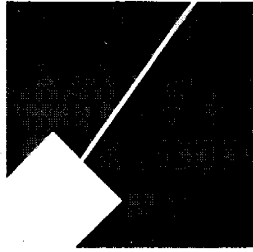


M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

**MCPB**  
**Item # 11**  
**6/10/04**

**MEMORANDUM**

**DATE:** June 4, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning Division, LAC  
**FROM:** Judy Daniel, AICP, Rural Area Team Leader (301-495-4555)  
Community-Based Planning Division

**REVIEW TYPE:** Special Exception Remand  
**APPLYING FOR:** Wholesale Nursery, Landscape Contractor, Mulch Manufacture  
**APPLICANT:** Twin Ponds Partnership, Ltd.  
**CASE NUMBERS:** S-2527, 2528, 2529  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**ZONE:** Rural Density Transfer Zone  
**LOCATION:** 15315 Mt. Nebo Road  
**MASTER PLAN:** Preservation of Agricultural and Rural Open Space

**FILING DATE:** June 3, 2002

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**STAFF RECOMMENDATION: Approval with revised conditions**

**BACKGROUND**

On November 21, 2002 the Planning Board reviewed the special exception applications of Twin Ponds Farm, LLC for a joint landscape contractor, wholesale nursery, and mulch manufacture operation on Mt. Nebo Road in the Rural Density Transfer Zone. The Board recommended approval of that use with conditions. A copy of the Planning Board recommendation to the Board of Appeals is attached to this report.

That case is still in process, and the Board of Appeals has requested additional information or clarification about certain specific items regarding this application. The Board of Appeals, after considering the recommendations of the Planning Board and

the reports and recommendations from the Hearing Examiner, received requests for further oral argument on this case from several persons and entities opposed to the applications. In a resolution of November 26, 2003 (attached), the Board of Appeals remanded this case to the Hearing Examiner for this further information, stating "*The Board finds that it requires additional factual information before it can decide either on the special exceptions or the requests for oral argument.*"

The order of the Hearing Examiner states that the Planning Board and Technical Staff are requested to submit their comments, if any, with respect to the final plans. The specific additional information requested by the Board of Appeals includes:

1. The nature and extent of contractor operations, specifically:
  - the number of employees;
  - number and types of equipment; and
  - types of activities
2. The source of water to serve the operations of the special exceptions;
3. Applicable parking requirements for the uses and compliance of the applications with those standards;
4. The stream valley buffer area;
5. Whether subdivision is required with respect to Case #S-2528 [*Landscape Contractor*]
6. What activities would be necessary on Saturday and Sunday with respect to Case #S-2529 [*Mulch Manufacture*]
7. The configuration, including graphic depiction, of the entry and exit control proposed for Mt. Nebo Road.

The staff also received a letter on May 10 (attached) from those in opposition to this application outlining their concerns. And the People's Counsel has been deeply involved in this case, assisting with attempts a negotiation and mediation between the petitioner and the opposition. A letter outlining his concerns with the application is also attached as it sheds light on some of the reasons for the current remand.

## **ANALYSIS**

Since the Planning Board has already recommended approval of this application, and the nature of the remand is a limited scope of items, the staff believes it is most appropriate to limit comment to how the current proposal differs from what was recommended for approval by the Planning Board, evaluation of the specific questions raised by the Board of Appeals, and evaluation of the questions raised in the May 10 letter from the opposition.

This report evaluates the items noted; and makes recommendations, where appropriate, of alternative or modified conditions for the approval of the special exceptions. The staff believes that nothing in the materials submitted for review indicate a reason for changing the prior recommendation of approval for these uses. But there are elements that the staff believes needed clarification or adjustments for consistency.

#### **A. Modifications Since Review by Planning Board**

The Hearing Examiner has recommended approval of these petitions with a wide range of conditions. The staff generally concurs with the Hearing Examiner that with the proposed modifications these proposals are acceptable – and that they sufficiently limit their scope and impact.

These petitions differ from what was recommended by the Planning Board in the scope of the operations allowed and the extent of conditions proposed to limit the impact of operations on the property. The Planning Board recommended approval of Phase 1 of each these operations rather than attempt to discern the necessary conditions required to limit the impact of the entire scope of operations.

