

**MINERAL MINING REVIEW BOARD
GEORGETOWN CHARTER TOWNSHIP
OTTAWA COUNTY, MICHIGAN**

RESOLUTION NO. 191120-03

**RESOLUTION APPROVING, WITH CONDITIONS, THE ISSUANCE OF
MINERAL MINING LICENSE ML1902 TO GRAND RAPIDS GRAVEL**

WHEREAS, Georgetown Charter Township (“Township”) has adopted a Mineral Mining Ordinance (“Ordinance”), which governs the application, review, issuance, conditions, and other matters related to mineral mining licenses in the Township; and

WHEREAS, Grand Rapids Gravel (“GRG” or “Licensee”) of 2700 28th Street SW submitted an application for a new mineral mining license (referred to as “ML1902”) for the following seven parcels of land in the Township

- P.P. #70-14-03-200-003, located at 1625 Fillmore, zoned RR
- P.P. #70-14-02-100-001, located at 1600 Fillmore, zoned RR
- P.P. #70-14-02-100-008, located at 1600 Fillmore, zoned RR
- P.P. #70-14-02-100-004, located at 9301 12th Ave., zoned RR
- P.P. #70-14-02-100-007, located at 9225 12th Ave., zoned RR
- P.P. #70-14-03-400-028, located at 1606 Fillmore, zoned LDR (leased property)
- P.P. #70-14-02-300-009, located at 1405 Taylor, zoned LDR (leased property)

(collectively the “Site”); and

WHEREAS, on October 16, 2019, the Township’s Mineral Mining Review Board (“Board”) held a public hearing on the application for ML1902, at which representatives of GRG and members of the public spoke about the application; and

WHEREAS, the Ordinance requires the Board to render a decision on an application within 60 days after the public hearing, and to incorporate its decision in statement of conclusions relative to the application under consideration, which shall specify the basis for the decision.

NOW, THEREFORE, BE IT RESOLVED that the Georgetown Charter Township Mineral Mining Review Board hereby approves the issuance of mineral mining license ML1902 subject to the findings, conclusions, and conditions set forth below:

1. The applicant, GRG, currently operates under active mineral mining licenses that are set to expire June 30, 2020.
2. The application under consideration was determined by the Mineral Mining Official (and the Board agrees) to be an application for a new license (ML1902) for the reasons that

it would include (combine) parcels subject to existing licenses under one license and, if approved, would change or eliminate certain conditions of the existing licenses.

3. With the application under consideration, GRG is seeking a mineral mining license to (a) excavate and process on-site gravel; (b) process off-site gravel; (c) import GRG residual concrete for a limited crushing operation; and (d) reclaim the Site.

4. GRG has identified the following as the remaining on-site gravel and the Board accepts this as true based on GRG's representations and the site plan presented:

- a. 25,000 tons located directly south of the pump on P.P. #70-14-02-100-004;
- b. 80,000 tons located under Hopper and extension of Fillmore on P.P. #70-14-02-100-008 and P.P. No 70-14-03-200-003; and
- c. 80,000 tons located on the peninsulas to the oil wells on P.P. #70-14-02-100-004 (mining is subject to capping/abandonment of the oil wells).

5. GRG has represented that it intends to excavate the 105,000 tons described in Paragraphs 4(a) and (b), above, during the excavation seasons of 2020 and 2021, with completion by December 31, 2021. The Board accepts GRG's representation as true and finds it to be a reasonable time frame in which to complete the excavation.

6. GRG has indicated that if it is permitted by the Michigan Department of Environment, Great Lakes & Energy ("EGLE") to have the oil wells on the peninsulas described in Paragraph 4(c) capped and abandoned, it will excavate the gravel on the access roads to the wells on what is referred to as the "DeWent piece" prior to August 1, 2021, and if EGLE does not permit the oil wells to be capped and abandoned, GRG would forego excavation of that area. The Board accepts GRG's representations as true and finds it to be a reasonable time frame in which to complete the excavation. The Board understands that GRG has offered to forego excavation of the area of the wells if not approved by EGLE, and nothing in this Resolution shall be construed as

prohibiting GRG from extracting the gravel by GRG's proposed December 31, 2021 deadline (discussed in more detail below) should EGLE approve the request.

