

## Luck Companies - Chester County, SC: Rezoning and Special Exception Conditions

Conditions applicable to properties included within the Luck Stone Corporation (the “Applicant”) application for rezoning of properties located in Chester County, South Carolina shown on the plan dated November 11, 2022, entitled “Proposed Zoning and Special Exception Plan” as (i) “ID1” containing 79.41 acres (the “ID1 Property”), (ii) “GC” containing 25.72 acres (the “GC Property”), (iii) “ID3” containing 247.87 acres (the “ID3 Property”) and (iv) “AG” containing 90.39 acres (the “AG Property”).

**Condition applicable to all properties:**

Prior to issuance of any County permits for development of the parcels included within the application for rezoning, the Applicant shall submit an application for subdivision/boundary line adjustment of all parcels included within the application for rezoning to provide for the adjustment of parcel boundaries by zoning classification so that no parcel shall be split-zoned (include more than one zoning classification) and that all parcels are in compliance with the County subdivision ordinance.

**Conditions applicable to the ID1 Property:**

1. **Prohibited Uses.** No portion of the ID1 Property shall be used for any of the following uses:
  - i. Grain Milling
  - ii. Reconstituted wood products
  - iii. Converted Paper Products
  - iv. Mineral and Earth
  - v. Misc. Nonmetallic Mineral
  - vi. Aluminum Production
2. **Dedication of Easement for Public Park.** Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County an easement over an across the area containing approximately fifteen (15) acres (the “Park and Trail Easement”) shown on the plan included in this application dated November 11, 2022 and entitled “Updated and Compiled General Development Plan” (the “GDP”) on commercially reasonable terms and conditions for a public park and trail system along Rocky Creek together with a right of access to and from Highway 9 as shown on the GDP. The County may accept the offer of dedication at any time within five (5) years after commencement of mining activities on the ID3 Property. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a survey of the Park and Trail Easement and payment of costs to prepare and record the easement agreement.
3. **Entrance Landscaping and Beautification.** The entrance to the ID1 Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the ID1 Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the GC Property and the ID3 Property to provide a consistent appearance for all such entrances.

4.

**Conditions applicable to all areas rezoned to the GC classification (the "GC Property"):**

1. Dedication of Property for Governmental Use. Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County of one or more parcels containing a total of not less than fifteen (15) acres for governmental uses (the "Governmental Use Property") as generally shown on the plan included in this application entitled "Updated and Compiled General Development Plan". The County may accept the offer of dedication at any time within ~~five~~six (56) years after delivery by Applicant to the County of written notice of the commencement of mining activities on the ID3 Property; provided, however, that if the County does not respond to the offer of dedication, then Applicant shall send the County a written notice at the end of the 6-year period and the County shall have one (1) additional year to accept the offer of dedication. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a current survey of the Governmental Use Property and payment of costs to prepare and record the deed of dedication. The deed of dedication shall restrict use of the Governmental Use Property to use by the County or other governmental entities unless otherwise approved by the owner of the ID3 Property. For purposes of this condition, all written notices to the County shall be delivered to the County attorney, with copies to each of the County's zoning administrator, the clerk of the County Council, and the County's administrator (or their equivalents at the time of such notice).
2. Entrance Landscaping and Beautification. The entrance to the GC Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the GC Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the ID1 Property and the ID3 Property to provide a consistent appearance for all such entrances.
3. Cemetery Access. The cemetery located on the GC Property will remain undisturbed and reasonable access will be provided to relatives and descendants of persons buried in the cemetery for the limited purposes of visiting graves, maintaining the gravesite or cemetery or conducting genealogy research. Such access shall not include the right to operate motor vehicles on the GC Property other than within any driveways and parking areas as may be located on the GC Property from time to time.

**Condition applicable to the area rezoned to the AG classification (the "AG Property"):**

The Applicant will enter into discussions with representatives of the County schools to explore the use of a portion of the AG Property for an agricultural education program which may include the cultivation of trees or other crops to provide a hands-on learning experience. If the County schools are interested, the Applicant will work with the County schools in good faith to agree upon the terms and conditions of a lease of up to one half (1/2) of the AG Property for

Luck Companies - Chester County, SC: Rezoning and Special Exception Conditions

\$1.00/year for a term of up to fifteen (15) years or as may otherwise be agreed upon by the County schools and the Applicant.

