the area). All truck traffic in and out of the Project will utilize Dryden Road (the limited traffic impacts are discussed in Section V.B.d of this Supplement). Dryden Road also serves as a natural barrier and buffer to other properties and activities to the South. Both Wilder Road and Ribble Road are located along a portion of the eastern boundary of the Project Site. Neither road will be used for hauling or access to or from the Project Site. Wilder Road also serves as an added barrier and buffer between the Project Site and uses to the east.

In summary, and as more fully described in the Community Impact Statement and the other Studies, the Project is compatible with existing land uses on both abutting and nearby properties, and is actually the same land use as four other mining operations in the vicinity. The Project will have very limited impacts on its immediate neighbors and even lesser impacts on properties in the vicinity. These limited impacts in no way constitute, or rise to the level of, very serious consequences.

c. THE PROJECT WILL NOT HAVE AN ADVERSE IMPACT ON PROJECT SITE VALUES IN THE VICINITY AND ALONG THE PROPOSED HAUL ROUTE SERVING THE PROJECT SITE

As discussed in the Impact Study (Real Estate Evaluation) prepared by Stout Risius Ross, dated October 26, 2015 (provided as Item II.E. of the D-bar-A Project Submittal and hereafter referred to as the “Property Value Impact Analysis”), the Project will **not** adversely impact property values. The Property Value Impact Analysis is a thorough study of comparable mining sites in Michigan and specifically addresses impacts on nearby property values. The analysis was prepared by Stout Risius Ross (“SRR”), a global financial advisory firm that specializes in valuation and financial opinions. SRR is a respected leader in the valuation industry. After thorough study, SRR concluded that the Project would not have an adverse impact on property values in the vicinity or along the haul routes. The Property Value Impact Analysis, its process and conclusions will be discussed as part of the public hearing and review process.

d. THE IMPACT ON PEDESTRIAN AND TRAFFIC SAFETY IN THE VICINITY OF THE PROJECT SITE AND ALONG THE PROPOSED HAUL ROUTE SERVING THE PROJECT SITE WILL NOT RESULT IN VERY SERIOUS CONSEQUENCES

As presented in the Community Impact Statement, and as concluded by the D-bar-A Traffic Impact Study, prepared by Bergmann Associates dated November 3, 2015 (provided as Item II.G. of the D-bar-A Project Submittal and hereafter referred to as the “Traffic Study”), the impacts on pedestrian and vehicular traffic safety will not result in very serious consequences. As discussed above, the Project is located on a Class A, all weather county road. It is currently a haul route for commercial trucks and three other mining operators. As set forth in the Traffic Study, Dryden Road has the capacity to absorb the additional trips that would be generated by the Project, without any safety or other significant impacts to level of service. It is particularly noteworthy that the haul route does not present heightened risk due to “tight” curves or obstructed views. There are also no bridges, viaducts or narrow roadway areas that would increase risks of two-way traffic.

The Traffic Study did recommend that AAOM undertake the following improvements: (i) install a passing flare at the entry to the Project Site off of Dryden Road; and (ii) install a dedicated taper at the entry to the Project Site off of Dryden Road. Ultimately, the Traffic Study and empirical data make it clear that any impacts would be far below the threshold necessary to constitute very serious consequences. AAOM looks forward to discussing the Traffic Study as part of the public hearing and review process.

e. THE IMPACT ON OTHER IDENTIFIABLE HEALTH, SAFETY, AND WELFARE INTERESTS IN THE LOCAL UNIT OF GOVERNMENT WILL NOT RESULT IN VERY SERIOUS CONSEQUENCES

As will be discussed at the public hearings, the Project is a significant undertaking that will yield important benefits for the region and the general public. As a well-respected mining operator and corporate citizen, AAOM has undertaken significant due diligence to confirm that there will

be no very serious consequences as a result of the Project. AAOM has hired highly respected independent experts to evaluate all aspects of the proposed Project. AAOM, based on the Studies prepared by its experts, has determined the location and depth of the natural resources and has studied the topography, geology, hydrogeology, wetlands, ground water and wildlife. AAOM has designed the Project to be sensitive to, and compatible with, the surrounding environment and ecosystems. All of the reports, studies and analyses that formed the basis for the proposed Project are being provided as part of the submission and are included within the Appendices.