7. GRG is seeking permission to continue processing materials from the local Cedar Valley site in the Township (which is being brought onto the Site pursuant to the Cedar Valley mineral mining license) until the Cedar Valley project is completed. GRG has indicated that the project is expected to be completed in Spring 2020, at which time it would stop accepting materials from Cedar Valley. The Board accepts GRG's representations as true and finds the request and anticipated completion date to be reasonable based on the proximity and impending completion of the Cedar Valley project.

8. GRG is also seeking permission to bring materials from outside of the Township, specifically from Plainfield Township in Kent County, onto the Site for processing. GRG has indicated that it entered into an agreement with Plainfield Township under which it agreed to cease all mining activities on property it owns in Plainfield Township (the "Boulder Creek Site") by a date certain (within approximately three years). Under the agreement, GRG voluntarily agreed that it would not process, crush, or stockpile bank run gravel at the Boulder Creek Site. GRG is thus requesting approval to bring approximately 300,000 tons of bank run gravel from the Boulder Creek Site to the Site in the Township for processing. GRG is seeking permission to import materials from the Boulder Creek Site until 300,000 tons is reached, or March 15, 2021, whichever is sooner.

9. The Board finds and GRG has acknowledged that GRG's current mineral mining license (issued in 2015) (ML1501) prohibits the importing of materials to the Site for processing. When the Township became aware that GRG was importing materials in February 2019, Township staff reminded GRG of the prohibition and GRG immediately stopped importing materials. GRG

represents that it has not imported materials to the Site from outside of the Township since the occurrence in February 2019.

10. The Board also acknowledges that under Section 26-78, a license issued under the Ordinance “shall not relieve the licensee from complying with any other applicable statute, ordinance, rule or regulation.” The Site is located on property zoned Rural Residential (RR) and Low Density Residential (LDR). The Township Zoning Ordinance does not permit industrial uses in the RR or LDR districts and the Board finds that the proposed importing and processing of 300,000 tons of material from the Boulder Creek Site would constitute an industrial operation that is not permitted in the zoning districts comprising the Site. Such an ongoing industrial operation at the Site would be inconsistent with the Zoning Ordinance and the Master Plan.

11. The Board also finds that the proposed importing and processing of 300,000 tons of material from the Boulder Creek Site is not expressly contemplated in MCL 125.3205(3), which provides that:

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

12. The Board concludes that a condition of approval prohibiting the proposed importing and processing of 300,000 tons of material extracted from the Boulder Creek Site in Plainfield Township, Kent County, would not violate MCL 125.3205(3), as further evidenced by MCL 125.3205(4), which states that:

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

In prohibiting the importing and processing of material from the Boulder Creek Site in Plainfield Township, the Board is not preventing the extraction, by mining, of valuable natural resources on the relevant property (i.e., the Site). To the contrary, the Board is permitting the extraction, by mining, of valuable natural resources on the Site (i.e., on-site gravel) within the areas and time frame proposed by GRG.

13. Because the Board's decision does not prevent extraction of natural resources, it does not determine whether very serious consequences would result from the extraction under the factors in MCL 125.3205(5). Nevertheless, the Board finds and GRG acknowledges (in its September 3, 2019 memorandum) that importing the material from Plainfield Township would create more traffic to the Site, including more "heavy" (full) trucks operating on the roadways. When GRG originally proposed to import 200,000 tons of material from Plainfield Township, GRG estimated 3,750 trucks would be needed to complete the task. GRG has increased the number of tons proposed to 300,000 tons, which will result in even more truck (including heavy truck) traffic. This, in turn, has an impact on pedestrian and traffic safety along the proposed hauling route serving the Site. The Board also finds that while GRG has presented documentation showing negative tests for PFAS, Plainfield Township is at the center of extensive litigation over PFAS contamination, including at and around the Boulder Creek Site. GRG has indicated that PFAS testing is ongoing, but the Board finds no that no proof has been presented regarding the final extent of the PFAS contamination in Plainfield Township, nor are there any assurances that materials extracted site from the Boulder Creek Site, which are proposed to be brought onto the Site for processing, are not or will not be contaminated, or pose any of the health or public safety risks associated with PFAS.

14. For all of the above reasons, the Board states that as a condition of approval, no materials (with the exception of the limited material left to be received from the local Cedar Valley

site by approximately Spring 2020) may be imported to the Site (including from Plainfield Township, Kent County) for processing or stockpiling.

15. With this application, as amended and supplemented by GRG, GRG is seeking approval to process on-site and off-site bank run gravel until it is completely processed or a firm date of December 31, 2021, whichever is sooner.