**Conditions applicable to all areas rezoned to the ID3 classification (the "ID3 Property"):**

1. No portion of the ID3 Property shall be used for any of the following uses:
  - i. Biological and allied wholesaling
  - ii. Manufacturing of animal, chemical, gas, or arms and munitions
  - iii. Petroleum storage for wholesaling (except to supply uses on the ID3 Property)
  - iv. Fuel dealers, retail (except to supply uses on the ID3 Property)
  - v. Hazardous waste carriers
  - vi. Municipal solid waste landfill
  - vii. Airport
  
2. Entrance Landscaping and Beautification. The entrance to the ID3 Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the ID3 Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the ID1 Property and the GC Property to provide a consistent appearance for all such entrances.
  
3. Screening and Visual Line of Sight. Mining activities and related uses on the ID3 Property shall be screened from visibility from Highway 9 using berms and landscaping or other means proposed by the Applicant and approved by the County in connection with the review and approval of a site plan for development of the ID3 Property.
  
5. Dedication of Easement for Public Park. Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County an easement over an across the area containing approximately fifteen (15) acres (the "Park and Trail Easement") shown on the plan included in this application dated November 11, 2022 and entitled "Updated and Compiled General Development Plan" (the "GDP") on commercially reasonable terms and conditions for a public park and trail system along Rocky Creek together with a right of access to and from Highway 9 as shown on the GDP. The County may accept the offer of dedication at any time within ~~five~~<sup>six</sup> (5~~6~~<sup>6</sup>) years after delivery by Applicant to the County of written notice of the commencement of mining activities on the ID3 Property; provided, however, that if the County does not respond to the offer of dedication, then Applicant shall send the County a written notice at the end of the 6-year period and the County shall have one (1) additional year to accept the offer of dedication. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a survey of the Park and Trail Easement and payment of costs to prepare and record the easement agreement. For purposes of this condition, all written notices to the County shall be delivered to the County attorney, with copies to each of the County's zoning administrator, the clerk of

the County Council, and the County's administrator (or their equivalents at the time of such notice).

**Conditions for a Special Exception to Allow Mining Operations and Associated Uses on the ID3 Property ("Mining Operations")**

Development and use of the ID3 Property for Mining Operations pursuant to the requested Special Exception shall be subject to the following conditions, which shall be and remain in effect for the duration of the SC DHEC Surface Mining Permit applicable to the ID3 Property:

1. Hours of Operation. Hours of operation shall be limited as follows:
  - (a) Extraction Area, Primary Plant and Equipment: 6:00 a.m. to 9:00 p.m. Monday through ~~Saturday ("Standard Operating Hours")~~ Friday only except as provided below.
  - (b) Shipping, Loading and Limited Processing: 6:00 a.m. to 9:00 p.m. Monday through Friday and 7:00 a.m. to 2:00 p.m. Saturday ("Standard Operating Hours") except as otherwise required in the event a federal, state or local agency or authority requests or requires that such activities be conducted during other hours.
  - (c) Processing Plant (secondary, tertiary and/or finishing phases of plant operations): Hours of operation for the processing plant shall be unrestricted when operated without the use of trucks and loaders utilizing audible back-up alarms (when operated with trucks and loaders utilizing audible back-up alarms, Standard Operating Hours shall apply). Any vehicular operations during hours other than Standard Operating Hours shall be for processing activities only and shall not be for extraction activities.
  - (d) Blasting. Blasting shall not occur before 9:30 a.m. or after 5:00 p.m. Monday through Friday, except when a blasting charge has been set before 5:00 p.m. and is delayed due to reasons beyond the reasonable control of Operator or due to safety considerations. In such a case, Operator may then complete the blast after 5:00 p.m. but no later than thirty (30) minutes after sunset. There shall be no blasting on Saturdays or Sundays except to complete a blast where the charge was set and blasting delayed as described above.
2. Buffers. Buffers shall be provided in the locations and of the widths shown on the on the plan included in this application dated November 11, 2022 and entitled "Updated and Compiled General Development Plan" (the "GDP"). Buffers shall consist of undisturbed natural vegetation supplemented by berms, additional vegetation or otherwise as necessary to comply with the requirements of the mining permit (the "State Mining Permit") issued to Operator for Mining Operations by the South Carolina Department of Health and Environmental Control ("DHEC"). Encroachments into buffers shall be allowed for utility lines, roads, access points and such other encroachments or breaks as necessary to conduct Mining Operations in accordance with the State Mining Permit.
3. No Trespassing Signs. "No Trespassing" signs shall be posted and perpetually maintained around the perimeter of the processing and extraction areas. Signs shall not be more than 300 feet apart.
4. Wetlands. All necessary permits to allow disturbance of jurisdictional wetlands on the ID3 Property shall be obtained from the applicable governmental authority (e.g., U.S. Army Corps. of Engineers, Chester County Government, or DHEC).
5. DHEC Mining, Water Discharge and Air Permits.
  - (a) Prior to commencement of any land disturbance associated with Mining Operations, Operator shall obtain the State Mining Permit from DHEC. The State Mining

Permit shall address all relevant issues including soil erosion, stormwater management, air quality and reclamation. Completion of the reclamation plan shall be secured by a bond posted with DHEC in accordance with its regulations.