In addition, the Project will contribute to the economy of the region. It will provide jobs and commerce related to: 1) operating the Project, 2) transporting and storing material, and 3) monitoring, and compliance with regulatory requirements. On a secondary basis, employees, contractors and vendors will create incremental economic activity in the Community by utilizing the businesses and services nearby. Case law has held that these types of economic benefits are important factors when evaluating the impacts of new mining projects.

It is also notable that the Project is temporary. After the mining and reclamation are complete, the Project Site will be returned to the Boy Scouts, revert to its prior zoning (if rezoned) and will be available for the many desirable uses and activities contemplated by the Community Impact Statement and the Mining and Reclamation Plan. Ultimately, the Project will not only serve important public resource needs, but will also benefit the Township and further the health and welfare of the community.

f. THERE IS SIGNIFICANT PUBLIC INTEREST IN THE EXTRACTION OF THE SPECIFIC NATURAL RESOURCES ON THE PROJECT SITE

As presented in the Community Impact Statement and the Aggregate Market Study, there is significant public interest in, and a significant and growing need for, the resources that will be produced from the Project Site. These resources will be used for important public and private

projects, including roads, bridges, buildings, infrastructure and other improvements that are located within the region. As shown in the Sand and Gravel Reserves vs Demand graph contained in the Aggregate Market Study, AAOM estimates that the need for such resources will reach a critical point in 2023 and demand will surpass reserves in 2024. The use of these resources will serve the greater public interest, and the benefit of the Project will be broader than the involved property owners and the local community. It is noteworthy that the State of Michigan recently approved significant funding for road and bridge repairs and improvements. This action is expected to significantly increase demand and need for the resources even beyond the demand and need presented in the Aggregate Market Study.

If approved, the Project would have the size, scale and capacity to help address this critical need across the region for many years to come. Access to these extensive reserves will also reduce the need for additional mines in the region, which will simplify the required regulation and governance compared with numerous smaller mines scattered across the region.

The location of the Project Site also contributes to the public interest. The Project Site is located near larger urban markets and will help meet the needs of greater Detroit and Flint. The proximity to these markets will limit transportation costs and benefit the public through lower costs for public infrastructure projects. It will also limit the time trucks are on the road and the distances they travel.

VI. THE APPLICATIONS

As discussed above, the Project satisfies Subpart 4 and Subpart 5 as it would yield valuable natural resources and would not result in very serious consequences under any of the applicable factors. As such, the Township lacks authority to impose or enforce an ordinance or decision that would prevent mining of the Project Site. These limitations against the Township include, and

extend to, its zoning district classification ordinances, special land use approval requirements and/or portions of the soil removal ordinance that would limit or prevent mining of the Project Site. As mentioned above, the Township retains the rights contained in Subpart 6 which permit it to regulate hours, noise levels, dust control and traffic. However, the extent and degree to which such regulatory ordinances may be enforced is strictly limited and “shall be reasonable in accommodating customary mining operations.”

In the final analysis, AAOM is **not** required to seek a rezoning of the Project Site or any other approval. If AAOM demonstrates compliance with PA 113, then AAOM is legally entitled to undertake mining of the Project Site (subject to compliance with Subpart 6 regulations and other applicable laws and requirements).

Nevertheless, AAOM recognizes that the Ordinance sets forth the Township’s vision for the development and operation of mining activities. AAOM has endeavored to tailor the Project such that it conforms to the spirit, if not all of the specific requirements, of the Ordinance. Furthermore, AAOM is willing to submit the Applications to demonstrate the extent to which the Project complies, and often exceeds, the requirements of the Ordinance. Therefore, subject to and in accordance with its rights under PA 113, AAOM has submitted (i) a conditional rezoning application for the Lease Parcel to Agricultural (A-2); and (ii) a special land use application for the Project Site (both the Lease Parcel and Guy Parcel) for mining. Because the Project fully satisfies PA 113, the Applications should be approved forthwith, regardless of any ordinance to the contrary or any renewed local opposition.

