

Agenda
Florence County Board of Zoning Appeals
Regular Meeting
Tuesday, March 17, 2026
6:00 p.m.
County Complex
Room 803

The Florence County Planning Department staff posted the agenda for the meeting on the information boards at the main entrance and lobby of the County Complex and on the information board at the entrance of the Planning and Building Inspection Department building.

I. Call to Order

II. Review and Motion of Minutes

- Meeting of February 17, 2026

III. Public Hearings:

BZA#2026-03

A variance requested by Palmetto Sand Company, Inc, from requirements of the Florence County Code of Ordinances, Chapter 30 – ZONING ORDINANCE, ARTICLE III. – CONDITIONAL USE REGULATIONS, Sec. 30-117. – Mining and Extraction Operations. For the property located off of E. Hwy 378-Hannah, Johnsonville, SC 29555, as shown on Florence County Tax Map No. 00418, Block 02, Parcel 006.

IV. Other Business

V. Adjournment

Minutes
Regular Meeting of the Florence County Board of Zoning Appeals
Tuesday, February 17, 2026 at 6:00 p.m.
County Complex, Council Chambers, Room 803
180 N. Irby St., Florence, South Carolina 29501

The Florence County Planning Department staff posted the agenda for the meeting on the information boards at the main entrance and lobby of the County Complex and on the information board in the lobby of the Planning and Building Inspection Department building.

The agenda was also mailed to the media.

I. Call to Order

Chairman, Brian Casey called the meeting to order at 6:13 p.m.

II. Attendance:

Board Members Present: Chairman Brian Casey
Vice-Chairman Brenda Deas
Craig Floyd
Kenneth Muldrow
Louie Hopkins
Jessica Wright

Board Members Absent: Wesley Martin

Staff Present: Mr. J. Shawn Brashear, Planning Director
Holly Smith, Senior Planner
Caroline Dunlap, GISP/Planner III
Geoff Akins, Planner I
Patrick Ward, IT Dept, A/V Support
Lisa M. Becoat, Executive Assistant/Secretary

Public Attendance: See sign-in sheet on file at the Florence County Planning Department.

III. Review and motion of the minutes:

- **Meeting of January 20, 2026**

Motion to approve the minutes as presented – Vice-Chairman Brenda Deas / **Second** – Commissioner Louie Hopkins / Minutes of January 20, 2026, meeting were unanimously approved 6 to 0.

IV. Public Hearing:

BZA#2026-02

A Variance Requested By Palmetto Sand Company, Inc., From Requirements Of The Florence County Code Of Ordinances, Chapter 30 - ZONING ORDINANCE, ARTICLE III. – CONDITIONAL USE REGULATIONS, Sec. 30-117. – Mining And Extraction Operations, For The Property Located Off Of E. Hwy 378-Hannah, Johnsonville, SC 29555, As Shown On Florence County Tax Map No. 00418, Block 02, Parcel 006.

Mr. J. Shawn Brashear presented the staff report to the Board. A copy of the staff report and presentation are available at the Florence County Planning Department and on the Florence County website at: <https://www.florenceco.org/planning/bza/archives.php>.

Mr. Brashear stated that the property had access and is located off of Highway 378 in the Hannah, Johnsonville area. The owner of record is listed as Henry Family Farm Properties, LLC and the parcel of land is approximately three hundred and forty-six (346) acres. The requested variance would allow the applicant to obtain a Certificate of Zoning Compliance for a mining operation greater than forty (40) acres.

Mr. Brashear mentioned that there was an extensive public call log and a copy of that call log was provided to the Board as staff would briefly go through the inquiries indicating whether the content was in favor of, opposed to, or simply an inquiry of the request to be reviewed. The call log included a narrative of the comments of the inquiries received up to and until 4:00 p.m., on February 17, 2026. (A copy of the comments and inquiries are maintained at the Florence County Planning and Building Department.)

Mr. Brashear continued with the presentation showing images of the property and the surrounding areas of the property. The vacant unzoned parcel of land stretches across Highway 378. Based on the submitted site plan for the parcel addressed in the application all activity occurs on the Southside of the property on Highway 378. Mr. Brashear went over the narrative statement of the variance request and stated that it provided a briefing of the applicant's request; as outlined in the application, supported by the narrative, site plan and the operational plan. (A copy of the narrative is maintained at the Florence County Planning and Building Department.)

Within the application the applicant has requested variances as they have agreed to meet certain aspects and some portions of the ordinance. The requests are listed in the narrative as a variance from the one hundred yard (100 yd) setback from the property line to any extractions or processing and a total setback of six hundred feet (600') from any currently and occupied residence. The ordinance requires a wooden stockade fence and the applicant desires to place a ten foot (10') vegetative berm with landscaping per Florence County Ordinance Section 30-121 bufferyard (a) requirements. They are also requesting a variance from fees to allow a one-time fee payment of ten thousand dollars (\$10,000) for the application. A slight variance for the time of operation from 6:30 a.m. to 5:30 p.m., Monday through Friday except County observed holidays, for general operations and from 8:00 a.m. to 12:00 p.m., on Saturday for maintenance and shipping only. Another request is to include a height limit of thirty-eight feet (38') only for equipment located within one thousand feet of Highway 378. The request of a variance to meet the noise limit of sixty-five decibels (65 dB), except in the event where something occurred and it would allow that to be exceeded for not more

than ninety minutes (90 min) in any calendar day. The applicant understands that if the Board grants the requested variances the proposed mining use will be in compliance with applicable county regulations and as such a certificate of zoning compliance would be issued to the applicant. The applicant has also submitted some conditions as approval of the requested variances; such as, utilization of a water truck such as is commonly used to minimize dust under the air quality plan shall be located on the site and used as needed to suppress dust on roads. All extraction and operating areas shall be fenced by a six foot (6') security fence. The gate to said fence shall be locked except during the hours specified for general and maintenance operations and for plant personnel that shall be allowed access to the site one hour before and one hour after hours solely for purposing of operating or closing the site. All signage shall comply with Florence County Code of Ordinances Section 30-117(4)(f) and be installed before operations. Lastly, no blasting will be permitted on site.

Mr. Brashear continued through the presentation showing images of the property and surrounding properties in relation to the requested site. The property was properly posted, notices mailed to adjacent property owners, notices in the newspaper, information posted on the counties website and some public facilities per the Florence County Ordinances. Mr. Brashear showed an image of the site plan and discussed the content of the Site Plan. (A copy of the site plan is maintained at the Florence County Planning and Building Department and is also a part of the staff meeting report and presentation on the Florence County Webpage at [https://www.florenceco.org/planning/bza/archives.php/February 17](https://www.florenceco.org/planning/bza/archives.php/February%2017)). He further stated that there were lots of wetlands on the site, which will restrict the applicant from being able to use a portion of the proposed site. The applicant has an approved Department of Environmental Control (DHEC) permit to operate the site. Mr. Brashear continued with the presentation and went through the comments of the applicant's submitted application. He read the content of the application as follows:

1. Applicant here appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal Form I of the following provisions of the Zoning Ordinance. Applicant's Response: So, the zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as follows: (the site plan was attached and previously reviewed during the presentation). Mr. Brashear stated that the site plan illustrated was denied by a zoning official on the grounds that the proposal would be in violation of the cited sections(s) of the Zoning Ordinance.

2. The application of the ordinance will result in the unnecessary hardship, and the standards for a variance set by state law and the ordinance are met by the following facts. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows: Applicant's Response: The property is a large tract that was acquired at considerable expense for a specific lawful use. The strict application of the ordinance to the property would make it completely unusable for the exact purpose for which it was acquired and which was lawful at the time.

These conditions do not generally apply to other property in the vicinity as shown by: Applicant's Response: Applicant is not aware of any other property in the area that is subject to the specific use and unique facts of this property. The specific facts of acquisition and proposed lawful use of this property do not apply to other properties in the area.

Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows: Applicant's Response: The application of the ordinance to this property would completely prohibit

the use of the property for the specific use for which it was purchased and which was lawful at the time of the purchase. The size of the buffer renders the property completely useless for the purpose for which it was acquired.

The authorization of the variance will not be substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons: Applicant's Response: Granting this variance will not be substantially detrimental because the use will not have significant off-site impacts. Blasting will not be used for mining on the site and the use of the site for mining is highly regulated by DES. Other provisions of Florence County Ordinances will continue to apply to matters not regulated by DES. The use is located on a United States Highway and will not use local roads that are not designated for such use. Applicant has proposed a hundred (100') foot buffer, larger than that required for most uses in Florence County, a screening berm no less than ten (10') feet in height and six hundred (600') foot extraction setback from any now existing inhabited residence. The applicant has provided attachments of the site plan, narrative and an operational plan.

Mr. Brashear reminded the Board that Florence County could not take any enforcement action against anything that is currently regulated under South Carolina Department of Environmental Services (SCDES).

There were questions and comments from the Board.

In response to questions and comments from the Board, Mr. Brashear stated that the applicant's request included a reduced buffer and a ten foot (10') vegetative berm.

There were no additional questions, comments from the Board and the Chairman Brian Casey requested a presentation from the applicant or representative for the requested variance.

Mr. Wayne Phears, the spokesman for Martin Marietta Materials, 4123 Parklake Avenue, Raleigh, North Carolina was present in the meeting and provided the presentation in the public hearing. He stated they were agreeing to be bound by the Florence County Mining Ordinance, except for some limited variances that were being requested. Presently, Florence County and the company is in court over the Florence County Ordinance and as part of the mediation and discussions the company along with Florence County has identified certain items which the company could manage with and still conduct their mining business operation. The county has also identified what they would be willing to accept in terms of deviations from their ordinance. The applicant is present in the meeting to obtain the variances that would enable the ordinance to be applied to the site and eliminate the litigation over the validity of the ordinance. If the variances pass, the ordinance will apply, and there will be rules out there. If it does not pass and Court strikes the ordinance down later, the parcel is an unzoned area and there will be no rules. The applicant has acquired all South Carolina Department of Environmental Services (SCDES) Permits, which includes an air quality permit. Mr. Phears further stated to the Board that the mining operation was a wet operation. It is like creating a pond, the material is dredged. It is a large area approximately one hundred plus acres (100 acres). The material is dredged, which then goes into a plant, and is processed in various ways. Sand is separated from the gravel. Then the gravel goes through different sizes of screens, and then dropped to a particular size screen and come out at a given size at the end. A specific size is needed for concrete and another specific size is needed for asphalt and the likes. That is what they do and every step of the process is what they have agreed upon. Water trucks will be on site but the applicant doubts there will be a need for water as the entire process is wet. They have also obtained a National

Pollutant Discharge Elimination System (NPDES) Permit, which is what everybody has to get if you discharge water. The county probably has dozens of NPDES permits. Those permits specify what can be in your discharge. They also require you to sample your discharge, typically once a month. They don't expect the proposed site to discharge at all as there is a large pond on the property and most of the water will be recycled internally and reused. They also have a mining permit which regulates the grading and stormwater management and all the other things that go along with mining on a given site. They have proposed to put the ten foot (10') berm along the front of the property and part of the way down the side. They have also agreed to apply the buffer yard (A) requirement for landscaping and they have to be submitted to the Planning Department for approval. They prefer that their sites look good as they have no intention of advertising to the world that that is where they are. They would just like to have a nice looking berm on the property. The largest component is the buffer yard requirement. The Florence County Ordinance requires a two thousand foot (2,000') buffer where the previous version had a five hundred foot (500') buffer. There is no other business in the entire county which has a two thousand foot (2,000') buffer. The site does not blast, nor crush, they dredge material out of the ground, that is it. There has never been a need for a two thousand foot (2,000') buffer. They have asked for a very small change in operating hours 6:30 a.m. versus 7:30 a.m. start and will close at 5:30 p.m.. A height limit for their processing equipment and about fifteen hundred feet (1,500') from the road so with the berm the site should not be intrusive to anyone. Mr. Phears stated that it would be nice to have the variances passed and everything resolved with the County. Mr. Phears reiterated that the site is not the big bad operation that people think. It is a sand and gravel mine, not a quarry where people blast explosives and crush rock, it is far more limited.

There were questions from the Board.

In response to questions from the Board Mr. Phears stated that other than the requested variances, the applicant has all the necessary permits to operate the mining operation. The screening plan for the site will be fifteen hundred feet (1,500') off of the main road, per Ellen, their Environmental Engineering Manager, who was also present in the meeting.

Chairman Brian Casey inquired if there were any additional questions or discussion from the Board. As there were no other questions or discussion from the Board the Chairman Brian Casey inquired if there was any public who desired to speak in favor of the requested variance.

Mr. Gary Finklea, Esq, of Finklea, Hendrick & Blake, LLC, was present in the meeting and spoke in favor of the requested variance request. He stated that he wanted to impress upon the board the importance that mines play in economic development and in the region of Florence County. He further stated his frustration and disappointment with County Council passing the mining ordinance, from what was originally written. He believed that County Council made some poor choices in recent decisions regarding the planning and ordinances. Especially with the recent lost of a multi-million dollar lawsuit. The County unfortunately has not been following good, substantive planning procedures. He believes this has put planning staff in a bad position because County Council is not listening to planning staff and are not listening to the Commissions. As such, County Council now has put this rotten egg in front of you to try to solve their mistakes, and unfortunately creates problems for everybody here. If County Council had done the right thing to begin with, we would not be here. He could not speak to the negotiations that the applicant has taken with the County, but did want the Board to know that mines are an important part of the economic economy in South Carolina and in Florence. Unreasonable regulations, such as the ones posed on this particular site drive up the cost of housing, commercial construction and things in general. We should try to avoid

that when we can. He previously had a mine and it was highly regulated. His father has a mine and he handles the paperwork and it is highly regulated. Even his little mine had to come up before the Board of Zoning Appeals for an exception because, the County ordinance is just too strict. In regard to the elements that they had to consider, there are extraordinary, exceptional conditions pertaining to the property, because of its size, its location, is perfect, and it has the ingredients, the soil. Not all soils in Florence County are appropriate. Along with the soil, you also have connectivity to a four lane road, which makes travel very safe for the public and those around us. He further stated to the Board that they must consider that the conditions of the proposed site do not apply to other properties in the vicinity of the County, because they do not have the soil or the connectivity. Although the property is not rendered useless, it is deprived of all economical viable commercial usage. The area is not suited for a commercial location or residential development, due to lack of infrastructure. These are the things the Board should consider in the applicants request for the requested variances. He stated that he wished that there was additional time for negotiations, particularly front yards and requiring some slope in connection with the buffer yards and that might be something that could be addressed, since the community may be concerned about the slope of the mining operations in connection with the buffer yards.

Ms. Ellen Price, Regional and Environmental Manager of permitting and compliance for Martin Marietta was present in the meeting and requested to speak regarding the slope. She stated that in regard to sloping and if there was any concerns, the State of South Carolina Department of Environmental Services did regulate sloping down to the open body of water to make sure that it is safe for both wildlife and people. That information was addressed as part of the state permits.