(b) Prior to commencement of Mining Operations, Operator shall obtain an NPDES General Permit for Discharges Associated with Nonmetal Mineral Mining Facilities from the DHEC Bureau of Water pursuant to the Pollution Control Act of South Carolina and the Federal Clean Water Act which is administered by DHEC in South Carolina.

(c) Prior to commencement of Mining Operations, Operator shall obtain an Air Quality Permit from the DHEC Bureau of Air Quality to ensure compliance with the Federal Clean Air Act which is administered by DHEC in South Carolina. In connection with the issuance of the Air Quality Permit, Operator shall develop and implement a facility-wide plan for controlling fugitive dust and emissions from Mining Operations including process operations, truck traffic, storage piles, and any other areas within the ID3 Property where fugitive dust emissions can be generated. Fugitive dust generated from direct Mining Operations shall be controlled by wet suppression and/or dry dust collection systems. Fugitive dust generated by vehicular traffic within Mining Operations shall be controlled by the application of water or equivalent wetting agent to roadways and other traveled surfaces on the ID3 Property.

(d) Operator shall maintain copies of all federal and state records pertaining to permits and approvals on-site and, upon reasonable prior notice from County zoning officials, Operator shall make copies of permits and approvals to County zoning officials for review.

6. Entrance Road.

~~(a)~~

(a) No later than the commencement of the sale of crushed stone from the ID3 Property, wheel wash and load wet-down rack infrastructure will be installed for traffic leaving the ID3 Property.

(b) Operator shall pave and maintain in good condition the entrance road providing access to Mining Operations from Highway 9 for a distance of approximately 1000 feet as generally shown on the on the GDP.

(b) Permanent access to Mining Operations shall be limited to a single point on Highway 9 as generally shown on the GDP and approved by SC Department of Transportation. The portion of such access located between Highway 9 and the area used for active mining may be shared by other uses as authorized by Operator.

(c) Operator shall inspect the intersection of the Mining Operations entrance road and Highway 9 daily for loose stone. Operator shall remove any loose stone material at or around the entrance road outside of the right of way of Highway 9 if removal can be completed safely and without interruption of traffic on Highway 9. Operator shall solicit the assistance of the appropriate agency (SCDOT, County Sheriff, etc.) with respect to removal of stone within the right of way of Highway 9 or as otherwise required for safe removal without interruption of traffic on Highway 9.

7. Monitoring Wells. Operator shall construct five (5) monitoring wells at locations determined by an independent qualified professional (i.e., certified hydrologist or geologist) and approved by DHEC. A plan describing the procedures and timing of observance for the monitoring wells shall be developed by an independent qualified professional and approved by DHEC and to be followed by Operator.