**A. THE LEASE PARCEL SHOULD BE CONDITIONALLY
REZONED FROM RECREATION (RC) TO AGRICULTURAL (A-2)**

The Lease Parcel is currently in the Recreation (RC) zoning classification. The Recreation (RC) zoning classification does **not** permit mining. As such, the zoning classification directly and

expressly prevents mining on the Lease Parcel on its face. As discussed above, valuable natural resources are available from the Project Site and very serious consequences would not result from mining of the Project Site as contemplated by the Project. Therefore, the Recreation (RC) zoning classification cannot be used to prevent mining of the Lease Parcel.

PA 113 does not require AAOM to pursue a rezoning of the Lease Parcel, or seek a variance or any other local approval, to proceed with the Project. AAOM could simply rely on its rights under PA 113 and proceed in accordance with other applicable portions of the Ordinance.

Nevertheless, AAOM is willing to conditionally rezone the Lease Parcel to Agricultural (A-2). Agricultural (A-2) expressly permits mining as a special land use (See Section 402.P. of Township Ordinance) and is the same zoning classification as the Guy Parcel and the surrounding properties (excluding the remainder of the Ranch, which is zoned Recreation). The condition to the rezoning would be that the Lease Parcel is used exclusively for “mining” purposes as contemplated by Section 402.P.

Although it is not required to do so, AAOM is willing to accept conditional rezoning of the Lease Parcel for administrative convenience and in an effort to cooperate with the Township in following certain procedures under the Ordinance. If granted, the conditional rezoning would be administratively convenient and a benefit to the Township because it would align the zoning classification of the Lease Parcel and the Guy Parcel for purposes of the special land use approval and the soil removal ordinances. In the absence of rezoning to A-2, it would be unclear which (if any) other portions of the special land use approval ordinance would apply to the Lease Parcel. Like any conditional rezoning, if implemented, the conditional rezoning would expire and revert to the Recreation (RC) district following completion of the use.

B. THE TOWNSHIP SHOULD APPROVE THE SPECIAL LAND USE APPLICATION

As discussed above, the Project and the Project Site satisfy the requirements of PA 113 and therefore Township ordinances and decisions cannot prevent mining of the Project Site. However, the Township can impose reasonable regulations as set forth in Subpart 6, provided that such regulations “shall be reasonable in accommodating customary mining operations.” The Ordinance contains numerous special land use approval standards and requirements that may, or may not, be limited or negated by PA 113. AAOM has submitted its special land use approval application but is also providing the following discussion of how PA 113 should be applied in connection with various portions of the special land use approval ordinance and the soil removal ordinance.

The special land use application considers the Project Site and Project for what they are - a single, integrated project. Consistent with case law that addresses natural resources, AAOM understands that the location of resources, water tables, drainage areas and topography do not follow property lines, zoning districts, setbacks and other “man-made” lines. As such, the requirements and standards for approval of a special land use and/or application of the soil removal ordinance should be applied to the entire Project and Project Site, with no consideration of the Project Site boundary between the Lease and Guy Parcels. For simplicity, the following discussion assumes that the Lease Parcel is either conditionally rezoned to the Agricultural (A-2) zoning district, or that the use limitation contained in the Recreation (RC) is overridden or negated based on PA 113. If the Lease Parcel is not conditionally rezoned to Agricultural (A-2), it would not be subject to the special land use approval requirements at all and any denial of the issuance of a mining permit would violate PA 113. However, as discussed above, AAOM respects the Township’s ordinance regime and is willing to discuss application of the special land use approval requirements, and the soil removal ordinance, to the “whole” Project Site and the “whole” Project.