There were questions and discussions from the Board.

In response to questions and discussions from the Board, Ms. Price stated that any slope down to an open body of water would be required to be constructed at three (3) to one (1) and vegetated over seventy-five percent (75%) coverage over seventy-five percent (75%) of the area. If wildlife were to fall in, they would be able to get out and if anyone were to trespass and get into a body of water, there is a safe means to get out.

Chairman Brian Casey inquired if there was any public who desired to speak in opposition to the requested variance request.

Mr. Ernest Groover, 411 Seabrook Road, Johnsonville, SC, was present in the meeting and spoke in opposition to the requested variance request. He stated that he has lived on his property for eighteen years (18), there are trees all around and presently there is no dust. Once the trees are removed from around the area and on the site there will not be enough water to keep the dust down. When the residence of the area get sick from all the dust, who, can they see about their issues and how will that be addressed. That was his concern.

Mr. David Yannello, 1795 W. Highway 378, Pamplico, SC, was present in the meeting and spoke in opposition to the requested variance request. He stated that this was a surprise because they previously asked staff what the variance was for and the information provided was pertaining to the whole mining ordinance, not just parts of it. It is difficult to speak specifically about the variance because they were unaware of the specifics of the variance until now. SCDES is in the business of approving permits. If you look at the permit process, they tell you what is wrong with it, you fix it and then they approve it. That are basically in business to approve permits. The County Council is in the business of zoning and that is what they mentioned in the community meeting they attended in

2023. In 2023 approximately two hundred and fifty (250) people came to the community meeting held by SCDES regarding the mining operation. Most of the people in attendance at the meeting were opposed to the proposed mining site. It is a huge piece of property approximately three hundred and forty-six acres (346 acres) and the mining operation portion of it is two hundred and ninety-six acres (296 acres). He stated that he was a kid once and used to mess around at all kinds of places. Although the mine will be manned and the front gate locked, he doesn't feel that this will prevent children from coming in from the backside and entering the property. There are many families in and around the area of the site with young children. Having the six foot (6') fence around the site, maybe even a chain linked fence, something that would help keep the children from getting in and getting into those deep ponds of water.

Mr. Jerry Evans, 2763 Crepe Myrtle Road, Florence, SC, was present in the meeting and spoke in opposition to the requested variance request. He stated that he owns a small parcel of land that borders the proposed mining site on the north. A sanding operation just does not fit well in the Salem Community. The operation brings heavy equipment, background noise, dust and safety concerns for families living nearby. He listened to Mr. Groover speak about dust and he also remembers the dust at Salem prevailing out of the Southwest. It would blow right into some of the homes and the trees have made it better but when the trees are removed, they will be back in a dust bowl. They are really concerned about the dust. They have safety concerns also on the Eastern border of the site as those family have small children in those areas. He noted that many of the Board members and staff probably live in subdivisions and their residential areas are totally protected from commercial operations. They just can't come into the subdivisions it is not suitable. But the rural Salem Community has no such protections, as the subdivisions. The only protections it has are the ordinances which the County has put into place. These ordinances are not perfect, but they do give some relief, and they need every bit of the relief that the ordinances provide and still even more. The ordinances should be allowed to stand without variances. They understand some of the efforts and discussions that have taken place to try to make it workable. Nevertheless, the requirements of the Ordinance need to stand without variances. The Palmetto Sand Company would argue that the Ordinances are too restrictive, but they are restrictive for a reason, they need to be restrictive. Our homeowners would say that the Ordinances are not restrictive enough. Florence County Council realized the restrictions were needed, and when the Ordinance was drafted it was intentionally made restrictive. This sand mining project will span multiple decades, once it is started up in the Salem Community, as such they will be stuck with the negative consequences of the site for a long time. Martin Marietta additionally requested a variance at this site in 2024 and the Board of Zoning Appeals denied their request for a variance. Nothing has changed, the community is exactly the same and the need for protection is exactly the same. The only thing changed is the name of the company making the request. The Board denied this variance previously and it must deny this variance request again.

Mr. Jimmy Poston, 4472 Mill House Road, Johnsonville, SC, was present in the meeting and spoke in opposition to the requested variance request. He stated that he is against the variance as the Board has already heard the argument from Martin Marietta before. He thanked all of his Community members for being in attendance and for all the telephone calls staff received. This shows the Board just how concerned they are about what is happening within their Community. He stated that there was no one in the meeting who would not be doing the same thing as his community is presently doing, if they had a piece of property and children or grandchildren that would be adjacent to the proposed site of a mining operations of this magnitude. None of County Council would want it. Mr. Finklea has departed the meeting and he wished that he had not, as he desired to respond to one of his comments. Mr. Finklea stated that County Council made all the wrong moves, and they feel that

County Council made the only smart move to try and protect the people that they are supposed to serve their constituents. That is what everyone should be doing. Mr. Finklea also stated that the sand was good for the County and it was in a perfect location. If it were his location, his home, or any others home, it would not be so perfect. They understand that the Board has a job to do and they appreciate what County Council has already done. He encourages the County to not back up, take this to the end. The things that happen today can change our County now and into the future in a better way, not a bad way. When large companies come with powerful pocketbooks, we should not bow down, but stand up and protect the citizens of our County. Mr. Poston encouraged the Board to make the right decision. The decision that the people the Community is crying about. This is not a short term project. If it had been a twenty acre (20 acre) mine it would have been done, the digging would have been completed. Mr. Finklea also stated that most of the sand stays in our County or it would be used in our County to grow our County and to make housing cheaper. But he lives in that area and knows where the sand goes from all of those areas around us. It goes straight to Horry County, Georgetown County and out of state. At least ninety (90%) percent of it and it will continue to go there. He stated that he appreciated the Board and all their consideration of the comments received and mentioned in the meeting, they just want the Board to do the right thing.

There was questions or discussions from the Board regarding a question Mr. Poston had earlier during staff's presentation.

Mr. Poston in response to the questions and discussions from the Board stated that he was not meaning to be disrespectful during the meeting, but during staff's presentation the presenter was reading fast and they did not know exactly what variances the applicant was requesting. It was just hard to keep up. He didn't even understand the ten thousand dollars (\$10,000), was it per acre or just a flat fee. It was just not understandable.

The Chairman explained to Mr. Poston that the amount was an adjustment of the fees of the variance and that it was a request for a flat permitting fee of ten thousand dollars (\$10,000).

Ms. Becky Ryan, 301 Allied Drive, #160E, Conway, SC, North Coast Office Director for the Coastal Conservation League, was present in the meeting and spoke in opposition to requested variance request. She stated that she wanted to offer a different perspective of what she had seen from other counties. She applauded Florence County for taking steps to protect their communities as SCDES requirements are not sufficient to protect the communities or their environments. She did not remember the exact numbers, but she had requested information from the first variance request from SCDES pertaining to the number of denials they had given for mining applications. It was just a handful of them, approximately seven (7) back in 2024. By and large if a mining application did not go through most times it was because it was withdrawn rather than an actual denial of the permit. It has been beneficial for Florence County to pass its own ordinance. Horry County went through a similar situation when they went through litigation against their mining ordinance and rather than adjust theirs after an unsuccessful case on their side, they withdrew their ordinance entirely. They just wiped it and relied solely on SCDES's mining ordinance and now they have more sand mines than any other county in the state. Horry County has about ten percent (10%) of all sand mines. It is like the Wild West. Hardly ever does a permit not go through. There have been four (4) that she has worked on that have been immediately proposed, immediately adjacent to conservation lands and to a community. There is one adjacent to Lewis Ocean Bay Heritage Preserve, there is also one next to a community that lives on a one lane dirt road, and it has become almost impossible for kids to go outside and play. It has really impacted their quality of life. They were able to get litigation and a

settlement agreement to put in place some guardrails for the community, but that was through litigation, not through an ordinance. She thanked Florence County for stepping the steps to draft and approve an ordinance to protect their communities. The proposed variances, the setbacks are unacceptable to go from five hundred feet (500') to one hundred feet (100') for adjacent to the property line, that is way too much. From two thousand feet (2,000') to just six hundred feet (600'), if it is an occupied residence, that is way too much to consider. That deviation is almost three times the reduction for it. It is just unacceptable. She continued to applaud Florence County for having an ordinance in place and wished that Horry County did the same.

Ms. Kathy Poston, 4472 Mill House Road, Johnsonville, SC, was present in the meeting and spoke in opposition to the requested variance request. She thanked the Board for the volunteered time and for being present to hear the item presented. She stated that she would have liked to have had information prior to the meeting of what Palmetto Sand was requesting as variances prior to the public hearing. The community was at a loss as they did not know the particular of what variances were being requested. The applicant and others make promises but they do not keep them. The communities of people in the room have lived it and know that the promises are not kept. She mentioned that she totally disagreed with all the comments mentioned by Mr. Finklea. When the citizens of the community received the notice that Blue Water desired to apply for a mining permit for the proposed site, they got concerned due to the enormity of the parcel of land. The community did what they were supposed to do, they pulled together, got a petition and contacted their representatives, council members and their state members. They contacted people and did what they needed to do and requested meetings with SCDES. This caused our Council Members to take a look at things and say; we might need to look at this situation in Florence County as we may have a problem. The citizens, the community they brought it to their attention and then did the right thing. She asked the Board to do the right thing and deny the variance request. If they allow the applicant a variance, it will not end there, they come with a huge arsenal, there are many, arrows in there quiver and they will pull them all out and use every last one. She did not feel that they will and would be good neighbors. They have the permit and they want it all and they will not quit. Their community will be destroyed and their health, and it will not end there. The citizens in their community today and the ones present in the room fear that if the variances are granted now they will not end. She thanked the Board for allowing her to speak and for listening to all of their concerns. She implored the Board to do the right thing.

Mr. J. Chris Riddle, Esq., of Law Offices of J. Christopher Riddle, LLC, was present in the meeting and spoke in opposition to the requested variance request. He stated that he was a landowner of a property nearby on Half Moon Road and that the Board's position would be easy as there was no application in front of them. He directed them to look at their packet on page 19 at the top of the page and read what the instructions required. If the applicant was not the owner, the owners must sign the declaration of agent. He further stated that the applicant was not the owner and that the designation of agent was not signed. Without that information the application was invalid. He stated that there was nothing that Board had to do at the meeting as the owner of the property was listed as Henry Family Farms. He was not able to locate any records conveying the property and since that did not seem to exist, without the owner's consent and approval on the form, there was no pending application. If the Board reviewed the intent of the applicant, he would question the words used on page twenty (20) of the packet, which used the words, was acquired, acts of acquisition, specific use for which it was purchased and was acquired. Five instances where the applicant says they purchased or acquired the property, but that information was not located within the record. Without that information the Board had an invalid application and there was nothing the Board could take any action on.

As there were not others in attendance who desired to speak in opposition to the requested variance request Mr. Wayne Phears requested to make a short rebuttal.

Mr. Wayne Phears in rebuttal stated that he desired to clarify a few things. That there would be a six foot (6') chain link security fence in the conditions of the mine. The lawsuit case mentioned previously regarding Horry County was exactly what the applicant is attempting to avoid. In that case the Horry County Ordinance was struck down by a Federal Judge. If the County continues going in that direction, that is probably what will happen in the present case as the cases are very similar. The applicant is trying to submit to the mining ordinance with some actual modest changes. The material from the mining operation would be used locally, as it cannot be hauled very far. Most people who know anything about the trucking industry, will know that such material as described sells relatively for a modest cost a ton and cannot be hauled very far. Permits, mean conditions, SCDHEC, SCDES has an interactive process back and forth with an applicant to ensure that they can get a set of conditions that comply with the law. If those conditions are met, SCDHEC issues the permits.

There were questions and discussion from the Board.

In response to questions and discussion from the Board, Mr. Phears stated that a signed declaration was submitted.

There were questions and discussion from the Board.

In response to questions and discussion from the Board, Mr. Brashear stated it was not included within the packet, but staff did have a letter of authorization from Henry Family Farms for the applicant on file within their system of records.

There were questions and discussions from the Board as they reviewed the application concerning the designation of agent.

In response to questions and discussion from the Board, Mr. Brashear stated that within the normal course of operations staff would accept the letter of authorization and that one was on file for the project. He further stated that the County Attorney was not present in the meeting, but other County Attorneys representatives were present in the meeting.

The Chairman of the Board stated that the Board would like additional information on the application and subject at hand prior to moving forward in the meeting. He stated that the Board would take a brief recess.

The Board recessed at 7:19 p.m..

The Board reconvened at 7:30 p.m.

Chairman Brian Casey called the meeting back to order. He stated that the Board had requested to have the County Attorney present at the meeting to discuss how the Board should proceed in the meeting in light of the events that were brought forward. As the County Attorney was not present the Board made a motion.

Motion: Commissioner Louie Hopkins made a motion to table the requested variance BZA #2026-02 until the Board had received further information from the County Attorney regarding the requested variance request / The motion was seconded by Vice-Chairman Brenda Deas / Six Board members voted to table the requested variance BZA #2026-02 until the Board had received further information from the County Attorney regarding the requested variance request ./ The motion to table carried with a vote of 6 to 0 for the requested variance BZA #2026-02.

There was no further business, discussion or questions by the Board.

VI. Adjournment

Chairman Brian Casey declared the meeting adjourned at 7:36 p.m.

Lisa M. Becoat, Secretary

Approved by:

J. Shawn Brashear, Planning Director

*These minutes reflect only actions taken and do not represent a true verbatim transcript of the meeting.

**STAFF REPORT
TO THE
FLORENCE COUNTY BOARD OF ZONING APPEALS
TUESDAY, MARCH 17, 2026
BZA#2026-03**

SUBJECT: A variance requested by Palmetto Sand Company, Inc, from requirements of the Florence County Code of Ordinances, Chapter 30 – ZONING ORDINANCE, ARTICLE III. – CONDITIONAL USE REGULATIONS, Sec. 30-117. – Mining and Extraction Operations. For the property located off of E. Hwy 378-Hannah, Johnsonville, SC 29555, as shown on Florence County Tax Map No. 00418, Block 02, Parcel 006.

LOCATION: East Highway 378-Hannah, Johnsonville, SC

TAX MAP NUMBER: 00418, Block 02, Parcel 006

COUNCIL DISTRICT(S): 2; County Council

OWNER OF RECORD: Henry Family Farm Properties LLC

APPLICANT: Palmetto Sand Company, Inc.

LAND AREA: Approximately 346.08 acres

VARIANCE REQUESTED: The variance requested would allow the applicant to obtain a Certificate of Zoning Compliance for a mining operation greater than 40 acres.

STAFF ANALYSIS:

Existing Land Use and Zoning:

The subject property is unzoned with current use being vacant.

Surrounding Land Use and Zoning:

North: Unzoned/ Residential, Industrial, Vacant

South: Unzoned/ Residential, Vacant

West: Unzoned/ Residential, Vacant

East: Unzoned/ Residential, Vacant

Background:

The applicant is seeking relief from specific provisions of Sec. 30-117 of the Florence County Code of Ordinances to develop a proposed mining operation exceeding forty (40) acres, identified as the “Henry Tract” mine on the applicant submitted site plan.