16. GRG has also represented to the Board (in a draft document called a Restrictive Covenant Agreement, which was prepared by GRG and submitted to the Board with its supplemental application materials) that it can “[f]inish and complete all mining, crushing, processing, stockpiling and other mining operations on or from the Property by December 31, 2021.”

17. GRG has also represented to the Board (in the same draft Restrictive Covenant Agreement), that it can remove all stockpiled materials from the Site on or before December 22, 2022:

All stockpiled materials (including, but not limited to, aggregate, sand, gravel, stones, etc.) must be entirely removed from the Property on or before December 31, 2022. However, if requested by The Ottawa County Parks Department, an undefined amount of 22-A gravel and sand may remain stockpiled on the Property to be used exclusively for trails, parking lots, and other construction and improvements associated with the construction of The Parks Property. Similarly, soil to be used exclusively for interim reclamation of the Property consistent with the approved end use plan and associated with the development on the Property (i.e., the soil shall not be available for sale to third parties), may be stored in the location shown on the approved plan if seeded to prevent dust and runoff.

18. Except with regard to the importing or processing of materials from outside of the Township (i.e., from Plainfield Township), which is expressly prohibited as a condition of approval, the Board finds that GRG’s proposed timeline as it relates to extraction and processing is reasonable in light of the scope of operations and it, therefore, grants GRG’s request, as a condition of approval, to:

- a. Receive materials extracted from the Cedar Valley site until the Cedar Valley project is completed, which is anticipated to be around Spring 2020;
- b. Complete excavation of all on-site bank run gravel by December 31, 2021;
- c. Process on-site bank run gravel until it is completely processed or December 31, 2021, whichever is sooner.
- d. Process bank run gravel extracted from the Cedar Valley site until it is completely processed or December 31, 2021, whichever is sooner.
- e. Finish and complete all mining, crushing, processing, stockpiling and other mining operation on or from the Site by December 31, 2021.
- f. Remove all stockpiled materials on or before December 31, 2022. Per Section 26-83(u), the approval to store and stockpile mined products for up to 12 months after cessation of mining activities shall not interfere with or excuse reclamation as otherwise required under the Ordinance and this Resolution. In no event shall any additional materials be added to the stockpiles.

19. With this application, as amended and supplemented by GRG, GRG has proposed the following schedule regarding the reclamation of the Site:

- a. GRG will work to certify the slopes on the North land mass of P.P. #70-14-03-200-003 (the shoreline just north of the sediment ponds) during the winter of 2019-2020.
- b. GRG will work during the low water season prior to December 31, 2021 to reclaim and certify the slopes on the peninsula that is referred to as the "DeWent piece."
- c. From January 1, 2022 to June 30, 2022, GRG will reclaim P.P. #70-14-03-200-003, 70-14-02-100-001, 70-14-02-100-008, 70-14-02-100-004, and 70-14-02-100-007, which includes all of the property on the Site that is owned by GRG (north of Fillmore St.).
- d. From January 1, 2022 to December 31, 2022, GRG will:
 - i. Remove all stockpiled material that has been processed and remains on property on the Site that is leased from the Ottawa County Road Commission (P.P. #70-14-03-400-028 and 70-14-02-300-009);
 - ii. Break down and remove the processing plant located on said leased property; and
 - iii. Remove concrete under the processing plant and crush said concrete onsite in lieu of hauling all broken material offsite.

- e. By December 31, 2022, GRG commits to having all stockpiles removed, and the processing plant removed from the leased property (with the exception of material left solely for use by Ottawa County at the Site).
- f. During the period of January 1, 2023 and June 30, 2023, GRG will reclaim the leased property; and
- g. After the earlier of completion of the reclamation of the leased property or June 30, 2023, GRG will conclude all activities related to ML1902 on all seven parcels.

20. The Board accepts GRG's reclamation schedule and finds it to be reasonable. In light of GRG's representations and commitments regarding the reclamation schedule, the Board determines that an initial performance guarantee in the amount of \$200,000 is reasonable taking into consideration the factors in Section 26-81, including GRG's proposal of a \$50,000 performance guarantee, staff recommendation, the scope of the project, potential court costs, and other (including administrative) expenses. The performance guarantee shall be provided as set forth in Section 26-81 of the Ordinance and, per that section, GRG may appear before the Board to request a pro-rata reduction in the amount of the performance guarantee for each acre restored and reclaimed.