The most controversial of the three operations was the Mulch Manufacturing, and the proposed Phases 2 and 3 of the Mulch Manufacture operation have been completely removed by the applicant from the petition. The staff notes that with this modification, the Manufacture of Mulch use is already operating at this level as a permitted use. Special Exception is required primarily to allow the Petitioner to sell the excess mulch they make to customers who are already arriving to deliver organic debris. With the special exception, they would be able to leave with a load of mulch created from prior debris deliveries. Thus, the special exception will require stronger environmental controls but a limited increase in truck traffic.

The potential scope of operations for Phases 2 and 3 of the Wholesale Nursery and the Landscape Contractor uses is reduced, and the Hearing Examiner has recommended approval of all Phases of those operations. In making this recommendation, the Hearing Examiner made the following statement:

*The Technical Staff and Planning Board recommended limiting the initial approval of this use to 10 trucks and giving the Petitioner the opportunity to request a modification to increase the number of trucks to 15. Because the Petitioner has agreed to delete phases 2 and 3 of the proposed Manufacture of Mulch and Composting use, and has agreed to numerous restrictions on the proposed Landscape Contractor use (including but not limited to reducing the number of vehicles and employees), the Hearing Examiner does not see any significant benefit in approving only one phase of this proposed use and requiring all parties to return to the Board of Appeals for what may involve many days of hearings when the Petitioner is ready to expand to 12 vehicles for this use.*

*There is no evidence to support the conclusion that an increase from 10 vehicles to 12 vehicles would impact the neighborhood in a way that would justify restricting the Petitioner to only 10 vehicles for this use and imposing upon all parties the time and expense of further hearings for only 2 additional vehicles.*

*And because the wholesale horticultural nursery use would generate very little noise or traffic, is a relatively innocuous use and would provide screening for the other two proposed uses, the Hearing Examiner does not see any significant benefit in approving only the first phase of this use and requiring all parties to return to the Board of Appeals for what may involve many days of hearings when the Petitioner is ready to open the second and third phases of this use.*

The staff concurs with the Hearing Examiner's rationale for this decision and recommends approval of the uses with conditions, as recommended for modification, in the subsequent discussion in this report.

## **B. Board of Appeals Remand Items**

*The staff evaluated the voluminous material submitted for this Petition since it was reviewed by the Planning Board in November of 2002. The staff understands the reasons for this request for clarification, and it was necessary to "sort" the materials submitted by topic in order to understand the elements of operations requested. This task was exacerbated by the artifice of having to consider this as three separate uses, when they are actually three elements of the same business. All the discussions and conditions proposed are repetitive in many ways.*

*The staff review led to recommendations for modifications to the Hearing Examiner's proposed conditions of approval primarily to lend greater consistency and clarification to the conditions. The discussion and conditions are arranged by topic, rather than by use, in order to make them easier to understand holistically.*

*The Board of Appeals requested additional factual information on the following items.*

### **1. The nature and extent of contractor operations, specifically: the number of employees; number and types of equipment; and types of activities**

While the staff agrees with the People's Counsel that this issue needs clarification, the staff generally agrees with the Hearing Examiner that the proposed extent of contractor operations, with the limiting conditions proposed, are acceptable. The majority of these conditions were conceived in answer to concerns raised over the past year by those opposed to the Twin Ponds operations. The staff's prior experience with these types of special exception applications indicate that the proposed operations, as limited by the extensive conditions proposed, will not be excessive or out of the ordinary for these types of uses.

The Board of Appeals needs this information because a major concern of the opposition appears to be a fear that there will be excessive traffic to and from the site created by outside or independent contractors doing maintenance, process, or auxiliary work at the site; and a fear of the number of auxiliary workers they would bring with them to do the contracted work. Without strong and clear limits this could become a problem. But any business contracts with other businesses that arrive from time to time to do work related to maintenance or upgrading of the business. Any office hires painters, any restaurant hires plumbers – and so any business of this type might logically hire experts from time to time for tasks such as cleaning out a pond. These are not regular visitors to the site and cannot always be fully determined in advance.