The South Carolina Dept of Environmental Services (SCDES) issued an Individual Mine Operating Permit (I-002403) for this mine on January 29th, 2025. Per Sec. 30-117 of the Florence County Code of Ordinances, a Certificate of Zoning Compliance must be obtained prior to development of a mining or extraction operation within the county.

The application, including the Narrative Statement, Operations Plan, and submitted site plan detail the specific regulatory relief sought by the applicant and the proposed operational parameters for the Board’s consideration.

If approved, the requested variance will enable the applicant to secure a Certificate of Zoning Compliance for a mine greater than 40 acres in accordance with the Narrative Statement, Operations Plan, and submitted Site Plan.

Sec. 30-117. Mining and Extraction operations.

Except that any mining activity which is part of a larger on-site construction project where the mining is not a major component, the mining activity shall be exempt from the requirements of this section. This exemption shall apply to land subdivision projects, to sites where buildings and structures are to be constructed, and to other land improvements which are approved under applicable permits such as approved Sketch and Development plans, Land Disturbance permits, Floodplain Development permits, and Building permits.

A mining or extraction operation must obtain a certificate of zoning compliance prior to such activities. Prior to the issuance of a certificate of zoning compliance, applicable mining related permits must be obtained from applicable state and federal agencies. Proof of such permits must be provided along with a zoning compliance application. The applicable state and federal permits shall have been issued within six (6) months of the date of the request for the County certificate. The application for the certificate of zoning compliance must include documentation to demonstrate compliance with the following requirements.

(1) Mines greater than 40 acres:

- a. Shall be not less than five hundred feet (500’) from the property line and shall not be less than two thousand feet (2,000’) from the nearest residential use and obvious place where children congregate such as: schools, religious worship centers, playgrounds, and daycares, etc.

- b. Shall have bufferyards created and maintained in the locations prescribed for Industrial uses as identified in §30-121, Table VI. Regardless of the distance of the extraction site from the property line, bufferyards shall be created and maintained in compliance with the twenty-foot (20’) bufferyard requirements of Type D bufferyards as identified in §30-121.

- c. A fee of \$1,000 per acre shall be applied to any such application.

(2) Mines 40 acres or less but more than 5 acres:

- a. Shall be not less than two hundred fifty feet (250') from the property line and shall not be less than two thousand feet (2,000') from the nearest residential use and obvious place where children congregate such as: schools, religious worship centers, playgrounds, and daycares, etc.
- b. Shall have bufferyards created and maintained in the locations prescribed for Industrial uses as identified in §30-121, Table VI. Regardless of the distance of the extraction site from the property line, bufferyards shall be created and maintained in compliance with the forty-foot (40') bufferyard requirements of Type D bufferyards as identified in §30-121.
- c. A fee of \$200 per acre shall be applied to any such application.

(3) Mines five acres or less:

- a. Shall not be less than one hundred fifty feet (150') from the property line.
- b. Shall be 1,000 *ft* from the nearest residential use and not less than 2,000 *ft* from an obvious place where children congregate such as: schools, playgrounds, and daycares, etc. The 1,000-foot requirement from the nearest residential use may be omitted when the nearest residence is located on the same property and the mine is intended to serve as a water feature for recreation or agriculture purposes.
- c. Shall have bufferyards created and maintained in the locations prescribed for Industrial uses as identified in §30-121, Table VI. Regardless of the distance of the extraction site from the property line, bufferyards shall be created and maintained in compliance with the fifty-foot (50') bufferyard requirements of Type D bufferyards as identified in §30-121.
- d. A fee of \$100/per acre shall be applied to any such application.

(4) Additional requirements for mines greater than five acres

- a. **Hours of Operation.** Hours of operation shall be Monday thru Friday 7:30 AM To 5:30 PM, except County observed Holidays.
- b. **Explosives.** Where explosives are employed, the mine operator shall provide an action plan that has been approved by the fire marshal having jurisdiction and the Florence County Sheriff's Office. Explosive operation times shall be within the hours of 9:00 a.m. and 3:00 p.m. Monday—Friday excluding County observed holidays.
- c. **Site access.**

- a. The site must have direct access to a major arterial road. Minor arterial road and Collector road access may be allowed only when direct access to a major arterial road is unreasonable and alternate access would not result in excessive traffic through populated areas and the road(s) is designed for heavy truck traffic. It shall be the burden of the developer/applicant to demonstrate compliance.
 - b. A truck route plan must be included in the submission for zoning compliance.
 - c. All private and/or public roads shall be kept wetted while being used or shall be hard-surfaced and maintained to prevent the emanation of dust.
 - d. Access from the site onto any public road shall not create the accumulation of debris such as dirt or gravel onto the roadway.
 - e. Any sub-standard roads must be brought up to adequate standards before a certificate zoning compliance can be issued. It shall be the burden of the applicant to provide verification that the authority having jurisdiction is satisfied with the road's condition. The Certificate of Zoning Compliance may be revoked if the authority having jurisdiction deems that the construction traffic is causing road damage requiring repairs. The authority having jurisdiction must notify the operator in writing. The operator must complete the repairs within thirty (30) days of notice or obtain approval of a remediation plan. The County Administrator may accept a financial guarantee in lieu of immediate repairs if the repairs can be delayed. In no case shall repairs extend beyond twelve (12) months from the date that the report is provided by the authority having jurisdiction whether the road is maintained by the County or another authority. Cost estimates of road repairs must be provided by a duly licensed SC Engineer. Such financial guarantees shall equal not less than 200% of the cost estimate if the road falls within the County's maintenance system. Roads that fall outside of the County's maintenance system is subject to the requirements of that authority.
- d. **Height.** No equipment shall exceed thirty-eight feet (38') in height above the lowest natural grade on the site regardless of zoned districts.
 - e. **Fencing.** A fencing plan shall be submitted with an application for zoning compliance for mines. In addition to fencing that may be required for bufferyard compliance, the following requirements must be met.
 - i. A heavy-duty security fence of not less than six feet (6') shall encompass the extraction site, areas of possible unsafe conditions (such as above ground fuel tanks and stockpiles of materials) and places where unauthorized personnel are prohibited.
 - ii. The fence shall not be less than fifty feet (50') from the extraction site and other required fenced areas.

- iii. Entrances, gates and access points in the fence shall be locked to prevent unauthorized entry during non-operational hours.

f. Identification.

- i. Clearly legible signs shall be placed along the fence at intervals not to exceed three hundred feet (300'). The sign shall read, "NO TRESSPASSING - MINING ZONE" in letters not less than four inches (4") in height. These signs shall also be placed at all entry/access points to the site.
- ii. A sign shall be located at all entrances, gates and access points that provide the assigned E-911 Address, and the operators emergency contact name, address and phone number. The sign shall not be less than 9 *ft*² with letters and numbers not less than six inches (6") in height.

- g. **Noise.** Maximum noise at the property line shall not exceed 65dB measured at the property line.

- h. **Operations Plan.** An operations plan shall identify the specific types of activities that are necessary for successful operation of the use, specific technologies that will be incorporated into the use, potential impacts on adjacent lands and mitigation measures, the size of the operation, the number of employees, and the operating hours of the use.

- i. **Exemptions for certain uses pertaining to Mining Operations.** Excavation or grading activities solely for onsite construction, or land development whereas the extracted materials will not be removed from the site, and agricultural irrigation ponds five (5) acres or less and drainage conveyances shall be exempt from the mining requirements of the Zoning Ordinance if the use complies with all of the following conditions:

- i. The mining operation shall be limited to one(1) year. If such work exceeds one(1) year, a new certificate of zoning compliance must be obtained.
- ii. The mining operation shall not be located within 50 *ft* of any property boundary and/or within 250 *ft* of any Building intended for human occupancy existing at the time of zoning compliance application.
- iii. No more than one (1) mining use shall be permitted on the same property within one (1) year from the date of zoning compliance approval for a previous mining use.

(5) Exceptions and Penalties:

- a. **Exemptions.** Mines may be exempt from any portion, or all, of these requirements given the following conditions are met, and the Board of Zoning Appeals (BZA) considers it is in the best interest of the community to do so and authorizes staff to issue a Certificate of Zoning Compliance.

- i. The mine operator can demonstrate that the mine was permitted and in continual operation under SCDES mining permit prior to the date of the introduction of this ordinance, January 23, 2024; or;
- ii. The mine operator can demonstrate through Florence County property tax records, and proper licensure through the South Carolina Department of Revenue (SCDOR) that the mine was in existence and in continual operation prior to the date of the introduction of this ordinance, January 23, 2024; and,
- iii. The mining operations cease and the operator obtains a proper SCDES mining permit within 10 months of the date introduction of this ordinance, January 23, 2024.
- iv. In addition to the per acre fee associated with an application, an additional fee of \$325 shall be applied for applicants seeking relief from the Board of Zoning Appeals (BZA).

b. Penalties.

- i. Any person or entity violating any provision of this ordinance and found guilty of such is subject to a misdemeanor fine of not more than \$200 or 30 days in jail; each day the violation persists is considered a separate violation.
- ii. A violation that persists beyond fifteen (15) days after notice, shall result in the revocation of the Certificate of Zoning Compliance.
- iii. If a certificate of zoning compliance is revoked, a new certificate cannot be issued until the project meets all of the requirements of this ordinance and will not be subject to the exceptions which may be granted under §30-117(4).

(Ord. No. 26-2023/24, § 1, 3-21-24)

Access and Circulation:

The property is currently accessed by way of East Salem Road, West Hwy 378, South Pamplico Hwy, and Sandpit Road in Johnsonville, SC.

Sec. 30-293. – Board of zoning appeals (c)

Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.
The board of appeals has the following powers:

- (1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
- (2) To hear and decide appeals for variance from the requirements of the zoning ordinance

when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. These conditions do not generally apply to other property in the vicinity;
- c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

VARIANCE REQUEST:

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal [Form 1] of the following provisions of the Zoning Ordinance:

- a. **Applicant's Response:**
Sec. 30-117. Mining and Extractions operations

so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as follows:

- b. **Applicant's Response:**
A sand mining/dredging operation greater than 40 acres

for which a permit has been denied by a zoning official on the grounds that the proposal would be in violation of the cited section(s) of the Zoning Ordinance.

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by state law and the ordinance are met by the following facts.

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows:

Applicant's response:

The subject property was originally utilized as productive agricultural land before being converted to timber production and subsequently clear-cut between

approximately 2009 and 2010, with replanting occurring thereafter; the existing pine stand is immature and less than 20 years old. This land management history has resulted in a previously disturbed, transitional tract with characteristics that differ from surrounding undisturbed agricultural and rural residential parcels, including limited near-term agricultural viability and early-stage timber regrowth. The property's large, contiguous acreage and long-standing use for agriculture and silviculture distinguish it from nearby lands and create conditions inherent to the tract rather than self-imposed by the applicant. Accordingly, the site's physical condition, scale, and documented land use history constitute extraordinary and exceptional conditions that support consideration of a variance for a resource-based use such as sand mining.

- b. These conditions do not generally apply to other property in the vicinity as shown by:

Applicant's response:

These conditions do not generally apply to nearby properties because most surrounding parcels remain in active agriculture, rural residential use, or mature timber stands and have not experienced recent large-scale clear-cutting and replanting. Unlike those properties, the subject tract is a large, contiguous 256-acre parcel that was extensively harvested and is now in an immature, transitional silvicultural state, creating physical and land-use characteristics that are not typical of other lands in the vicinity.

- c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows:

Applicant's response:

by limiting viable, resource-based uses on a large, previously disturbed tract of land that is not well-suited for immediate agricultural production or mature timber harvesting, thereby constraining the property to less practical uses that do not reflect its scale, land management history, and current transitional silvicultural condition.

- d. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:

Applicant's response:

The subject site is a large rural tract with a history of agricultural and silvicultural use, surrounded by similarly low-density residential and resource-based land uses. Its size, rural setting, and previously disturbed condition provide natural buffering

and ensure the proposed use remains consistent with the existing character of the area rather than introducing an incompatible land use. All operations adhere to strict South Carolina Department of Environmental Control regulations and enforcement.

3. The following documents are submitted in support of this application:

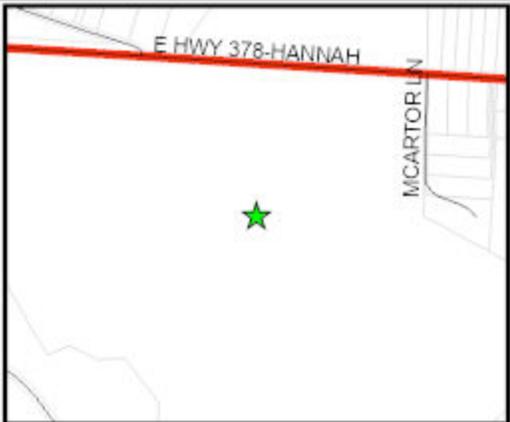
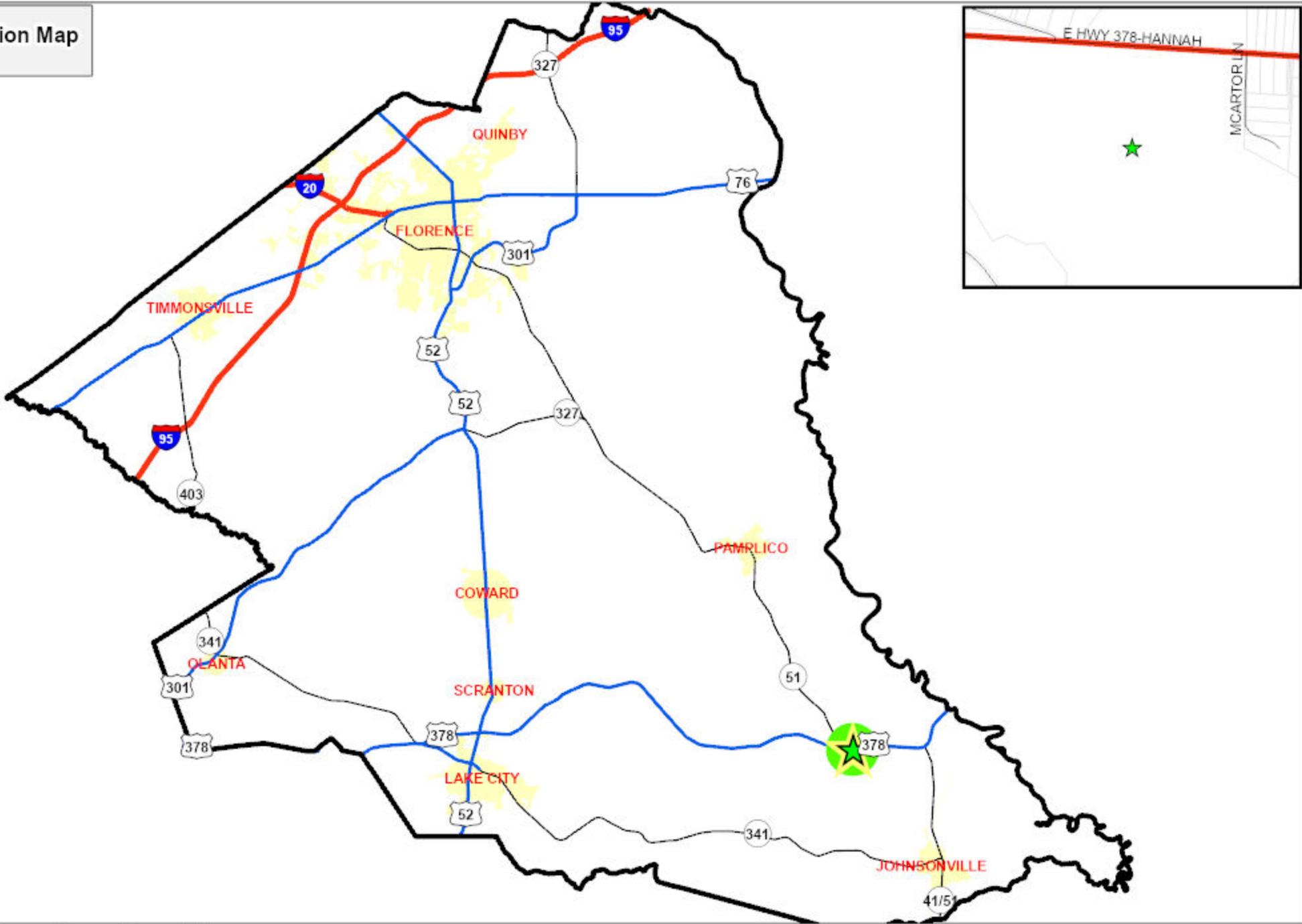
Applicant's response:

Site Plan, SCDES Individual Mine Operating Permit #I-002403, Narrative Statement, Operations Plan, Notarized Letter of Authorization from the property owner, Applicant's ID

ATTACHMENTS:

1. Location Map
2. Zoning Map
3. Aerial Map
4. Site Plan
5. SCDES Mining Operation Permit #I-002403
6. Submitted Application
7. Narrative Statement
8. Operations Plan
9. Notarized Letter of Authorization

Location Map

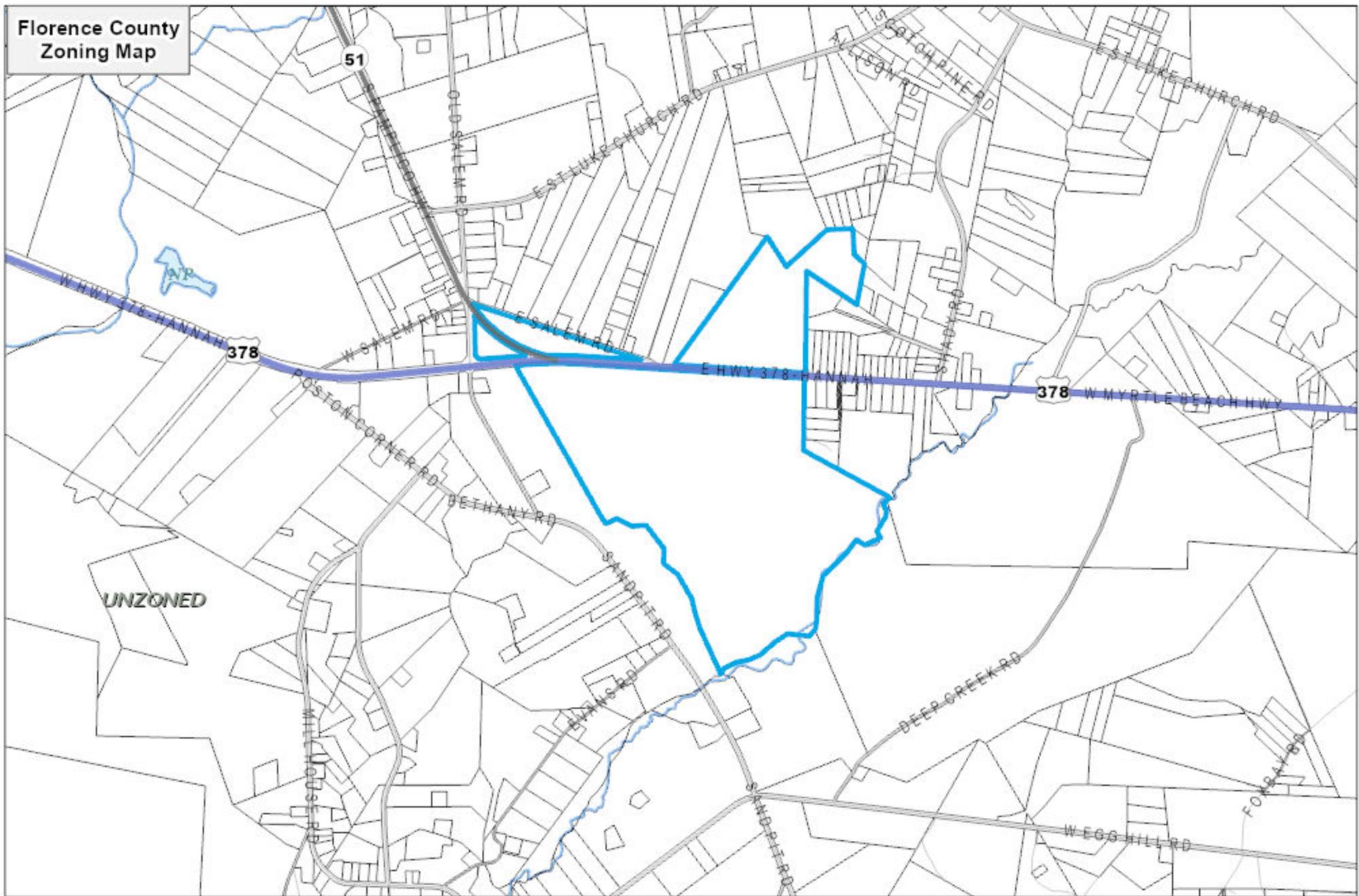


Florence County
Planning Department
Meeting Date:
03/17/2026



Council District 2
BZA#2026-03

**Florence County
Zoning Map**



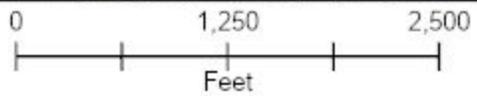
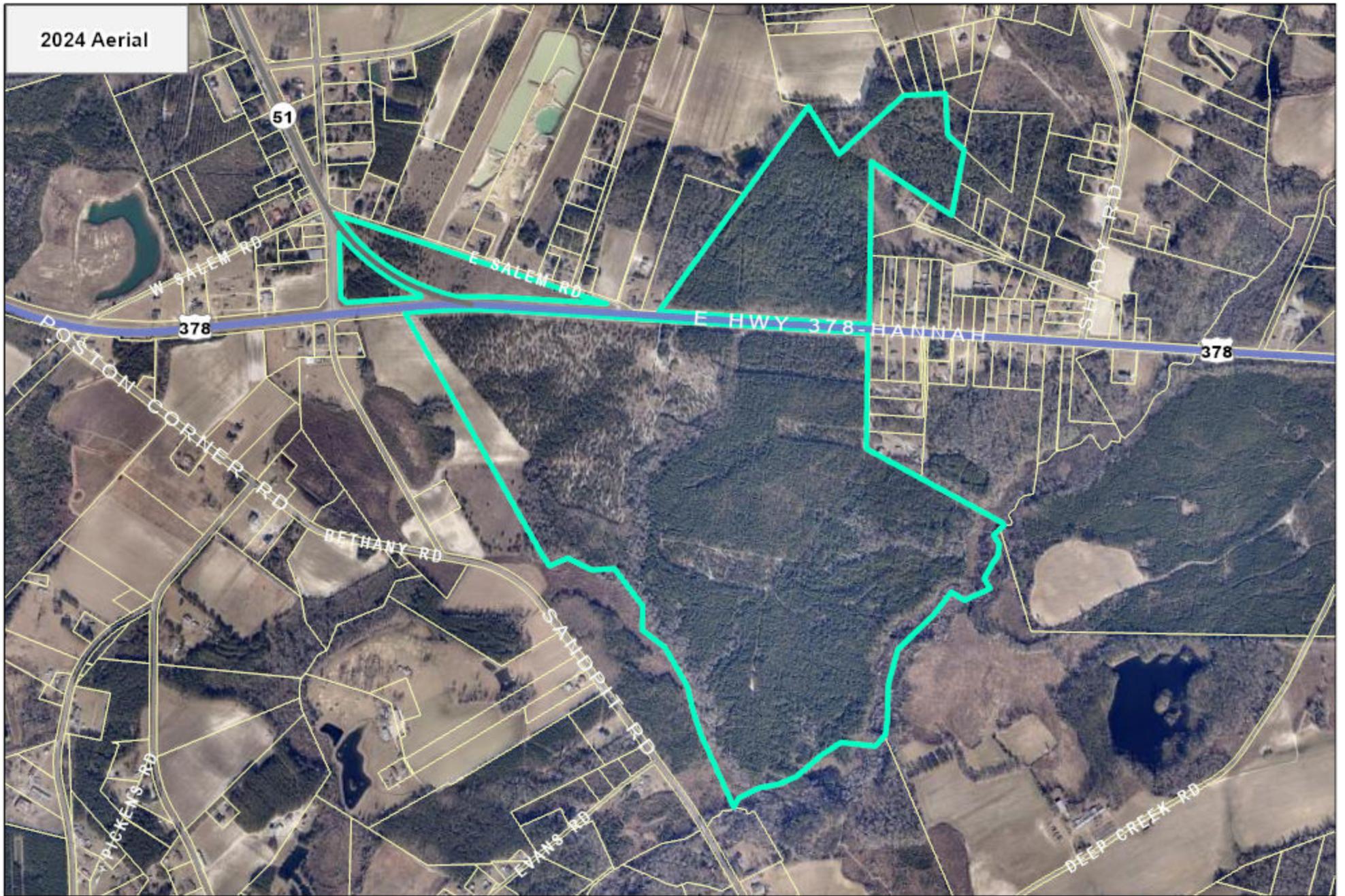
Current County Zoning
UNZONED

Florence County
Planning Department
Meeting Date:
03/17/2026

**Council District 2
BZA#2026-03**



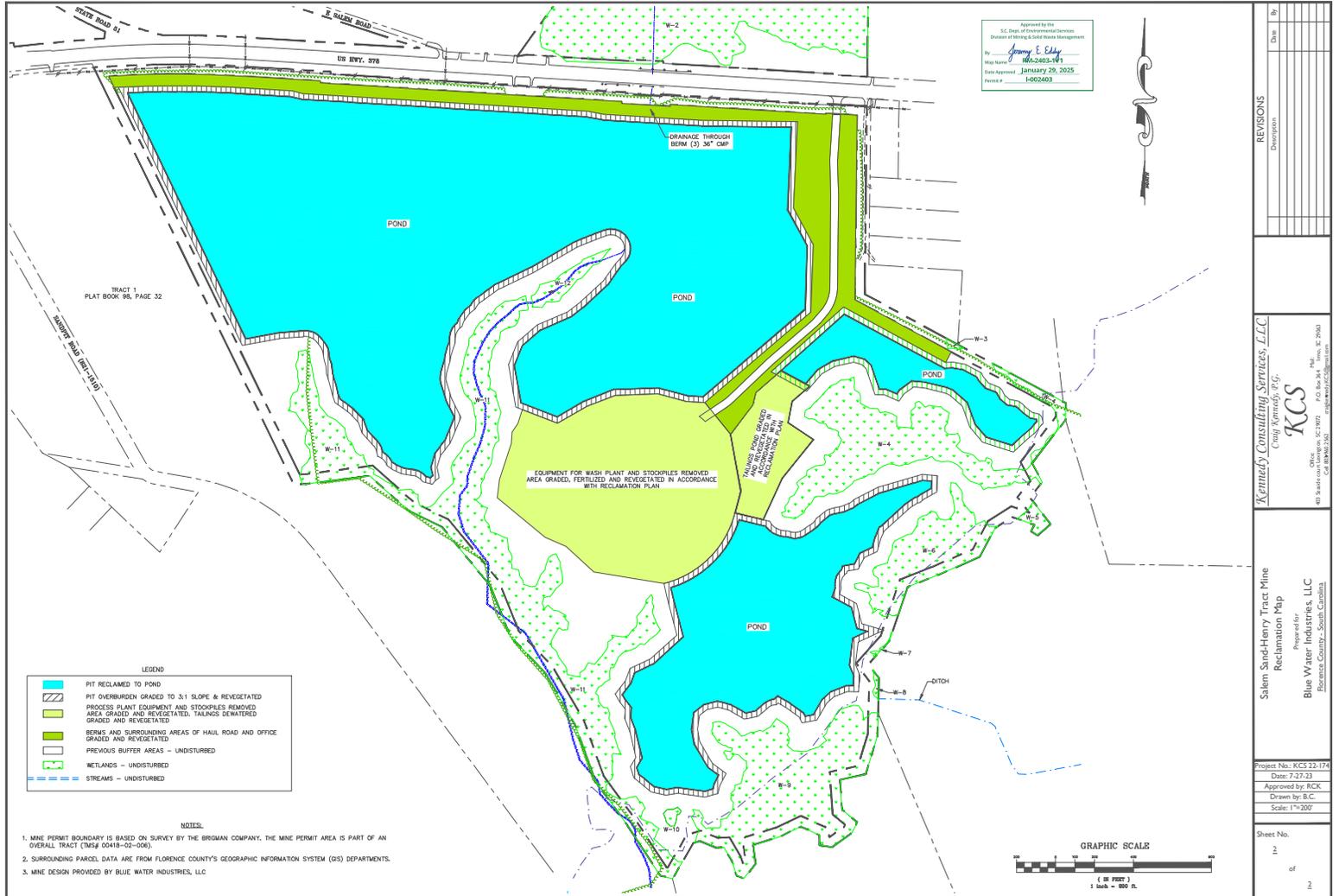
2024 Aerial



Florence County
Planning Department
Meeting Date:
03/17/2026



Council District 2
BZA#2026-03







SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

Division of Mining & Solid Waste Management
Mining & Reclamation Program
2600 Bull Street
Columbia, S.C. 29210

January 29, 2025

Martin Marietta Southeast Agg Operations, LLC
Attn: Ellen Price
3019 Riverwatch Pkwy
Augusta, GA 30907
ellen.price@martinmarietta.com

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Approval of Application and Reclamation Plan for a Mine Operating Permit
Issuance of an Individual Mine Operating Permit
Mine Permit #I-002403 | Henry Tract Mine | Florence County

Dear Mrs. Price:

The S.C. Department of Environmental Services (SCDES) has approved the application and reclamation plan for the Henry Tract Mine as of the date of this letter. SCDES has received the reclamation bond submitted in the amount of \$664,487.00.