21. GRG shall reclaim the Site to the standards set forth in the Bend in the River Master Plan, as amended (i.e., the 2010 Bend Area Final Report), except as may be expressly approved in writing by the Ottawa County and/or the Ottawa County Parks and Recreation Commission in consultation with the Township (referred to hereinafter as the "Approved Reclamation Plan").

22. If GRG fails to reclaim the site as required by the Approved Reclamation Plan, the Township may come upon the Site per Section 26-83(t) of the Ordinance and reclaim the land in accordance with the Approved Reclamation Plan and may use the proceeds of the performance guarantee required by the Ordinance and this Resolution to defray the costs of the reclamation.

23. The Board finds that except as otherwise provided in this Resolution, GRG has represented that it meets or will meet the minimum standards and requirements set forth in

Ordinance Section 26-83 for the following: fencing and signs; screening; hours of operation; access to public roadways; on-site roads; transportation vehicle standards; lighting; location of excavation; drainage and erosion control; dust control; noise control; special land conditions; fueling of vehicles. GRG shall, as a condition of approval, maintain compliance with these requirements as set forth in Section 26-83.

24. GRG shall, as a condition of approval, ensure that it meets the requirements in Sections 26-83(p) (treatment of banks), Section 26-83(q) (vegetation), Section 26-83(r) (stockpiling and replacement of topsoil), and Section 26-83(s) (fill material).

25. With this application, GRG is also seeking approval to conduct a limited crushing operation at the Site. Specifically, GRG is requesting to haul residual concrete to the Site from its five (5) Redi-Mix locations. GRG has requested approval to bring residual concrete to the Site on an as-needed basis with crushing to occur within a two-week period annually during 2020 and 2021, and for one week during 2022 (to allow for the crushing of the concrete that is currently beneath the processing plant). Crushing is currently prohibited under the existing license and GRG is not currently operating a crushing operation at the site.

26. The Board finds that, as a condition of approval, crushing shall not be permitted at the Site, for the reasons that it is an industrial operation that is not permitted in the zoning districts comprising the Site, it is not necessary to the mining operations at the Site, it is currently prohibited under the existing licenses (and is only currently permitted by the Township on industrial mining sites), it is not currently occurring at the Site, and GRG indicated at the public hearing that it would forego the crushing operation if it was objectionable.

27. The Board approves the site plan submitted by GRG, entitled "Bend in the River Mining Enlarged Site Plan – Grand Rapids Gravel Plant #16", dated May 9, 2019; however, all

notations on the site plan that are inconsistent with this Resolution shall be considered stricken from the site plan. In the event there is a conflict between the site plan and this Resolution, this Resolution shall control. In the event there is a conflict between the site plan and the Approved

28. Reclamation Plan, the Approved Reclamation Plan shall control.

29. The license is approved until and shall expire June 30, 2023, unless suspended or revoked earlier per the Ordinance.

30. The Board incorporates the findings and conclusions in the Staff Report dated October 2, 2019, to the extent they do not conflict with this Resolution.

31. This approval of ML1902, with conditions, supersedes the existing licenses pertaining to the subject parcels. The Site shall be operated in compliance with ML1902 and the conditions of approval so long as ML1902 is in effect.

32. GRG shall be considered the licensee for purposes of enforcing the Ordinance and the conditions of approval.

33. GRG shall comply with all federal, state, and local laws, regulations and ordinances, including the Ordinance.

At a meeting of the Georgetown Charter Township Mineral Mining Review Board held on November 20, 2019 at 7:40 p.m., this resolution was offered by Member VanderKlok, and supported by Member Samy.

YEAS: Smit, Ferguson, VanderKlok, Bolhouse, Samy, Healy

NAYS: Ulberg

ABSENT/ABSTAIN: None

RESOLUTION NO. 191120-03 DECLARED ADOPTED.



Donna Ferguson, Secretary
Georgetown Charter Township Mineral Mining
Review Board

CERTIFICATION

I, Donna Ferguson, hereby certify that that the foregoing is a true and complete copy of a resolution adopted by the Georgetown Charter Township Mineral Mining Review Board at a meeting held on November 20, 2019, which was noticed and held in accordance with the Michigan Open Meetings Act, Public Act 267 of 1976.

A handwritten signature in black ink, appearing to read "Donna Ferguson", written over a horizontal line.

Donna Ferguson
Secretary, Georgetown Charter Township Mineral Mining
Review Board