As discussed below, the Project satisfies the applicable requirements and standards for issuance of a special land use permit (as may be partially limited, overridden or negated by operation of PA 113) as to the “whole.”

a. THE COMMUNITY IMPACT STATEMENT DEMONSTRATES THE PROJECT WILL HAVE MINIMAL ADVERSE IMPACTS

In furtherance of its special land use application, AAOM has prepared and submitted a Community Impact Statement for the Project Site as required by Section 1429.I.1. and 2.a. of the Ordinance. The Community Impact Statement complies with the requirements of Section 1533 of the Ordinance. Except as may be otherwise addressed therein, the Community Impact Statement, together with the other information contained in this document and the other Studies, demonstrate that the Project will have minimal, if any, adverse impact on community services, the immediate neighborhood, the natural environment and the haul route. The information, disclosures, discussion and conclusions contained in the Community Impact Statement, together with the other Studies, also support the position that the Project would produce valuable natural resources and would not result in very serious consequences. AAOM looks forward to discussing and explaining the Community Impact Statement, the other Studies and the positions set forth in this Supplement, as part of the public hearing process.

b. THE PROJECT SATISFIES THE REQUIREMENTS OF SECTION 1400 A - H

The Project fully satisfies each of the general standards contained in Section 1400 A through H of the Ordinance. As discussed above, the Project is located in a low population, low density area and is in the vicinity of other mining operations. It is isolated within a large property and will have limited, if any, impact on surrounding properties. AAOM has undertaken exhaustive studies that conclude that the Project will not materially or adversely impact any of the ecosystems in the area, nor will it diminish property values. It will provide a vital resource that will benefit

the region and the public at large at a time when the need is high and continues to increase. As such, the Project satisfies the requirements of Section 1400 A through H.

Nonetheless, if the Township does not agree that the requirements of Section 1400 A through H have been met, the special land use permit still must be approved. PA 113 precludes the imposition of standards, criteria or restrictions, or the making of interpretations, decisions or actions, that would modify or conflict with the “no very serious consequences” standard.

**c. THE PROJECT SATISFIES THE REQUIREMENTS
OF SECTION 1429 (INCLUDING SECTION 1429.G)**

Except in one minor respect, the Project directly satisfies all of the provisions of Section 1429, including those contained within Section 1429.G. The minor deviation relates to Section 1429.G.2.a. Specifically, that provision requires a raised earthen berm of at least six feet in height that has slopes of at least one foot vertical to four feet horizontal. As set forth in the Community Impact Statement and the Mining and Reclamation Plan, AAOM proposes to establish berms at the time it commences each phase of the Project. The berms will be located in the areas shown on the Mining and Reclamation Plan and/or in the figures contained in the Community Impact Statement. The berms will buffer and screen the Project from all neighbors (excluding the northerly boundary with the Ranch). The berms will be located at least fifty feet from the property boundaries so that trees within the fifty foot area closest to the boundaries can be preserved. The height of the berms will exceed the ordinance and range from ten (10) feet to sixteen (16) feet in height. However, as described in the Community Impact Statement and as shown on the Mining and Reclamation Plan, the slope of these berms would be increased to one on three (on the outside) and one on two (on the inside) in order to maintain the equivalent horizontal footprint at the base of the berm. This taller, slightly steeper berm will provide a better noise, visual, and dust buffer,

preserve more existing woodland, and still meet generally accepted mining industry guidelines for safety.

The minor deviation from the slope requirement is not a legal basis to deny the special land use application. PA 113 precludes the enforcement of technical requirements to prevent mining, unless very serious consequences would result. In this case, no “very serious consequences” would result from the minor slope alteration proposed here, and so PA 113 operates to limit this requirement.

**d. THE PROJECT SATISFIES THE REQUIREMENTS
OF THE SOIL REMOVAL ORDINANCE**

The Township’s soil removal ordinance is incorporated into the special land use approval requirements in Section 1429.I.d. The Project directly complies with all but two of the requirements of the soil removal ordinance. Although the Project achieves their purposes, it does not directly comply with the “technical letter” of Sections 305.1.i, 309.1 and 308.9 of the soil removal ordinance.

Section 305.1.i requires that the unreclaimed, disturbed mining area shall be the lesser of 20 acres or 40% of the permitted area. This requirement is arbitrary and would not be logical when applied to the Project. As discussed above, the Project characteristics, mining areas and infrastructure were tailored to the size, scope of operations and actual characteristics of the Project Site. The Project’s proposed area for the plant, stockpiles, internal haul route and scale trailer represents approximately 40 acres of “disturbed” area for the duration of the Project. Strict imposition of the Section 305.1.i. requirement would not make sense in the case of the Project and would constitute an improper violation of the no very serious consequences standard.