With the receipt of the reclamation bond and the approval of the application and reclamation plan, this letter serves as official notification that the Individual Mine Operating Permit for the Henry Tract Mine is being issued as of the date of this letter. Enclosed are the permit document, reclamation plan, and mine and reclamation maps. Please note that Section 48-20-250 of the S.C. Mining Act states, "*No provision of this chapter supersedes, affects, or prevents the enforcement of a zoning regulation or ordinance within the jurisdiction of an incorporated municipality or county or by an agency or department of this State, except when a provision of the regulation or ordinance is in direct conflict with this chapter.*"

Should there be any questions or if we may be of further assistance, please do not hesitate to contact the project manager, Colby Myers, at 803-898-3079 or by e-mail at Colby.Myers@des.sc.gov. Colby is also the inspector for this site.

Respectfully,

A handwritten signature in blue ink that reads "Jeremy E. Eddy".

Jeremy E. Eddy, P.G.
Manager, Mining & Reclamation Program

Cc: Marty Lindler, Colby Myers, Brett Caswell, Kevin Yokim (Florence County), Craig Kennedy (Consultant), Jeffrey Phillips (MSHA)

Encl: Permit document, reclamation plan, and maps.



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

**INDIVIDUAL MINE
OPERATING PERMIT**

**Henry Tract Mine
Martin Marietta Southeast Agg Operations, LLC**

Martin Marietta Southeast Agg Operations, LLC, a corporation, has been granted a Mine Operating Permit, Mine Permit Number I-002403, to operate the Henry Tract Mine in accordance with this Permit, the approved Reclamation Plan, the S.C. Mining Act (S.C. Code Sections 48-20-10 *et seq.*, 1976), and Regulations 89-10 *et seq.* The operator shall conduct this operation as represented in documents submitted to support the issuance of this permit.



JEREMY E. EDDY, P.E.
MANAGER - MINING AND RECLAMATION PROGRAM
DIVISION OF MINING AND SOLID WASTE MANAGEMENT

PERMIT NUMBER: I-002403
ORIGINALLY ISSUED: January 29, 2025
MODIFIED: N/A



Part I: GENERAL INFORMATION

In accordance with Section 48-20-60 of the South Carolina Mining Act, this Mine Operating Permit will remain valid unless it terminates as set forth in R.89-270 or is revoked in accordance with Section 48-20-160 and R.89-280. The anticipated mining completion date is shown on the *Schedule for Conservation and Reclamation Practices* in the *Reclamation Plan*.

The approved *Permit Application, Reclamation Plan*, and all supplemental information referenced herein, are an integral part of this permit. *Land Entry Agreements and Mine Maps* as identified in Part II and Part V, respectively, are also a part of this permit.

CONTACT INFORMATION:

Home Office Address: Martin Marietta Southeast Agg Operations, LLC
3019 Riverwatch Parkway
Augusta, GA 30907

Local Office Address: Martin Marietta Southeast Agg Operations, LLC
3019 Riverwatch Parkway
Augusta, GA 30907

Address for Official Mail: Same as Home Office Address

Company personnel and title to be the contact for official business and correspondence [South Carolina Department of Environmental Services (SCDES) should be notified in writing immediately of any change in contact, address, telephone or e-mail]:

Ellen Price, P.G. Telephone: 706-691-8785
Manager, Environmental Engineering Email: Ellen.Price@martinmarietta.com

LOCATION: The mine is located on the Gresham Quadrangle, Pamplico South Quadrangle, Johnsonville Quadrangle, and Prospect Crossroads Quadrangle, SC U.S.G.S. 7.5' Topographic Maps. The approximate geographic coordinates for the site are:

Latitude: 33.880085 Longitude: -79.500019

LOCATION DESCRIPTION: The operation is located in Florence County, approximately 1 mile(s) southeast of Salem, S.C. Specifically, the site is located [Click here to enter text](#). approximately 500 feet west of the intersection of Hwy 378 and McArtor Lane.

Part II: PERMITTED LAND

This permit allows Martin Marietta Southeast Agg Operations, LLC, also referred to as the operator, to conduct mining operations within the permitted land as defined through the *Land Entry Agreement* submitted as part of the application. Permitted land as defined by Section 48-20-40(18) is "the affected land in addition to (a) lands identified for future mining to become affected land; (b) and undisturbed or buffer area that is or may become adjacent to the affected land." Therefore, this permit grants the operator the right to conduct active mining operations within the specified affected land, delineate land for future mine areas as future reserves, and to establish undisturbed buffer zones to mitigate any adverse effects to the surrounding environment.

AFFECTED LAND: 189.2 acres of land are to be affected by Martin Marietta Southeast Agg Operations, LLC under the current mine plan; 189.2 of the affected acres are currently bonded. The affected acres are derived from the operator's response in the *Application for a Mine Operating Permit* and are shown on the approved mine map(s).

FUTURE RESERVES: 0.0 acres are identified as future reserves and are specified on the mine site map. Prior to the initiation of activity in future reserves, the operator shall submit detailed mine and reclamation plans to SCDES for approval.

BUFFER AREAS: 71.5 acres are identified as buffer area, setbacks, or areas that will not be disturbed beyond the pre-mine natural state. These buffer areas are identified on the mine site map. Acres designated as buffer areas are not bonded under the reclamation bond. Any activity within the buffer areas (e.g. removal of timber) shall require **prior** notification and approval by SCDES.

TOTAL PERMITTED AREA: 260.7 acres as submitted on the *Land Entry Agreement(s)*.

LAND ENTRY AGREEMENTS: The operator is required to furnish and maintain up-to-date *Land Entry Agreements* on all lands covered under this permit. Any change in ownership on any portion of land covered by this permit, the operator is responsible for furnishing the appropriate and completed *Land Entry Agreements* (Forms MR-600 or MR-700) to SCDES within 30 days of the change of ownership.

Land Owner(s) as Listed on *Land Entry Agreement(s)*:
TMS #: 00418-02-006, Henry Family Farm Properties, LLC

Total acres of the contiguous tract(s) of land for which the permit is granted:

OWNED 0.0 LEASED 260.7 TOTAL 260.7

Part III: FINANCIAL ASSURANCE FOR RECLAMATION

The financial assurance for reclamation is based upon the total affected acres. Pursuant to Section 48-20-70 and R.89-200, the financial assurance for this mining permit is set at \$664,487.00. The financial assurance shall remain in force and continuous throughout the life of the mining operation and shall only be released, partially or in full, back to the operator after the operator has completed reclamation in accordance with the approved *Reclamation Plan* and the minimum standards in R.89-330.

Part IV: MINE OPERATIONS

Martin Marietta Southeast Agg Operations, LLC is permitted to mine sand at the Henry Tract Mine. The maximum depth to the pit floor shall not exceed ±0 feet mean sea level (to an approximate elevation of 50 feet below ground surface as measured from the lowest ground surface elevation). Mining will take place on a tract of land leased by the referenced operator. This tract of land is identified in the submitted *Land Entry Agreement*.

MINE/PIT CHARACTERIZATION:

Sand, and possibly some gravel, will be removed from the bed of the pit using a hydraulic suction dredge. The dredge will pump the material to a processing plant on the bank, where it is screened, dewatered, and stockpiled. Excavators and loaders will be used to load material from the stockpiles onto trucks for transport offsite.

PROCESSING PLANT LOCATED ON MINE SITE:

The processing plant shall be centrally located, as designated by the mine map. The plant may consist of a grizzly, screens, and sand screws.

MINE DEWATERING:

The pit shall not be dewatered. If dewatering of the stockpile area becomes necessary due to heavy rains, water will be pumped into a sediment basin prior to discharge. Necessary discharge permits must be obtained prior to any discharge.

BLASTING:

Blasting operations are not permitted at this mine site.

NOISE MONITORING AND CONTROL:

The operator shall use Best Management Practices (BMPs) to minimize noise from the mine site. These noise BMPs shall include, at a minimum, proper maintenance of mufflers on equipment (trucks, trackhoes, pumps, etc.) and consideration of special buffering measures if planning to operate equipment during nighttime hours.

OTHER STATE OR FEDERAL PERMITS:

The operator must obtain, maintain, and update, as appropriate, all necessary State and Federal permits in order to construct and operate the mine.

Part V: MAPS

The mine site map was prepared by Kennedy Consulting Services. This map is further identified with the following SCDES map number and is part of the operating permit:

SM-2403-1V1 Mine Map Dated: October 13, 2023

The reclamation map was prepared by Kennedy Consulting Services. This map is further identified with the following SCDES map number and is part of the operating permit:

RM-2403-1V1 Reclamation Map Dated: July 27, 2023

Part VI: PROTECTION OF NATURAL RESOURCES

MINE SITE AND SURROUNDING AREA:

Prior to mining activities, this site's land use type was undeveloped; the site has been logged. The immediate area around this site is mostly undeveloped and rural residential. The topography of this area is slightly variable (i.e., mostly flat), with surface elevation ranging from 50 - 60 ft. MSL. The site is located south of Hwy 378 and east of State Rd SC 21-225. There is a residential area to the northeast and a permitted mining site (I-002262) to the northwest of the site.

PUBLIC SAFETY:

A gate shall be installed at the entrance to the mine site and kept locked during inactive periods. *Warning* and/or *Danger* signs shall be posted around the perimeter of the property. In the future, if determined to be necessary by SCDES, an appropriate fence shall be installed around the affected area.

Operator shall use BMPs to prevent accumulation of sediment/soil on public roads carried by trucks and other vehicles exiting the mine site; any accumulations shall be removed by the operator on a daily basis or more frequently if needed. To reduce the potential of trackout on public roads, the operator shall construct a crushed stone "mud mat" that extends the width of the haul road and stretches a minimum of one hundred (100) feet in length.

The operator shall establish a protected area or establish procedures to minimize fuel spillage or incidental spillage of other petroleum products during storage, refueling of equipment or in the performance of routine maintenance on equipment. Contaminated materials resulting from contact with petroleum products shall be removed from the site and disposed of properly to prevent contamination to ground and surface water resources.

During times of inactivity or for final reclamation, slopes shall be constructed no steeper than a 3H:1V gradient in order to minimize the potential for landslides or unstable mine walls. The operator is responsible for maintaining stable mine walls and appropriate setbacks to prevent significant slumping that may encroach into non-permitted lands.

PUBLICLY-OWNED PARKS, FORESTS, OR RECREATION AREAS:

There are no publicly owned parks, forests, or recreation areas near this mine site.

WETLANDS AND SURFACE WATER AREAS:

Deep Creek runs to the east and several unnamed tributaries exist on the mine site, as shown on the mine map. Furthermore, there are wetlands to the west, south, and east of some parts of the mine site.

The operator shall maintain a minimum 50ft undisturbed buffer between all land disturbance activity and any wetlands shown on the mine map. This buffer shall be permanently flagged prior to the initiation of any mine activity. The flags shall be maintained throughout the active mine operation of the site. The operator is allowed to discharge accumulated stormwater—that meets NPDES permit limits—into wetlands through a regulated NPDES outfall.

The operator shall comply with the NPDES General Permit for Non-metallic Mineral Mining and Stormwater Pollution Prevention Plan developed for the mine.

SIGNIFICANT CULTURAL OR HISTORICAL SITES:

Per the *Cultural Resources Reconnaissance Survey of Approximately 365 Acres at the Proposed Henry Tract Mining Site* conducted by Terracon on May 8, 2023, no archaeological sites or isolated finds were identified on this site.

If archaeological materials are encountered prior to or during the construction of mine facilities or during mining, the S.C. Department of Archives and History and SCDES should be notified immediately. Archaeological materials consist of any items, fifty years or older, which were made or used by humans. These items include, but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, oyster shell, worked wood, bone and stone, metal and glass objects, human skeletal remains, and concentrations of charcoal and stones below the ground surface. These materials may be present on the ground surface and/or under the surface of the ground.

WILDLIFE:

Common wildlife typical to this area can be found in and around this site; the Spotted Turtle (*Clemmys guttata*) and Northern Long-Eared Bat (*Myotis septentrionalis*) are threatened or endangered species believed to inhabit this area.

Potential habitat for spotted turtles was observed on the site and include shallow aquatic wetland habitats with abundant vegetation and perennial streams. See Part X: *Additional Terms and Conditions #3* for additional information related to the protection/relocation of this species.

Potential summer habitats for the Northern Long-eared Bat were observed within the pine-mixed hardwoods, forested wetlands, and some older planted pines. No suitable winter habitats were observed. See Part X: *Additional Terms and Conditions #4* for additional information related to the protection/relocation of this species.

VISUAL SCREEN:

To appropriately screen the operation from view, the operator shall maintain a minimum 50ft. undisturbed buffer between mining activity and all property lines, as shown on the mine map. A vegetated earthen berm shall be constructed and maintained on the mine side of this undisturbed buffer along Hwy 378.

ACID WATER GENERATION:

Acid water is not anticipated to be generated from the oxidation of existing minerals currently found on this site.

AIR QUALITY:

The mine operator will use appropriate measures (e.g. water truck, dust suppressants) to control fugitive dust created by moving equipment along haul roads. The operator, where feasible, shall establish vegetation in non-active mine areas barren of vegetation to stabilize the soil and reduce potential for wind erosion and dust emissions.

Part VII: STANDARD CONDITIONS OF MINE OPERATING PERMIT

SURVEY MONUMENTS:

In accordance to R.89-130, the operator shall install and maintain the two required permanent survey monuments, or control points, within the permitted area as shown on the mine site map. At the discretion of SCDES, the operator may be required to mark the area to be affected with flagging or other appropriate measures.

RIGHT OF ENTRY:

Pursuant to Section 48-20-130 and R.89-240, the operator shall grant SCDES and/or duly appointed representatives access to the permitted area for inspection to determine whether the operator has complied with the reclamation plan, the requirements of this chapter, rules and regulations promulgated hereunder, and any terms and conditions of this permit.

RECORDS RETENTION:

All records are to be maintained through additional terms and conditions of this permit or by regulations. Records shall be kept on site or at the office identified for receipt of official mail and open for inspection during normal business hours. The records shall be maintained for a minimum of three (3) years or as specified by SCDES. The operator shall furnish copies of the records upon request to SCDES.

PERMIT MODIFICATIONS:

Pursuant to Section 48-20-80, the operator may modify the permit and/or *Reclamation Plan* upon approval by SCDES. Requests for permit and/or *Reclamation Plan* modifications may be made to SCDES on Form MR-1300. The operator shall submit any requested supporting data for consideration during SCDES's evaluation of the modification request. If a modification request is determined to be substantial by SCDES, the modification request will be public noticed pursuant to R.89-100 and a modification fee will be required as specified in R.89-340. If SCDES determines activities proposed under the *Reclamation Plan* and other terms and conditions of the permit are failing to achieve the purpose and requirements of the S.C. Mining Act and Regulations, SCDES shall notify the operator of its intentions to modify the permit and/or *Reclamation Plan* pursuant to Section 48-20-150.