Rather than try to anticipate every potential visit, the Hearing Examiner has taken the approach of limiting the number of “outside or independent” contractors who may visit the site on a daily basis. In consideration of the legitimate concerns of the opposition, the staff has recommended strengthening this condition to limit the number of visits that may be made by these contractors on a monthly basis, and the number of workers they may bring with them to the site. The number recommended and workers who may come with them are based on conversations with the Petitioner regarding the frequency of visits they anticipate. The staff believes that strengthening the limiting conditions for this aspect of the uses will be helpful.

## **2. The source of water to serve the operations of the special exceptions;**

The sources of water to serve the operations include: a well to be drawn from the Poolesville Area Aquifer restricted to use for nursery stock irrigation and permitted by The Maryland Department of the Environment, withdrawal from the Twin Ponds permitted by the Hearing Examiner for fire suppression only, a water tank holding 1000 gallons located next to the compost piles, and a sediment and erosion control pond located between the compost piles and the stream valley buffer. The Department of Permitting Services, Well and Septic Division, and Maryland Department of the Environment are the appropriate lead agencies for further questions. The staff is recommending that the wellhead and the water tank capacity be added to the Site Plan.

## **3. Applicable parking requirements for the uses and compliance of the applications with those standards;**

As noted by the Hearing Examiner, there are no specific applicable standards for this type of use. The stated standards refer to calculating parking based on “total floor area”, which is irrational for these uses. The Board of Appeals has used common sense in the past to determine sufficient parking for these types of uses, as provided by the phrase that requires “adequate parking”. The key factor is thus the total number of vehicles and trailers that need to be parked.

Specifically, the Montgomery County Zoning Ordinance Article 59-E, Section 3.7 Schedule of Parking Requirements) requirements are:

Wholesale Nursery: Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 50-E. This requirement is: One and one-half parking spaces for each 1,000 square feet of total floor area and sufficient area to provide for loading and unloading.

Landscape Contractor

Areas for parking and loading of trucks and equipment as well as other on-site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on-site may be limited by the Board to preclude an adverse impact on adjoining uses. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.

Mulch Manufacture

The operating area as well as areas for parking and loading must be a minimum of 50 feet from any property line and adequately enclosed, screened, and buffered, or otherwise constructed or arranged so as to protect adjoining uses from noise, dust, odors, and other objectionable impacts.

The Board may limit the number of motor vehicles operated in connection with the business or parked on the site so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on the site for the total number of vehicles permitted, and must not be less than required for an industrial or manufacturing establishment or warehouse, under Article 50-E.

All of these requirements refer back to the "industrial or manufacturing establishment or warehouse" requirement of Article 59-E-3.7. This guideline is limited in its usefulness in that it refers to a ratio of parking spaces to floor area, and these uses are primarily outdoor uses. It would be a useful guide for a greenhouse operation, but it is not useful for determining parking for acres of planted trees and outdoor mulch manufacture. Sufficient area for loading and unloading is certainly to be provided, and is necessary for operation of the business.

The secondary guides for the landscape contractor and mulch manufacturing operation are more direct, but still subjective. Landscaping contractors and mulch manufacture as to provide "adequate parking" on-site for the total number of vehicles and trailers permitted. That is measurable when the number of vehicles is determined.

The November 2002 staff report recommended approval of the existing parking area. Subsequent information submitted has indicated a need for additional parking area to accommodate company vehicles at night and employee vehicles during the day.

The proposed size of the parking area for trucks and employee vehicles has 20 spaces, and must accommodate:

12 spaces for 12 Twin Ponds trucks/trailers (evening parking)

12 spaces to accommodate 12 employee vehicles (day parking)

*The Petitioner anticipates an average of 2 employees arriving per vehicle, and this will accommodate the 24 employees who will be working primarily for the Landscape Contracting operation.*

0 spaces for the Wholesale Horticultural Nursery operation

*The 2 employees assigned to this operation are also employees of the Landscape Contractor operation who will work in this area as necessary. There are no "separate" employees for this use.*

1 space for the Manufacture of Mulch operation

*This use is to have one full time assigned manager. Most other duties are to be performed by employees of the Landscape Contractor operation who will work in this area as necessary.*

This points to the need for a parking area of 25 spaces at a minimum, although the staff believes that 5 additional spaces should be provided to accommodate occasional outside or independent contractors performing maintenance or process duties on the site. The additional spaces can be added to the existing gravel parking area, extending it toward the access drive to the Wholesale Horticultural Nursery loading area. Customers coming to the site will not need to use parking spaces, as they will generally be delivering organic debris to the Mulch Manufacture area, perhaps picking up mulch and/or trees (or other plant materials) at the Wholesale Horticultural Nursery, and then leaving.