8. Water Well Impacts. Upon submission of a formal complaint by an adjacent property-owner or, as ~~requested~~acknowledged by ~~the County~~DHEC, pursuant to the State Mine Permit, DHEC shall determine if any activity associated with Mining Operations has caused a well or wells on the adjacent property owner's land to become dry. From the submission of the complaint until DHEC's determination, Operator shall supply water (e.g., via a water tank, etc.) to the affected property owner as needed for such owner to receive the volume of water historically drawn from the property owner's well. If DHEC determines that Mining Operations ~~has~~have caused the drying of the property owner's well, Operator shall be responsible for providing an alternative water source (e.g., drill well deeper, new well, or connect to public water source at the discretion of Operator) for the aggrieved party at Operator's expense.
9. Blasting.
  - (a) Blasting Data shall be monitored and recorded for all blasts, shall be maintained on-site at the scale house for a period of three (3) years and shall be made available to County zoning officials for review at the scale house. Blasting Data shall include the time and date of blast, pounds of blasting material per delay, total pounds of blasting materials per blast, seismograph readings of ground vibration levels and air over-pressure levels in decibels.
  - (b) Operator shall provide notice prior to the first blast associated with Mining Operations (not site development/construction) either by (i) written notice via direct mail to all property owners and/or occupants of existing dwellings within one-half (1/2) mile of the areas where blasting will occur or (ii) advertisement two (2) times in a local newspaper of general circulation at least ninety (90) days prior to the first blast associated with Mining Operations blast. Upon receipt, pursuant to the above described notice, by DHEC and Operator of a written request from the owner of any existing structures within one-half (1/2) mile of the areas where blasting will occur, a third party consultant selected and engaged by Operator shall conduct an inspection of the applicable structures to determine the structural condition of the structures prior to the first blast associated with Mining Operations. The property owner shall have the right to supervise the inspection by the third-party consultant and shall be provided with a copy of the consultant's report.
  - (c) Ground vibration caused by blasting activity shall not exceed the maximum peak particle velocity allowed pursuant to South Carolina Code of Regulations Section 89-150(E) as measured at the immediate location of any dwelling, public building, school, church, or commercial or institutional building existing as of the date of approval of the Special Exception to allow Mining Operations. The maximum peak particle velocity requirement does not apply to structures within the permitted area, or any area that is owned or leased by Operator or any structures on which Operator has acquired waiver to damage rights.
  - (d) If a formal claim is made by any private or public landowner that the landowner or the property (real or personal) of the landowner has been damaged by blasting activities associated with Mining Operations, whether by ground vibration, air over-pressure or otherwise, an independent, qualified professional with experience in the effects of blasting shall be engaged to determine if any damage was caused by blasting activities associated with Mining Operations. If it is determined that damage was caused by blasting activities associated with Mining Operations, Operator shall correct the damage or reimburse the landowner for such damage. The amount of any reimbursement shall be determined by an independent, competent professional with expertise in estimating the damage (for example, a licensed builder or building contractor

where the damage is to a residence). The independent professionals performing assessments pursuant to this paragraph shall be agreed upon by both Operator and the property owner and retained at the expense of Operator.

10. Lighting. Exterior light fixtures associated with Mining Operations shall be of a type and installed in a manner to reasonably minimize light spillage from Mining Operations onto adjoining parcels.

11. Noise.

(a) Airborne noise produced from Mining Operations ~~other than blasting~~ shall not exceed ~~80dba of continuous noise~~, for greater than five (5) minutes at any one time as measured along the northern and western boundaries of the ID3 Property, (i) 80dba of continuous noise from 6:00 a.m. to 6:30 p.m. or (ii) 70 dba of continuous noise from 6:30 p.m. to 6:00 a.m. (the "Noise Limit"). The Noise Limit shall not apply to individual events lasting less than five (5) minutes. Operator shall install monitoring devices on the northern and western property lines of the ID3 Property to monitor decibel levels to assure that noise from Mining Operations does not exceed the Noise Limit. Operator shall maintain readings from such monitoring devices for a period of three (3) years and make such readings available to the County upon request.

(b) In connection with the initial development of the ID3 property and in adherence to condition 11(a) above, Operator shall make best efforts above current permitted design to enhance any berms, buffers or vegetation in a manner to reduce noise to adjacent properties which may be produced from temporary facilities located outside of the pit.

12. Reclamation Plan. As a condition of the Special Exception, the reclamation plan approved by DHEC as part of the State Mining Permit shall be complied with by Operator, including, but not limited to, the following tasks which shall be completed upon completion of Mining Operations: (i) all debris, scrap metal, concrete foundations, sidewalks and structures will be removed and (ii) the stockpile, office and plant areas will be graded, sloped back to as natural a contour as reasonably possible (but no steeper than a 3h:1v slope) and seeded. Perimeter berms and buffers may be left in place and the pit area may be allowed to fill up with water.
13. Community Interest Engagement Group. Operator shall work with interested parties in the community to establish a Community Interest Engagement Group (the "CIEG") comprised of representatives of homeowner associations or similar residential groups and interested individual property owners located within a two (2) mile radius of Mining Operations. Operator shall facilitate meetings with the CIEG on a quarterly basis or as otherwise mutually determined by Operator and the CIEG to allow for information exchanges with respect to historical Mining Operations, future plans for Mining Operations and other community issues or opportunities of concern or interest of the CIEG and Operator. This condition is intended to provide a forum for communications among the CIEG and Operator and does not grant any approval rights to the CIEG with respect to Mining Operations.
14. Community Fund. Annually, Operator shall contribute the lesser of (i) one percent (1%) of the adjusted net sales of construction aggregate materials excavated from the ID3 Property and sold to third parties during the year or (ii) Thirty Five Thousand Dollars (\$35,000.00) to one or more organizations within Chester County in support of local Chester County non-profit initiatives, workforce development programing or general community improvement opportunities. This funding will be managed by Operator and distributed to organizations selected by Operator after consultation with the CIEG. For purposes of this condition, "adjusted net sales" shall mean total sales dollars of construction aggregate materials mined or extracted from the ID3 Property excluding any transportation (whether by

truck, rail or other method), hauling, loading or unloading charges and less deductions for cash discounts, price adjustments, additive materials, allowances, volume discounts and sales, use and other similar taxes or governmental charges. Annually, a report of contributions made by Operator pursuant to this condition shall be provided to the CIEG and to the County.