TRANSFER OF PERMIT:

Pursuant to Section 48-20-70, this permit may be transferred to another responsible party. The transfer of the permit must be conducted in accordance with R.89-230. The transferor of the permit will remain liable for all reclamation obligations until all required documents, plans, and the replacement reclamation bond have been submitted and approved by SCDES. The transfer will be considered complete when all parties have received notification by certified letters of the approval of the transfer by SCDES.

DURATION OF MINE OPERATING PERMIT:

In accordance with Section 48-20-60, this Mine Operating Permit will remain valid unless this permit terminates as set forth in R.89-270 or is revoked in accordance with Section 48-20-160 and R.89-280. The proposed anticipated mining completion date is shown on the *Schedule for Conservation and Reclamation Practices* in the *Reclamation Plan*.

Pursuant to R.89-80(B), the operator shall conduct reclamation simultaneously with mining whenever feasible. Reclamation shall be initiated at the earliest practicable time, but no later than 180 days following termination of mining of any segment of the mine, and shall be completed within two years after completion or termination of mining on any segment of the mine.

Part VIII: ENFORCEMENT ACTIONS

Pursuant to Section 48-20-30 of the S.C. Mining Act, "SCDES has ultimate authority, subject to the appeal provisions of this chapter, over all mining, as defined in this chapter, and the provisions of the chapter regulating and controlling such activity." This allows SCDES to assist, cooperate with, or supersede other State agencies in taking

enforcement action on violations of the State Regulations or violations of the S.C. Mining Act to ensure the purposes of this Act are enforced.

The operator shall comply at all times with all conditions of this mine operating permit. Non-compliance with this mining permit, statute, or regulations could lead to permit revocation and bond forfeiture pursuant to Sections 48-20-160 and 48-20-170 or other enforcement action allowed by law.

Compliance with the Mine Operating Permit requires the operator to conduct the mining operation as described in the approved *Application for a Mine Operating Permit*. Variance from the *Application for a Mine Operating Permit*, this permit, statute or regulation, without first receiving SCDES approval, shall be deemed non-compliance with the permit.

An operator or official representative of the mine operator who willfully violates the provisions of the S.C. Mining Act, rules and regulations, or willfully misrepresents any fact in any action taken pursuant to this chapter or willfully gives false information in any application or report required by this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each day of continued violation after written notification shall be considered a separate offense.

The operator is responsible for all mining activity on the permitted mine site.

Part IX: REPORTS

ANNUAL RECLAMATION REPORTS:

The operator shall comply with Section 48-20-120 and Regulation 89-210 and submit an *Annual Reclamation Report* on Form MR-1100 as supplied by SCDES. The form for the report will be made available to the operator electronically. The operator should receive access to the report form from SCDES by July 1 of each year; however, the operator is ultimately responsible for obtaining the *Annual Reclamation Report* form and is not excused from penalty fees for failure to submit the report on time.

The Annual Operating Fee is a part of the *Annual Reclamation Report*. Failure to submit a complete *Annual Reclamation Report* and fee, in accordance with Section 48-20-120 and R.89-340, will result in a late penalty payment. The *Annual Reclamation Report* and Annual Operating Fee are required if there is any permitted land not fully reclaimed and released by SCDES by June 30 of *each* year.

SPECIAL REPORTS:

SCDES may at any time request information, data, or explanations from the operator as to conditions relating to the permitted mine site. Such requests from SCDES shall be made in writing to the operator with an appropriate time frame stated for the submittal of the requested information to SCDES. The operator must produce the information requested within the timeframe specified by SCDES.

Part X: ADDITIONAL TERMS AND CONDITIONS

1. Temporary or permanent placement of refuse and debris (e.g., concrete, brick, asphalt) from off-site locations is prohibited without approval by SCDES. Topsoil fill approved by SCDES may be brought in from off-site sources only for the purposes of mine land reclamation.

2. County National Floodplain Insurance Program Manager: A permit from the County National Floodplain Insurance Program Manager is to be obtained if deemed necessary before impacts occur to the FEMA special flood hazard area located on this site.

3. Spotted Turtles: The operator will avoid construction in areas within or adjacent to aquatic resources from January 15th through May 31st. Prior to any construction activity, the operator will install silt fencing from November 15th

through January 15th adjacent to all aquatic resources onsite. Silt fencing will include 45-degree arms to direct spotted turtles to the uplands adjacent to the waterbody and away from the construction site. The 45-degree arms will be placed outside of the 50ft wetland buffers. Additionally, silt fence arms should extend at least 50 feet and extend in each direction so that the ends of each 45-degree angle to the fence meet to form a triangle. Silt fencing will remain in place throughout the duration of the proposed construction activities. Prior to construction, the operator will monitor the silt fencing to ensure it is effectively working properly on a monthly basis. This should effectively exclude the species from the project area prior to construction activities. Once construction activities begin, the silt fence shall be monitored weekly for the integrity of the fencing and the presence of spotted turtles. If spotted turtles are encountered, the SCDNR state herpetologist shall be notified by the operator immediately.

4. Northern Long-Eared Bat: A majority of the potential habitat is within the forested wetlands and immediately adjacent buffer area. These areas are not to be impacted as part of the overall site plan. As a conservation measure, all tree clearing activities shall be conducted during the inactive season (November 1 through March 15) for northern long-eared bat.

APPENDIX A

MODIFICATIONS TO MINE PERMIT I-002403

NUMBER	DATE	DESCRIPTION OF MODIFICATION <small>(PA= Permitted Acreage; AA= Affected, Bonded Acreage; FR= Reserves Acreage, B= Buffer Acreage)</small>
Issued	1/29/25	PA = 260.7ac., AA = 189.2ac., FR = 0.0ac., B = 71.5ac. Permit issued.

MR-500 Reclamation Plan for an Individual Mine Operating Permit

Environmental Protection

Describe practices to protect adjacent resources such as roads, wildlife areas, woodland, cropland and others during mining and reclamation.

During mining, wildlife areas, woodlands, cropland and residences will be protected with a variety of methods. Protection of these resources can be achieved in part by observing setbacks to property lines, conducting concurrent reclamation as feasible, using accepted agronomic practices to establish temporary and permanent vegetation. Wildlife may be temporarily displaced during mining; however, experience has shown once mining ceases and reclamation completed new wildlife habitats are formed and populated by indigenous animal species.

Describe proposed methods to limit significant adverse effects on adjacent surface water and groundwater resources.

Mining will not create a pit water discharge. In mining with a dredge, the water used by the dredge to transport the sand in a slurry to the plant is returned to the pit without discharging to the outside environment. Stormwater within the permit area can be routed to the pit and retained in the permit area without discharge. Minor stormwater runoff from the outside flanks of berms will be controlled with silt fencing, brush barriers or diversion berms.

Potential for groundwater contamination will be low to non-existent because mining will not use chemicals.

Describe method to prevent or eliminate conditions that could be hazardous to animal or fish life in or adjacent to the permitted area.

Proper reclamation of the mine site will include stabilizing all disturbed soils with vegetation, removal of mine equipment, cleanup of any spillage of petroleum products, and removal of scrap material. Buffer for active mine segments and sediment basin will provide protection to fisheries in nearby streams. Establishing 3:1 slopes around the pit will remove hazardous conditions for the public and indigenous animal populations.

Describe how applicant will comply with State air quality and water quality standards as established by the South Carolina Department of Environmental Services.

Mining, transporting, and processing the sand uses water with a dredging operation. The pit is inundated with water, the mined sand is transported to the plant as a slurry. The process plant uses water to screen and wash the sand. These practices eliminate fugitive dust. The mine is in a rural area with significant buffers between mining and nearby homes or businesses. After mining, vegetation will be established to stabilize the soil and prevent windblown dust from occurring.

Reclamation of Affected Area

State useful purpose(s) the affected land is being proposed for reclamation.

Grassland
Lake or Pond

Feasibility Documentation Attachment

NONE PROVIDED

Comment

NONE PROVIDED

Will the final maximum surface gradient (slope) in soil, sand, or other unconsolidated materials be steeper than 3 Horizontal : 1 Vertical (18 degrees or 33 percent)?

No

How will the final slopes in unconsolidated material be accomplished?

All slopes above normal pool level of the pond will be accomplished by grading to final 3:1 grade.

If the slope will be by backfilling, demonstrate that

there is adequate material to accomplish the stated final gradient. If gradient is to be achieved by bringing in material from outside the permitted area, state the nature of the material and approximate quantities. If the gradient is to be achieved by grading, show that there is adequate area for grading to achieve gradient (i.e., adequate distance between the property line and edge of highwall).

Final slopes calculations or other supporting information attachment(s)

NONE PROVIDED
Comment
 NONE PROVIDED

Describe the plan for revegetation or other surface treatment of affected area(s). The revegetation plan shall include but not be limited to the following: (a) planned soil test; (b) site preparation and fertilization; (c) seed or plant selection; (d) rate of seeding or amount of planting per acre; (e) maintenance.

(a) Planned Soil Test

Soil analysis will be performed to determine the need for pH adjustment and nutrients. Different soils will be sampled separately. Soil samples will be taken in advance of planting. Soil samples will be submitted to the cooperative NRCS or Clemson extension services or commercial lab for analysis.

(b) Site Preparation & fertilization

Grading, shaping, and other earth moving will be completed to the extent necessary to permit seeding or planting. Tillage shall be the minimum needed to break compaction; incorporate fertilizers when incorporation of them is required; and provide enough loose soil to cover the seed when seed are to be drilled or covered by harrowing or cultipacking.

Soil amendments will be added as necessary to promote conditions suitable for plant growth (i.e., organic matter). Agricultural limestone will be uniformly spread and incorporated as soon as possible to allow for the pH adjustment. Incorporation also benefits relatively immobile nutrients such as phosphorus when needed. Type and rate of fertilization will be determined bases upon soil analysis.

(c) & (d) Seed or Plant Selection and Seeding Rates

Plants shall be selected based on species characteristics, site and soil conditions, the planned land use and maintenance of the area, the time of year the planting is made, and the needs and desires of the land user. Availability of seed will be one of the criteria for plant selection.

Coastal Plain
 Spring Seeding Mix

Grass or legume Optimum
 Planting Date Seeding Rate
 (# per acre) Comments
 Browntop millet April- August 10 Serve as short term cover
 Bermudagrass (common)
 or
 Coastal Panicgrass March-June

March-May 4

20 broadcast, 12 drilled Hulled (chaff removed)

Pure Live Seed (PLS)
 Annual lespedeza (Kobe) Feb. - April 10 Use scarified seed and inoculate

Coastal Plain
 Fall Seeding Mix
 Grass or legume Optimum
 Planting Date Seeding Rate
 (# per acre) Comments
 Rye (Abruzzi) or Oats Sept-Nov. 10 Serve as short term cover
 Bermudagrass (common)
 or
 Switchgrass Aug-Oct

Oct-May 8

10 Unhulled (in chaff)
 Crimson clover (optional) Sept-Oct 10 Serve as short term cover, inoculate

(e) Maintenance

The revegetated site will be maintained through periodic inspections to detect areas with significant erosion, seed germination failure or significant plant die off. Additionally, site will be inspected after significant storm events to detect wash outs or gullies in planted areas. Damaged areas will be repaired where necessary by fixing erosion damage and reseeding as necessary.

Does the possibility exist for (a) acid rock drainage; (b) where the National Pollutant Discharge Elimination Systems (NPDES) Permit has discharge limitation parameters other than pH and Total Suspended Solids (TSS); (c) chemically treated tailings or stockpiles (excludes fertilizer or lime for revegetation purposes)?

No

Describe the methods to control contaminants and permanently dispose any mine waste. This includes any soil, rock (overburden), mineral, scrap, tailings, fines, slimes, or other material directly connected with the mining, cleaning, and preparation of mineral substances mined. It also includes all waste material deposited on or in the permit area from any source.

The mine waste generated will be silt and clay sized particles (◆fines◆) that will be removed from the sand product and deposited in the tailings pond and segment 1 of the mine. The fines will be allowed to dewater and will be revegetated to stabilize.

Describe the method of reclaiming settling and/or sediment ponds.

Sediment ponds will not be necessary in this mining operation.

Describe the method of restoring or establishing stream channels, stream banks, and site drainage to a condition to minimize erosion, siltation, and other pollution.

Not applicable - no streams will be diverted or relocated by mining. Streams and wetlands will be protected with a minimum 50-foot buffer.

What are the maintenance plans to insure that the reclamation practices established on the affected land will not deteriorate before released by the Department?

Areas that have undergone final reclamation practices will be maintained through periodic inspections and conducting any necessary repairs in a timely manner.

For final reclamation, submit information about practices to provide for safety to persons and to adjoining property in all excavations. Identify areas of potential danger (vertical walls, unstable slopes, unstable surface on clay slimes, etc.) and provide appropriate safety provisions.

All slopes above normal pool level of the pond will be graded to a maximum of 3:1 slope to ensure slope stability and remove the danger of accidental falls.

What provisions will be taken to prevent noxious, odious, or foul pools of water from collecting and remaining on the mined area? For mines to be reclaimed as lakes or ponds, provide supporting information that a minimum water depth of four (4) feet on at least fifty percent (50%) of the pond surface area can be maintained.

The ponds created by mining will meet the criteria for ◆pond◆ reclamation. Proper grading on other areas not mined will ensure foul pools of water will not form.

Identify any structures (e.g. buildings, roads) that are proposed to remain as part of final reclamation. Provide justification for leaving any structures.

No structures will remain after mining.

Attach a copy of a map of the area (referred to as the RECLAMATION MAP) that shows the reclamation practices and conservation practices to be implemented. The following should be shown (A through P - see below):

Salem Sand-Henry Tract RECLAMATION MAP-(4)-24X36 200 sht 3 of 3.pdf - 11/05/2024 02:22 PM

Comment

NONE PROVIDED

- A. The outline of the proposed final limits of the excavation during the number of years for which the permit is requested.
- B. The approximate final surface gradient(s) and contour(s) of the area to be reclaimed. This would include the sides and bottoms of mines reclaimed ponds and lakes.
- C. The outline of the tailings disposal area.
- D. The outline of disposal areas for spoil and refuse (exclusive of tailings ponds).
- E. The approximate location of the mean shore line of any impoundment or water body and inlet and/or outlet structures which will remain upon final reclamation.
- F. The approximate locations of access roads, haul roads, ramps or buildings which will remain upon final reclamation.
- G. The approximate locations of various vegetative treatments.
- H. The proposed locations of re-established streams, ditches or drainage channels to provide for site drainage.
- I. The proposed locations of diversions, terraces, silt fences, brush barriers or other Best Management Practices to be used for preventing or controlling erosion and off-site siltation.
- J. Proposed locations of the measures to provide safety to persons and adjoining property.
- K. Segments of the mine that can be mined and reclaimed as an ongoing basis.
- L. The boundaries of the permitted area.
- M. The boundaries of the affected area for the anticipated life of the mine.
- N. The boundaries of the 100-year floodplain, where appropriate.
- O. Identify sections of mine where the final surface gradient will be achieved by grading and/or backfilling.
- P. A legend showing the name of the applicant, the name of the proposed mine, the north arrow, the county, the scale, the date of preparation and the name and title of the person who prepared the map.