Parking spaces for up to 4 (four) office employees and the three owners of the Twin Ponds LLC would be more appropriately located near the office, accessed by a separate driveway and existing parking loop. Visiting commercial vehicles should specifically be denied use of this driveway.

#### **4. The stream valley buffer area**

The submitted Natural Resource Inventory/Forest Stand Delineation indicates the location of the 100-foot stream valley buffer.

#### **5. Whether subdivision is required with respect to Case #S-2528**

The November 2002 staff report noted that although the proposed landscape contractor use is agriculturally related, it is commercial in nature and would require a building permit for the construction of any new buildings, or expansion of existing buildings. It concluded that when any existing building is proposed for expansion subdivision will be required. The Development Review staff memo confirming this position is attached.

Sometimes subdivision might be triggered if existing septic facilities are found to be insufficient for the proposed use. In this instance, as noted in the Hearing Examiner's report, the Department of Permitting Services found that the current system on the site is adequate to serve 30 persons as proposed. Therefore, no subdivision is required until a building permit is requested.

**6. What activities would be necessary on Saturday and Sunday with respect to Case #S-2529 (Mulch Manufacture)**

As noted in the report of the Hearing Examiner, weekend operations are limited. Saturday operations are limited to pick-ups and deliveries in conjunction with the Landscape Contractor operation. And employees would be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturdays and Sundays. A condition of approval is that use of the processor for grinding and/or shredding raw materials will be limited to weekdays only.

**7. The configuration, including graphic depiction, of the entry and exit control proposed for Mt. Nebo Road**

The November 2002 staff report recommended the following regarding the Mt. Nebo access:

“Access to the site is restricted to left-turn ingress and right-turn egress onto Mt. Nebo Road so that no traffic to and from the site uses Mt. Nebo Road south to reach River Road. The applicant should inform this restriction to companies that have delivery activities associated with the landscape contractor and/or wholesale nursery operation.”

The proposed operations plan for these uses has been modified and the northernmost driveway is no longer to be used by any commercial truck traffic. Therefore the channelized driveway design will not be necessary for that driveway. The graphic depiction of the proposed design for the truck access driveway is attached. The staff has reviewed the proposed conceptual entrance design and finds the design adequate to achieve that objective if built as depicted.

The staff also reviewed the additional traffic information submitted regarding the seasonal vehicular trips -- 72 daily trips during April through November and 46 trips during December through March. The staff believes that this level of traffic will not cause any traffic capacity problem on the surrounding roadways.



### **C. Letter from Opposition to Twin Ponds**

*In addition to the specific questions of the Board of Appeals, the staff received a letter dated May 10, 2004 regarding the nature of their continuing concerns regarding this use. A copy of that letter is attached, and the staff has the following comments regarding these concerns:*

**1. They believe that the nature and extent of contractor operations remain unclear and they are concerned that the number of partners within the Twin Ponds LLC will expand without notice to the Board of Appeals.**

The letter contains extensive language regarding the reasons for this concern. As previously noted, the staff agrees that the submitted material has become confusing due to multiple modifications proposed in attempts to address concerns of the opposition. And, as previously discussed, the staff is recommending a wide range of modifications to the conditions proposed by the Hearing Examiner for purposes of clarity and consistency.

In reference to the concern regarding the number of partners within the limited partnership of the Twin Ponds business venture, the materials submitted for this use list the partnership as three people. The staff believes that any change to that number would require a modification to the special exception. But to clarify that intent, the staff recommends changing all conditions related to the partnership to note that this pertains to three persons only.

**2. They believe subdivision should be required for S-2528 (Landscape Contractor), and that the Board of Appeals has the ability to require subdivision even when not otherwise authorized by subdivision regulations.**

The reason why subdivision is not required has been discussed. The staff is not aware of any means by which the Board of Appeals can require subdivision if not otherwise authorized.