The legitimate purpose for the Section 309.1 ten acre requirement is to require ongoing reclamation as portions of mining projects are completed. Similar to the 20 acre/40% requirement

discussed above, strict application of the 10 acre requirement is not necessary when considered in light of the legitimate purpose and the Project itself. First, as disclosed in the Mining and Reclamation Plan and the Community Impact Statement, the purposes of Section 309.1 are achieved because reclamation will occur on an ongoing basis throughout the course of the Project. The Mining and Reclamation Plan was developed and tailored based upon the **actual** location of the resources, the unique characteristics and geology of the Project Site and the phasing necessary to protect neighbors, the environment and the ecosystem of the area. Moreover, the Mining and Reclamation Plan also contemplates using overburden from various portions of the Project Site to establish berms and screening that must be maintained for the life of the Project. The arbitrary ten acre requirement was not meant for a project of this size and scale and would negate this important benefit and use of the overburden. Similar to the 20 acre/40% requirement, the technical interpretation of the ten acre requirement may be effective when applied to smaller projects, but when applied to projects of commercially efficient scale, it could be used to prevent mining. AAOM's proposed approach to phasing and ongoing reclamation meets the spirit of the ten acre and 20 acre/40% requirements in the Ordinance. This strategy will result in reclamation on a broader and more efficient scale that is directly tied to size, scope, and actual phases of the Project.

Section 308.9 states that stockpiles of sand shall be limited to one thousand cubic yards and fifteen feet in height. Like the ten acre and 20 acre/40% requirements discussed above, this requirement is inconsistent with mining operations of commercial scale. The Project contemplates the production of approximately 3000 - 5000 cubic yards of material per day. If enforced, the quantity requirement would prevent the Project from proceeding.

Similarly, the Section 308.9 height limitation also ignores the realities of larger scale mining projects. Such projects require stockpile height limits that correspond to actual production

quantities. In this particular Project, stockpiles could be approximately fifty (50) feet in height. It is important to note that the “visible” impact of the height will be mitigated by the lowering of the plant and stockpile area by approximately thirty-five (35) feet. As such, when a fifty (50) foot stockpile is viewed from the property boundaries, it will only appear to be approximately fifteen (15) feet above grade.

In addition, Section 308.9 indicates that it is intended to prevent blowing of dust and sand. As set forth in the Community Impact Statement and the Studies, AAOM’s processes will mitigate (if not entirely eliminate) blowing of dust and sand. Specifically, most material stockpiles will have been washed and will contain water (as required by construction standards). The water content, and the reduction/elimination of silt as a result of the washing process, minimize the potential for any blowing of dust and sand.

In summary, the strict enforcement of Sections 305.1.i, 309.1 and 308.9 as described above would interfere with mining in the absence of any “very serious consequences.” Such enforcement is forbidden by PA 113 and could not serve as a basis for denying the special land use permit.

VII. COLLABORATION WITH TOWNSHIP ON THE PROJECT

As discussed above, AAOM is an experienced developer and operator of large sand and gravel mining projects. AAOM has a history of being a good neighbor and a positive contributor to the communities in which it does business. AAOM hopes and desires to work constructively with the Township and is willing to collaborate with regard to matters that are of the greatest concern to the Township. To this end, AAOM is willing to consider conditions to approvals and is open to discussing modifications to features and characteristics of the Project. After AAOM receives and understands the Township’s expectations and positions, AAOM hopes to be able to address them and eliminate many, if not all, of the differences. AAOM looks forward to an open

dialogue and hopes to address and resolve areas of particular concern as the process moves forward.

VIII. REQUEST

For all of the reasons outlined in this document, and based on all of the authority discussed above, AAOM respectfully requests approval of the Project. AAOM looks forward to participating in the public hearing process and discussing the Project and all of the information, reports and data in the near future.