THE REQUIRED RECLAMATION MAP SHALL HAVE A NEAT, LEGIBLE APPEARANCE AND BE OF SUFFICIENT SCALE TO CLEARLY SHOW THE REQUIRED INFORMATION LISTED ABOVE. THE BASE FOR THE MAP SHALL BE EITHER A SPECIALLY PREPARED LINE DRAWING, AERIAL PHOTOGRAPH, ENLARGED USGS TOPOGRAPHIC MAP OR A RECENTLY PREPARED PLAT. RECLAMATION MAP SHOULD BE THE SAME SCALE USED FOR THE SITE MAP.

Schedule for Implementation of Conservation and Reclamation Practices

As stated in Section 48-20-90 of the S.C. Mining Act, reclamation activities, to the extent feasible, must be conducted simultaneously with mining operations. Identify which areas or segments of the mine are not feasible to reclaim simultaneously with mining. Provide reasons why reclamation can not proceed simultaneously with mining in these areas.

Not applicable

Schedule for Implementing Conservation and Reclamation Practices

Conservation & Reclamation Practices	Segment # or Area	Planned Amount	Planned Year	*Applied Amount	*Applied Year	Notes
1. Mark Wetland & Property Line Buffers	Process Plant, Shop, Plant, Tailings & HR/Office	5,600 FT	2025			Where wetlands buffers are adjacent to these facilities
2. Construct and vegetate earthen berm 2 along PLB 2	Office, Haul Rd & Process Plant	1.7 acres	2025/26			1,400' x 50'
3. Establish stormwater diversions along WB-11 near shop area and plant	Shop & Process Plant	1,500 ft	2025/26			NONE PROVIDED
4. Slope and revegetate terminal pit wall as feasible ♦ maximum unreclaim pit wall before reclamation 500 feet.	Ph 1	2.2 acres	2027/28			Portions of seg 1 adjacent to plant may not be feasible until end of mining. Seg 1 ♦ tailings overflow;
5. Mark wetland buffer and property line buffers	Ph 2	4,600 feet	2028/29			Wetland buffer ♦ 300 ft Property line buffer ♦ 4,300 ft
6. Construct Berm 1; Berm constructed when tree removal is within 200 feet of the north pit wall	Ph 2	3.5 acres total	TBD			NONE PROVIDED
7. Slope and revegetate terminal pit wall as feasible ♦ maximum unreclaim pit wall before reclamation 500 feet.	Ph 2	5.1 acres	TBD			NONE PROVIDED
8. Mark wetland buffer and property line buffers	Ph 3	3,800 feet	TBD			Wetland buffer ♦ 2,900 ft Property line buffer ♦ 900 ft
9. Slope and revegetate terminal pit wall as feasible ♦ maximum unreclaim pit wall before reclamation 500 feet.	Ph 3	4.6 acres	TBD			NONE PROVIDED
10. Mark wetland & PL buffer	Ph 4	5,600 feet	TBD			NONE PROVIDED
11. Slope and revegetate terminal pit wall as feasible ♦ maximum unreclaim pit wall before reclamation 500 feet	Ph 4	7.9 acres	TBD			NONE PROVIDED
12. Mark wetland & PL buffer	Ph 5	1,200 feet	TBD			NONE PROVIDED
13. Slope and revegetate terminal pit wall as feasible ♦ maximum unreclaim pit wall before reclamation 500 feet	Ph 5	3.9 acres	NONE PROVIDED			NONE PROVIDED
14. Remove all equipment and stockpiles, regrade and revegetate	Plant, shop & entrance	25.7 acres	TBD			NONE PROVIDED
15. Monitor reclamation until DHEC approves and releases from bond	All phases	NONE PROVIDED	NONE PROVIDED			NONE PROVIDED

*Applied fields to be completed by department



Florence County
 Building & Planning Department
 518 S. Irby Street
 Florence, SC 29501
 843-676-8600

Board of Zoning Appeals Notice of Appeal - Form 1

Form
 ZA-2026-02

FOR OFFICE USE ONLY:

Date Filed: 02/18/2026 Permit Application Number: 26-0053 Appeal Number: BZA#2026-03

INSTRUCTIONS

This form must be completed for a hearing on **appeal** from action of a zoning official, application for a **variance**, or application for **special exception**. Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent. An accurate, legible plot plan showing property dimensions and locations of all structures and improvements must be attached to an application for variance or special exception. A \$100.00 fee must accompany this application.

THE APPLICANT (S) HEREBY REQUEST (S) (indicate one):

- from action of a zoning official as stated on attached Form 2
- for a variance as stated on attached Form 3
- for a special exception as stated on attached Form 4.

APPLICANT(S) MUST BE THE PROPERTY OWNER OR AGENT OF THE PROPERTY OWNER (please print or type)
 Name(s): Palmetto Sand Company, Inc., Martin Marietta Southeast AGG Operations, LLC, and Blue Water Industries LLC

Address: 4123 Parklake Ave, Raleigh, NC 27612

Telephone Number: [work] 706-691-8785 [home] _____

- Property Owner
- Agent for Property Owner

OWNER(S) [if other than Applicant(s)]: Name(s): Henry Family Farm Properties LLC

Address: 4728 Jenn Dr, Suite 100, Myrtle Beach, SC 29577

Telephone Number: [work] n/a [home] n/a

The Property Owner must provide a notarized Letter of Authorization, which ascribes authority to the named applicant herein to apply for necessary Appeals, Variances, or Special Exceptions on the owner's behalf.

PROPERTY ADDRESS: 350 E Hwy 378-Hannah, Johnsonville, SC 29555 (not E911 verified)

Tax Map No. , Map 00418 , Block 02 , Parcel 006

Are there Restrictive Covenants on this property that would prohibit the proposed use? Yes No
 [If yes, a copy must accompany this application.]

Subdivision Salem Farm (less and except Tracts 1, 2, and 3 as shown on PB 98 PG 32)

Lot Dimensions OR Area: 346+/- acres (less and except 90+/- acres from PB 98 PG 32)

Zoning District: UNZONED AREA

PROVIDE LESSEE INFORMATION IF APPLICABLE

Name: Blue Water Industries, LLC Telephone Number: 803-206-0248

Address: 200 West Forsyth Street, Suite 1200, Jacksonville, FL 32202

I certify that the information in this application and the attached Form 2, 3, or 4 is correct.

Applicant signature: *Kate Gallagher* Date: February 18, 2026

Printed name: Kate Gallagher Date: February 18, 2026

Variance Application - Form 3 Florence County Board of Zoning Appeals

FOR OFFICE USE ONLY:

Date Filed: 02/18/2026 Permit Application Number: 26-0053 Appeal Number: BZA#2026-03

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal (Form 1) of the following provisions of the zoning ordinance:
Sec. 30-117. Mining and Extractions operations. _____ so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as follows:
A sand mining/dredging operation greater than 40 acres _____
for which a permit has been denied by a zoning official on the grounds that the proposal would be in violation of the cited section(s) of the zoning ordinance.

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by state law and the ordinance are met by the following facts:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows:

The subject property was originally utilized as productive agricultural land before being converted to timber production and subsequently clear-cut between approximately 2009 and 2010, with replanting occurring thereafter; the existing pine stand is immature and less than 20 years old. This land management history has resulted in a previously disturbed, transitional tract with characteristics that differ from surrounding undisturbed agricultural and rural residential parcels, including limited near-term agricultural viability and early-stage timber regrowth. The property's large, contiguous acreage and long-standing use for agriculture and silviculture distinguish it from nearby lands and create conditions inherent to the tract rather than self-imposed by the applicant. Accordingly, the site's physical condition, scale, and documented land use history constitute extraordinary and exceptional conditions that support consideration of a variance for a resource-based use such as sand mining.

b. These conditions do not generally apply to other property in the vicinity as shown by : _____

These conditions do not generally apply to nearby properties because most surrounding parcels remain in active agriculture, rural residential use, or mature timber stands and have not experienced recent large-scale clear-cutting and replanting. Unlike those properties, the subject tract is a large, contiguous 256-acre parcel that was extensively harvested and is now in an immature, transitional silvicultural state, creating physical and land-use characteristics that are not typical of other lands in the vicinity.

c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows: _____

by limiting viable, resource-based uses on a large, previously disturbed tract of land that is not well-suited for immediate agricultural production or mature timber harvesting, thereby constraining the property to less practical uses that do not reflect its scale, land management history, and current transitional silvicultural condition.

d. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:

The subject site is a large rural tract with a history of agricultural and silvicultural use, surrounded by similarly low-density residential and resource-based land uses. Its size, rural setting, and previously disturbed condition provide natural buffering and ensure the proposed use remains consistent with the existing character of the area rather than introducing an incompatible land use. All operations adhere to strict South Carolina Department of Environmental Control regulations and enforcement.

3. The following documents are submitted in support of this application: _____

Site Plan, SCDES Individual Mine Operating Permit #I-002403, Narrative Statement, Operations Plan, Notarized Letter of Authorization from the property owner, Applicant's ID

Date: February 18, 2026

Signed by:
Applicant Signature *Kate Gallagher*
66ED91EA7C3F43F...

Supplemental Statement in Support of Variance Application

This Supplemental Statement is filed in support of the pending variance application and is a part of it.

Application of Mining Ordinance

Applicants (hereafter collectively “Martin Marietta”) seek variances to enable them to operate a mine on the property described in the application (the “Property”). If granted the requested variances and allowed to operate on the Property as specified in the Operations Plan and Site Plan, Martin Marietta agrees to operate in compliance with the Mining Ordinance, § 30-117, as modified by the variances sought herein, and as the Mining Ordinance exists and is applied at the time of this application. Except as expressly waived by it, Martin Marietta preserves all of its rights, expressly including its vested rights and claims made in the pending litigation, if at any time it is not allowed to operate on the Property in compliance with the Site Plan and Operations Plan as a result of action taken by Florence County. By making this application and participating in the hearing Martin Marietta is endeavoring to resolve the pending disputes in a manner satisfactory to it and Florence County and not waiving any rights or claims now existing or that might arise in the future.

Additional Grounds for Variance

Martin Marietta leased the Property for the purpose of mining sand and gravel on Sept. 27, 2022. Martin Marietta has made lease payments for nearly three and one half years since then. When the lease was executed the Property and the surrounding area were unzoned and mining was a lawful use.

After leasing the Property Martin Marietta began the lengthy and expensive process of obtaining mining and environmental permits from the State of South Carolina. Those permits are expensive, time consuming, and require engineering and environmental expertise. Martin Marietta began the process to apply for a mining permit from DHEC on August 1, 2023.

On Sept. 6, 2023 Martin Marietta applied to the State for a National Pollution Discharge Elimination System (“NPDES”) permit and on Oct. 5 was issued the permit. At the time the Property remained unzoned and mining was a lawful use.

More than a year after Martin Marietta leased the Property, and more than two months after it was issued its NPDES permit for the Property, on Dec. 7, 2023, Florence County sent a letter to the South Carolina Department of Health and Environmental Control (DHEC)

opposing the pending application by Martin Marietta to mine the Property. At the time the Property was unzoned, mining was a lawful use, and no 2,000 foot buffer was required.

Subsequently, in 2024 Florence County enacted what it called a “Mining Ordinance” that imposed a 2,000 foot buffer on the Property for mining purposes. The Mining Ordinance had a built-in exemption for mining operations that predated the ordinance, but the exemption was deliberately structured to exclude the Property. Martin Marietta appeared before the Board of Zoning Appeals seeking an exemption for the Property but it was denied. Martin Marietta in fact holds all necessary permits from South Carolina for operations at the site and should be allowed to mine it free of the Mining Ordinance provisions under the exemption.

Lawsuits followed the denial of the exemption and were mediated. The result of that mediation is that Msin Marietta parties have agreed to comply with the mining regulations as they currently exist, with approval of certain variances. Staff and Martin Marietta believe that these are the only variances necessary for the operation as described in the site plan and operations plan, but out of an abundance of caution, Martin Marietta requests that a variance be granted as necessary for the operations depicted in the site plan or Operations Plan to comply with the Mining Ordinance.

One of the reasons for this request is that it is difficult to determine what rules apply to this site. Normally, the rules are found in the zoning ordinance and in the specific districts that apply to that use. This use is in an unzoned area with no specific zoning districts so it can be difficult to determine what rules apply to it.

Variances are sought because application of the Mining Ordinance makes the Property useless for the exact purpose for which it was acquired and which was and is lawful. The Property is uniquely impacted in a way no other property in the area is impacted.

Granting this variance will not be detrimental to surrounding property because operations on the site are strictly regulated by the South Carolina Department of Environmental Services (“DES”) through the regulations issued by it and the permits required to operate under those regulations. Other provisions of Florence County ordinances that existed prior to the lease of this property will apply to operations on it. Likewise, Martin Marietta has agreed that other provisions of the Mining Ordinance as it currently exists and as altered by the variances sought can be applied to the Property.

Truck traffic will not be a burden on the community because that traffic will use the adjacent U.S. Highway that is fully capable of safely absorbing such traffic.

Finally, the 600 foot setback from existing occupied residences, couple with the large, landscaped berm will minimize any impacts on adjacent property.

Variations Sought

The variations sought are as follows:

1. 30-117(1)a: A variance is requested for a 100-foot setback from the property line to any extraction or processing and a total setback of 600 feet (the "Setback") from any now existing, inhabited residence for extraction or processing of material for sale. The 100-foot setback will not allow mining or processing within it and by way of example allows only an access road to cross it, vegetated berms to be built in it to limit visibility and sound, and access for construction, landscaping and similar matters, but not for shipping.
2. To the extent that 30-117(1)b might require a wooden fence under 30-121, a variance is requested to omit a wooden stockade fence and construct a vegetative berm no less than ten (10) feet in height where shown on the attached Site Plan. The berm shall be landscaped pursuant to a landscape plan complying with Buffer Yard A requirements and the plan shall be submitted to the Planning Department for approval. Construction of the berm and landscaping may be done as the site is developed and material becomes available to build the berm.
3. 30-117(1)c requires payment of \$1,000 per acre to obtain a certificate of zoning compliance. A variance to allow a one-time fee payment of ten thousand dollars is requested. For a use that does not require a large structure, this is one of the County's highest fees. No other company has paid the per acre fee in 30-117(1)c.
4. 30-117(4)a limits mining hours to 7:30 a.m. to 5:30 p.m. A variance is requested to allow hours of operation: (A) from 6:30-5:30 Monday thru Friday, except County observed holidays, for general operations; (B) from 8 a.m. to noon on Saturday for maintenance and shipping only, no operations on County observed holidays.
5. 30-117(4)d: A variance is requested to include a height limit of thirty-eight feet that applies only for equipment located within one thousand feet of Hwy 378.
6. 30-117(4)g provides for a noise limit of 65 decibels, but does not otherwise define how the limit is measured or applied, especially as to sound of short duration. A variance to limit any exceedances of the noise limit to no more than 90 minutes in any calendar day is requested.