**3. They believe that the design, function and capacity of the sediment control trap must account for the special features of runoff from the compost facility. They believe this is a concern for water quality, since the facility is located near the stream valley buffer area.**

A concern to the staff is a realization that forest area appears to have been cleared within the stream buffer area for this use, and forest may have been cleared (perhaps inadvertently) on an adjacent property. This cleared area was shown on the originally submitted plans, but the staff thought that it had been cleared before the mulch operation began. As reflected in a recommended modification to the conditions for approval, this area must be reforested as a part of the Final Forest Conservation Plan.

The mulch manufacture area is surrounded by a drainage area that is relatively small, flat, and forested. Surface drainage into the site and through the compost piles would likely carry sediment produced by the compost piles and a small amount from offsite. To manage the runoff, the staff recommended that the applicant work with the Natural Resource Conservation Service (NRCS) of the Montgomery Soil Conservation District to develop a Conservation Plan for the proposed uses.

In this area, a sediment basin, berms and 50-foot grass swales were the recommended runoff management methods in the November 2002 staff report and also by the Hearing Examiner. The applicant is working with the NRCS and has an approved Soil Conservation Concept Plan. That Plan recommends providing an increased level of conservation by adding another buffer area in the form of a grassed filter strip and to utilize some of the compost windrows as diversions. Approximately 1/2 acre will be removed from compost production and placed into conservation practices. These recommendations are included as modification to the conditions of approval.

The Environmental staff believes these measures will sufficiently filter the runoff, but the size of the sediment basin that must be approved by the Department of Permitting Services (DPS), is critical. The plan for the sediment basin must be approved by DPS as part of the Sediment and Erosion Control Plan.

Regarding *Groundwater Protection*, staff defers to the Montgomery County Department of Environmental Protection. That agency sees minimal possibility of groundwater contamination from the proposed operation. No additional conditions were recommended in the November 2002 staff report and no additional conditions are recommended with this report.

**4. They believe that each special exception should be associated with a specific area of the property.**

The opposition views Twin Ponds as three separate businesses, not a combined operation business. That is not how this business operates. Because they are very often operated together, these three uses were originally contained within one special exception category, but were separated several years ago to allow easier process for those entities that wished to have only type of operation. That decision unfortunately creates a confusing evaluation process when these uses are combined on one site.

The staff believes that it would be detrimental to try to keep these uses totally separated on the site, as that is not the normal practice for this type of business. There are economies of scale that arise from operating related businesses on the same site which usually mean fewer vehicles, fewer employees, and less impact than the cumulative impact of such businesses operating on separate sites. Employees can be assigned to work on various aspects of the business as needed. For these reasons, the staff does not recommend adoption of this recommendation.

**5. They believe that the proposed parking is not sufficient to serve the three uses, and is not consistent with the scale of the operations proposed. They believe that up to 50 spaces are needed. They also believe the proposed parking is in an area not accessible to the functions dependent on parking. And the site plan is not clear about parking and storage areas for various vehicles for the use.**

The Hearing Examiner concludes that the parking area proposed is sufficient for the size of the uses proposed and the number of employees and visitors intended. As discussed above, the staff agrees that the parking area should be expanded, but that 30 spaces are sufficient for the joint uses. The staff also agrees that "some of the parking is in an area not accessible to the functions dependent on parking", and the office employees should be authorized to park near the office structure. The staff also agrees that the site plan is inadequate and unclear and the staff has recommended modifications to that document.

**6. They believe that the proposed location for parking does not meet the requirements of the zoning ordinance. They believe that the parking area should be within 500 feet of the pedestrian entrance to the uses so the proposed parking area is located too far from the office/storage area. And they believe the employee and equipment parking should be separated.**

The staff is unsure how to determine a pedestrian entrance to a rural area property and the staff does not believe that such a standard should be used on this site. All parking areas are over 200 feet from the nearest property line and over 900 feet from the nearest off-site home. The staff agrees that employees with office jobs should be authorized to park in the loop area adjacent to the office structure, accessed by the northern driveway. The use of this driveway should be limited to those employees and the vehicles of the three Twin Ponds LLC owners. Any commercial vehicle traffic should be expressly prohibited.

The staff does not believe that the employee and equipment parking should be separated. It is more efficient for employees who drive the trucks to arrive, leave their vehicle, and get into a truck stored in the same lot. The conditions of approval require additional trees to screen this parking area from the home on the adjoining lot, as noted on the Site Plan.