15. Plant Modifications.

(a) At such time as the pit reaches an average depth of 150 feet from the top of the rock and Operator installs a permanent Primary Plant within the pit, (i) Operator shall cease use of any temporary Primary Plant located outside the pit, and (ii) any dump-hopper within the pit shall have an elevation no higher than the top of the cut of the pit (i.e., the initial ground elevation before excavation of the pit).

(b) Upon installation of the permanent processing plant (for secondary, tertiary and/or finishing phases of plant operations), all screens and crushers above the top of the cut of the pit on the ID3 Property shall be enclosed for noise abatement.

16. Transfer of Special Exception. This Special Exception to allow Mining Purposes on the ID3 Property shall automatically terminate if operation of the stone quarry on the ID3 Property is transferred to a new quarry operator (hereinafter, the "transferee") that has not been deemed acceptable by the County Council. A transferee may continue to operate hereunder if, prior to the transfer, a transferee is determined by the County Council to be an acceptable operator of the stone quarry located on the ID3 Property. A determination of a transferee's acceptability shall be initiated by a written request from the Applicant to the County Council. Upon receipt by the County Council—verified by the clerk of the County Council—of a written request by the Applicant and required supporting documentation, the Council shall have sixty (60) days to review the request and issue a determination as to the acceptability of a transferee. Supporting documentation to be considered by the Council shall include: (i) a financial report that demonstrates a transferee's financial ability to comply with all applicable rules and regulations, (ii) a letter from the state agency responsible for the regulation of stone quarries of each state in which a transferee owns or operates a stone quarry facility, if any, indicating whether a transferee is in compliance with all applicable state rules and regulations, and (iii) a list of each locality in which a transferee owns or operates a stone quarry, if any. This 60-day review by the County Council is not intended to constitute a new Special Exception application, and approval of a transferee shall not be unreasonably withheld, conditioned or delayed. Any approved transferee shall accept the special exception conditions as approved by the County Council and the County's Zoning Board of Appeals, as applicable.

17. Correction Plans. In the event of an alleged violation of the conditions of this Special Exception that the County's Planning Director reasonably believes could give rise to the termination of the Special Exception, or in the event that the County's Planning Director has determined that such a violation has occurred, prior to the County taking any action to terminate the Special Exception or modify its conditions, the County's Planning Director shall notify the Applicant and Operator in writing of the alleged violation or the determined violation (together with any evidence in support thereof) and the Applicant and/or Operator shall meet with the County's Planning Director within a reasonable time after receipt of such written notice. If a violation is determined to have occurred, then Operator shall (i)

immediately take action to remedy such violation in accordance with applicable industry standards, and (ii) within thirty (30) calendar days or such other reasonable time agreed to by the Operator and the County's Planning Director, prepare a correction plan detailing the nature and timing of such correction, all as commercially reasonable and consistent with applicable industry standards, to be reviewed and approved by the County's Planning Director, such approval not to be unreasonably withheld, conditioned or delayed. Each such correction plan, if applicable, shall be implemented promptly following approval from the County's Planning Director and in accordance with its terms. If the same violation giving rise to such correction plan occurs two or more times after approval of the correction plan by the County's Planning Director (and after allowing for such corrective time as is set forth in the plan), then the County may impose a daily monetary penalty on Operator until such violation is corrected, not to exceed \$500 per day. If any such violation shall remain uncorrected for a period of sixty (60) days after the correction date identified in the applicable correction plan, the County may thereafter take action to terminate the Special Exception.

Document comparison by Workshare 10.0 on Friday, February 3, 2023 10:42:40 AM

Input:	
Document 1 ID	iManage://IMANAGEDMS/Active/142591073/1
Description	#142591073v1<Active> - Chester County Application Conditions_1172022
Document 2 ID	iManage://IMANAGEDMS/Active/142591073/9
Description	#142591073v9<Active> - Chester County Application Conditions_1172022
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	37
Deletions	12
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	55