7. The variances specified herein are deemed to satisfy the requirements of Florence County Code of Ordinances Section 30-117 and related provisions and shall be so construed. To the extent the variances and conditions herein vary from Section 30-117 of the Florence County Code of Ordinances, these variances and conditions shall be deemed a variance from Section 30-117 of the Florence County Code of Ordinances and shall be controlling.

Conditions of Approval

The applicant has submitted the following as conditions of approval of the variances requested:

- a. **Air Quality.** A water truck such as is commonly used to minimize dust under an air quality plan shall be located on site and used as needed to suppress dust on roads.
- b. **Fencing.** All extraction and operating areas shall be fenced by a six-foot security fence. The gate to such fence shall be locked except during the hours specified in paragraph 7, except that plant personnel shall be allowed access to the site one hour before and one hour after such hours solely for purposes of opening or closing the site.
- c. **Signage.** Signage complying with Section 30-117(4)(f) of the Florence County Code of Ordinances shall be installed before operations commence.
- d. **Blasting.** No blasting is permitted on site.

OPERATIONS PLAN FOR HENRY TRACT IN FLORENCE COUNTY

Use of site. The site is used for extraction, processing, conveying, stockpiling, sale, equipment maintenance and ancillary uses related to mining and selling coarse and fine aggregate. No blasting is conducted at the site. Overburden will be stripped with excavators and trucks and then the mineral reserves will be mined with a dredge. Material from the dredge is pumped to a processing plant that will include a series of hoppers, conveyors, pumps, screens, sand screws, and classifiers. The screens, sand screws, and classifiers are all used to separate different sizes of material. There will be no crushers.

Material is loaded into trucks that are weighed on a certified scale, issued a scale ticket with weights and then exit the site on Hwy. 378. Maintenance of plant and equipment is done on site. Use of the buffer yard acreage is restricted to access, a berm, landscaping, and maintenance. Access to the site crosses the buffer yard where shown on the site plan.

Site Size. The site operates on approximately 189 acres. The buffer yard acreage is not in active use.

Safety. Safety is a priority at all of Martin Marietta's operations. All employees must have site specific training, be familiar with and follow all basic safety rules. Personal protective equipment specified by the company must be worn on site at all times.

Employees. Employment at the site will vary from 8 to 12 employees depending on local demand for the product.

Hours of operation. General operations are carried on from 6:30 a.m. to 5:30 p.m. Monday through Friday. Maintenance and shipping may be done on Saturday from 8 a.m. to noon depending on the needs of the operation. There are no operations on holidays, including those recognized by Florence County.

Environmental Compliance. The site operates in compliance with NPDES, Air Quality, and Mining permits issued by DHEC to mitigate impacts from dust, stormwater and processing water. Fluids used on site are kept in secondary containment that complies with state and federal law and the site has a spill prevention control plan for managing any spills.

Mobile Equipment. Be alert to mobile equipment operating on site; mobile equipment has the right of way. The operator of mobile equipment does not always have good visibility in all directions so stay a safe distance and before you approach any mobile equipment be sure the operator sees you by making eye contact with him.

Air Emission Control. A water truck is used as necessary to suppress dust emissions from roadways on site. Other emission control technology may be implemented as submitted to and approved by DES.



H. Wayne Phears
Associate General Counsel - Litigation

September 16, 2024

D. Malloy McEachin
County Attorney for Florence County
180 N. Irby St.
Florence, SC, 29501

Dear Mr. McEachin:

I am counsel for Martin Marietta Materials, Inc. and I write regarding Florence County Ordinance No. 26-2023/24 effective March 21, 2024, sometimes referred to as the Mining Ordinance.

Martin Marietta owns several hundred acres of land known as the Henry Tract and the Salem Tract in Florence County. The Mining Ordinance imposed a new, 2000-foot setback on these properties for mining activities from various other uses, including residences, churches, and any place children gather. Based on discussions with Florence County Planning Staff, Martin Marietta has applied for a variance that may moot issues with the setback and we understand from discussions with County staff that such variances have been granted to others. So we are optimistic that our variance will be granted, but we must advise you that Martin Marietta does not waive its right to challenge the ordinance in a court of competent jurisdiction if the variance is denied.

The Mining Ordinance is unlawful on its face and as applied to these properties. Among its various flaws, the Mining Ordinance is preempted by the South Carolina Mining Act, §48-20-10, violates well-established vested rights under South Carolina law, is arbitrary and capricious, and violates substantive due process and equal protection guarantees.

On Dec. 7, 2023, Florence County sent a letter to the South Carolina Department of Health and Environmental Control (DHEC) opposing the pending application by Martin Marietta's predecessor, Blue Water Industries, to mine the Henry Tract. The letter expresses what the County describes as "serious concerns on the part of the County with respect to the health and safety impact of the Mine." The letter then goes on to claim that DHEC's issuance of a mining permit could be in "conflict with the policies and initiatives of the County that are intended to protect the integrity of the County's soil and water and the health and safety of its residents."

Given that this letter is addressed to DHEC, these "health and safety" concerns must be matters within the jurisdiction of DHEC. If the "policies and initiatives" of Florence County are in "conflict" with the issuance of a permit by DHEC, it is clear those same "policies and initiatives" must yield to state law.

The letter goes on to make it clear that the "policies and initiatives" Florence County intends to pursue include the Mining Ordinance it has now enacted to block use of any permit issued by DHEC:

"[T]he county is undertaking a study of issues relating to mining in these areas with an eye toward new zoning regulations that will help ensure safety, responsible use of resources and sustainable development."

D. Malloy McEachin
September 16, 2024
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Florence County's letter suggests that DHEC slow-roll its review of the mine permit application until the "work" of Florence County "in this regard is complete." This request for delay of permit approval came even though the County knew when it wrote the letter that the application had already been pending for almost three months.

The County's letter also makes the case for Martin Marietta's vested rights. The letter admits that Florence County enacted an "emergency ordinance" establishing a "moratorium" to stop the Mine in "light of the foregoing concerns." Thus, not only does the letter prove the County's intention to stop the mine, but also it shows the County's after-the-fact misuse of its powers.

Blue Water Industries (BWI) acquired a lease on the Henry Tract on September 27, 2022, for the express purpose of mining sand and gravel from it. BWI applied to DHEC for a National Pollution Discharge Elimination System (NPDES) permit for "nonmetallic mineral mining" on September 6, 2023, and was issued the requested permit by DHEC on October 5, 2023. Under regulations promulgated by DHEC the NPDES permit is one of the necessary permits for mining.

The NPDES permit is neither simple nor cheap to acquire. It requires specialized mining and environmental expertise and the design of a system and facility that will handle water run-off in compliance with the Clean Water Act and South Carolina laws and regulations implementing it. The County's letter to DHEC admits knowing that DHEC had already issued the NPDES permit.

BWI began the process to apply for a mining permit from DHEC on August 1, 2023. One week later an attorney for BWI, then the applicant, wrote DHEC providing a certification necessary for the requested mine permit. We anticipate the permit will be issued in the near future. This permit application is quite complex and requires specific mining and environmental expertise simply to design a system meeting DHEC requirements. Florence County's effort to slow-roll the DHEC approval process has undoubtedly delayed issuance of the permit.

Martin Marietta's Vested Rights are Clear

These properties are in an unzoned part of Florence County. BWI expressly asked the Florence County Planning Department to confirm what land use regulations that might affect mining applied to these properties on or about May 2, 2023. Teresa Ellison-Edwards, Florence County Planning, responded by email, copying Mr. Singletary, and directed BWI to the "attached section of the Chapter 30 Zoning Ordinance. Look at D." Exhibit .

Martin Marietta and its predecessor BWI have spent a great deal of time and money acquiring the Henry and Salem Tracts, developing the necessary applications, and applying for necessary permits. Leaving aside for the moment the arbitrariness of the 2024 Mining Ordinance, it still cannot be applied to these properties under South Carolina law because of the vested rights acquired by Martin Marietta. In *Vulcan Materials v. Greenville County*, 536 S.E. 2d 892 (S. C. App. 2000) the Court upheld a vested right to mine when an "owner has in good faith substantially entered on performance of a series of acts necessary to accomplishment of end intended" Remarkably, in that case Vulcan was found to be vested to mine property because it had been used as a borrow pit before.

Here Martin Marietta expended a large sum of money to acquire its Florence County property for mining, expended time and money to develop permit applications, obtained a DHEC permit necessary for mining, applied for another DHEC permit—that Florence tried to get denied—and asked the Planning Department what restrictions applied. Notably, Florence County's own DHEC letter refers to the NPDES permit already issued for the mine and admits the County both knew of and was taking steps to stop the issuance of another mining permit already applied for by the mine operator.

D. Malloy McEachin
September 16, 2024
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All of this “series of acts necessary to the accomplishment of the end intended” was done in good faith. Indeed, Martin Marietta’s predecessor even checked with the Planning Department to confirm the ordinance conditions that applied to the Henry Tract at the time.

Martin Marietta has a vested right to mine the Henry and Salem properties and this is notice that Martin Marietta intends to do so.

The Mining Ordinance is Preempted

Florence County has chosen not to zone this area where Martin Marietta’s properties are located, and the Mining Ordinance does not purport to establish a zoning district, much less to apply it to a map of the area. The ordinance repeatedly refers to “mining” and thus facially appears to conflict with the statewide act that regulates mining. Add in the fact that Florence County’s letter advising DHEC that issuance of a mining permit would be “in conflict” with County initiatives and DHEC’s jurisdiction over the issues that gave rise to the Mining Ordinance is plain. The Mining Ordinance is preempted.

DHEC regulates an array of mining related health and environment factors, including water discharges, storm water management, stream proximity, particulate emissions, and reclamation, among others. These, and more, are the very same items that Florence County relied on to ask DHEC to deny the mine permit. Thus, all of these matters are either already regulated by DHEC or within its jurisdiction. In *Red Bluff Trade Ctr., LLC v Horry County*, 454 F. Supp. 3d 570 (D.S.C. 2020), U.S. District Court Judge Lydon struck down a similar ordinance that Horry County attempted to enforce, holding that the South Carolina Mining Act preempts any local ordinance that attempts to control how mining is performed in the state of South Carolina. Judge Lydon made it clear that simply labeling something a zoning ordinance does not save it from preemption: “The General Assembly could not have intended to delegate to localities the authority to invalidate the purpose and effect of a state issued permit simply where the county calls its law a zoning ordinance.”

Florence County’s letter to DHEC implicitly (and perhaps explicitly) admits the issues giving rise to the Mining Ordinance are within DHEC’s jurisdiction. It told DHEC that issuance of a mine permit for the Henry Tract would be “in conflict” with Florence County policies and then passed its own Mining Ordinance, calling it a zoning ordinance even though Florence County expressly applied it to “unzoned areas.”

Florence County may not retroactively heap local requirements onto the requirements set by the State of South Carolina for mining simply by calling those local requirements zoning. The Mining Ordinance does just that and is thus not enforceable.

The Mining Ordinance Is Arbitrary and Capricious and Violates Due Process and Equal Protection Guarantees

The Mining Ordinance is an effort by Florence County to prohibit the use of land for a lawful and very necessary purpose, all without regard to the reasonableness of the County’s regulations or the County’s power to regulate. Indeed, the 2000-foot buffer and \$1,000/acre fee are both so excessive and so unreasonable that they are plainly designed not to regulate, but rather to prohibit an activity made lawful under the South Carolina Mining Act and carried on pursuant to permits issued by the State of South Carolina. The only setback that is of a remotely similar distance is for adult entertainment uses, and it is only 1,000 feet.

The result of what Florence County has done is an excessive and punitive regulatory scheme that singles out mining for disparate treatment after a landowner has invested time and money to use land lawfully and applied for and received a permit to use the land for mining.

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The Henry Tract is in a rural area of Florence County with minimal population density. Development is a sufficiently disinteresting possibility that the area is unzoned. Most people may use their land as they wish, with little or no County regulation.

Unless, that is, they want to mine it. Then, they must have a tract so large that even imposing a 2,000-foot buffer on every boundary there will still be enough land left to mine. That would, of course, require a very large tract of land, but even then, Florence County has a blocking provision in its ordinance: A fee of \$1,000 per acre for mined land. Even if a sufficiently large tract could be found in Florence County, that fee likely makes it uneconomical for anyone to mine it, which, of course, is precisely what Florence County intended.

Setbacks and fees of this magnitude must be rational, and not arbitrary or capricious. There is no regulatory interest in Florence County's lawful sphere that justifies either the setback or the fees. Any justification one can imagine is either not in Florence County's regulatory sphere, or regulated elsewhere by Florence County already. Water discharges are already regulated by DHEC, as is distance from a water body. Particulate emissions, dust, are regulated by DHEC. Noise is regulated by Florence County elsewhere and a 2,000-foot setback is a particularly blunt—arbitrary—instrument if somehow Florence County could treat mining noise differently from all other noise. Florence County's DHEC letter refers to traffic on US Hwy. 378, but that has nothing to do with a buffer. Moreover, US 378 is a federal highway over which Florence County has no jurisdiction.

Conclusion

The Mining Ordinance is unlawful and may not be used to prohibit, retroactively, the preexisting, lawful use of property.

Sincerely,



H. Wayne Phears
Associate General Counsel-Litigation

September 10, 2024

To:
Florence County
Planning Department
Attn: Chelsea Carver



Re: Aggregates Mining Lease Agreement (the "Lease") by and between Blue Water Industries LLC ("Martin Marietta") and Henry Family Farm Properties LLC ("Lessor") dated September 27, 2022 affecting the 364.4 acres of property described therein (the "Property") being Florence County Parcel #00418-02-006.

Dear Ms. Carver:

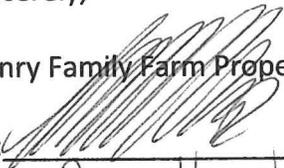
I write to you on behalf of Lessor regarding the Lease on the Property. The people and entities listed below are authorized to apply for and hold permits for the Property pursuant to the Lease:

Martin Marietta Materials, Inc.
Palmetto Sand Company, Inc.
Blue Water Industries LLC
Kate Gallagher
Wayne Phears
Scott Gibbes

Please let me know if you need any additional information about this matter.

Sincerely,

Henry Family Farm Properties LLC

By: 
Name: Roger Howard Henry III
Its: Managing Member

STATE OF SOUTH CAROLINA §
 §
COUNTY OF Horry §

This instrument was acknowledged before me on September 12th, 2024 by Roger H. Henry III the managing member of Henry Family Farm Properties LLC on behalf of said entity.


Notary Public, State of South Carolina
My commission expires: 2/12/2030
MELISSA B. MARTIN
Notary Public - State of South Carolina
My Commission Expires