**7. They believe that the driveway entry/exit control on Mt. Nebo will be insufficient to keep trucks from turning left onto Mt. Nebo. And they believe there should be an internal road for connecting the two driveways.**

As stated previously, the staff believes the entry/exit control as proposed will be sufficient to keep trucks from turning left onto Mt. Nebo.

An internal access road will connect the wholesale horticultural nursery loading area to the commercial access driveway, allowing trucks to pull in, turnaround, and leave via the commercial access driveway. Commercial vehicles will have no direct access to the business office driveway. Only vehicles of the three managing partners of Twin Ponds LLC, and office employees should be authorized to use that driveway and parking area.

The staff does not believe there should be a loop driveway as this would necessitate a second controlled access driveway along the Rustic Road. The staff recommends that the Petitioner also get approval from the Rustic Road Advisory Committee on the design of the controlled access driveway entrance.

## **CONCLUSION AND RECOMMENDATIONS**

After review of the Hearing Examiner's reports, the supporting documentation, the letters from the petitioner, the People's Counsel, and the opposition – the staff confirms its recommendation of approval of these uses as modified by the conditions authorized by the Hearing Examiner and submitted to the Board of Appeals, with additional conditions and modifications as discussed above and proposed below.

The above report outlines, summarizes, and condenses the rationale for these modifications. The staff believes in many areas these uses are further restricted under the current conditions for approval than they were when recommended for approval by the Planning Board in November of 2002. And the staff reiterates strong support for this type of business in the Rural Density Transfer Zone, particularly given the decision to no longer allow them in residential zones. The use is agriculturally related in an agricultural zone, and as such is afforded stronger consideration.

At a larger scale, the use might become a problem at this location, but as now proposed and limited, the staff believes it will – as concluded by the Hearing Examiner – be an appropriate scale at an appropriate location. The staff recommendations for modifications to the conditions of approval recommended by the Hearing Examiner are listed below, organized by common element rather than specific use for easier comparison. Only the conditions noted as being of concern are discussed.

### **A. SITE PLAN MODIFICATIONS**

*The current submitted site plan is incorrect in a number of areas. In order to clarify what is now recommended for these Petitions, the Site Plan should be revised to reflect the current conditions of approval. Revise the Comprehensive Special Exceptions Site Plan in the following ways:*

1. Include the location of the interior driveway that connects the commercial traffic driveway to the wholesale horticultural nursery loading area.

2. Indicate that the northernmost storage structure will not be used for any of the Special Exception uses unless it is relocated to meet the setback standards of the Rural Density Transfer Zone.
3. Remove the areas indicated as future phases for the Mulch Manufacture use.
4. Indicate the location of the wellhead on the property.
5. Change notation from "Landscape Contractor Operation" to Landscape Contractor Equipment Storage Area"
6. Indicate the storage capacity of the water tank.
7. Revise the mulch manufacture area to show that the compost pile is clearly removed from the stream valley buffer line.
8. Expand the parking area in the direction of the interior access drive to accommodate up to 30 vehicles.

## **B. EXTENT OF PERMITTED OPERATIONS**

*The modification clarifies that there are no additional vehicles that are a part of this business that would be stored elsewhere and used as a part of the business. This is necessary to address the legitimate concerns regarding traffic volumes related to the various aspects of this business.*

### **For All Uses**

5. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner.
  - a. Phases 1, 2 and 3 of the Wholesale Nursery Operation.
  - b. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles, all of which must be stored on-site.
  - c. Phase 1 of the Manufacture of Mulch and Composting operation.

## **C. ACCESS**

*The staff believes that several areas of the condition relating to this area of concern should be modified for clarification. This modification also requires the Rustic Roads Advisory Committee to approve the final design for the channelized island at the commercial entrance to the property. It also clarifies that truck and heavy vehicle traffic is not allowed to use Mt. Nebo to the south, as that road is not appropriate for frequent use by vehicles, especially large heavy vehicles.*

*It also establishes that office employees and the three owners of the business may park in the loop adjoining the business offices. And it specifies the interior route that must be used by vehicles picking up plant materials from the Wholesale Nursery Operation.*

*The staff believes these clarifying conditions are important for the implementation of these proposed uses.*

### **For All Uses**

3. Commercial vehicle access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island on the southernmost driveway. The design of the channelized island for the southernmost driveway must be approved by the Rustic Roads Advisory Committee.

No special exception related truck or other heavy vehicle traffic to and from the site may use Mt. Nebo road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.

Only employees working primarily in the business office (up to 4 employees), those with business in the office, and the 3 managing partners of the Twin Ponds, LLC may use the northernmost driveway and park in that area.

Trucks picking up trees or other plant materials at the wholesale horticultural nursery must enter via the channelized driveway and access the nursery loading area via the interior drive adjacent to the vehicle parking area. After pickup they must exit via the same route.

## **D. STRUCTURES**

*The original staff report noted that relocation of this structure, or any other change requiring a building permit would require subdivision. This modification addresses and clarifies that requirement.*

### **Landscape Contractor**

19. The existing storage building closest to the north property line shall only be used for farm equipment. When and if the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone; and subdivision will be required.

### **Wholesale Nursery**

22. The existing storage building closest to the north property line shall only be used for farm equipment. When and if the building is used for the Wholesale Horticultural Nursery Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone; and subdivision will be required.

## **E. HOURS OF OPERATION**

*The hours of operation permitted are more restricted than those previously recommended by the Planning Board. The Planning Board recommended hours of 6:00 AM to 8:00 PM for the Landscape Contractor, and 7:00 AM to 7:00 PM for the Mulch Manufacture. The proposed condition limits the Landscape Contractor to the same operating hours as the Wholesale Nursery, and puts stricter limits on the Mulch Manufacture operation. The recommended modifications clarify the weekend hours and staff arrival times.*

### **Landscape Contractor**

16. Hours of operation are restricted to 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM Saturday; provided that employees may arrive between 6:45 and 7:00 AM. Operation of machinery or departures to job sites is not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.

### **Wholesale Nursery**

16. Hours of operation for delivery or pick-up related to this use are limited to 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM Saturday; provided that employees may arrive between 6:45 and 7:00 AM. Operation of machinery or departures to job sites is not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.

### **Mulch Manufacture**

15. Hours of operation for the operation of general equipment for this use are limited to 8:30AM to 4:30PM (or daylight hours, whichever is less) Monday through Friday. However, deliveries may occur between 7:00 AM and 7:00 PM, Monday through Friday. Saturday operations shall be limited to pickups and deliveries in conjunction with the Landscape Contractor operation, provided that up to two employees will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.

## F. ENVIRONMENT

*The staff believes the clauses removed from these conditions are redundant and unnecessary, as the Forest Conservation Plan and concept stormwater management plans are required. And additional language is added to address the concerns discussed in this report with the stream buffer area and the required environmental plans.*

### **Landscape Contractor and Wholesale Nursery**

14. ~~If required by Chapter 22A of the Montgomery County Code, a~~ A Final Forest Conservation Plan must be submitted prior to issuance of a Sediment and Erosion Control Permit and any building permit. ~~(if required by the Department of Permitting Services).~~

15. ~~If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental Staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.~~

### **Mulch Manufacture**

14. ~~If required by Chapter 22A of the Montgomery County Code, A Final Forest Conservation Plan must be submitted to and approved by the M-NCPPC Environmental staff prior to issuance of a Sediment and Erosion Control Permit or any building permit. (if required by the Department of Permitting Services). This plan~~ The Final Forest Conservation Plan must show reforestation of the stream valley buffer in the area of the existing compost piles. No new forest clearing is allowed. The Plan must also shall indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law.

If the applicant is found to have cleared forest area on the adjoining property to the north, the applicant must work with that property owner to reforest any cleared area on that property.

16. Stormwater Management and Sediment and Erosion Control Plans must be consistent with the Final Forest Conservation Plan approved by the Department of Permitting Services prior to issuance of any Sedimentation and Erosion Control permit. The petitioner must obtain approval of the required Sediment and Erosion Control Permit by Montgomery County Department of Permitting Services must be based on the plan prepared by the Natural Resource Conservation Service of the Montgomery County Soil Conservation District. The Sediment and Erosion Control Plan plan shall include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins, another buffer area in the form of a grassed filter strip and utilizing some of the compost windrows as diversions. Approximately 1/2 acre must be removed from compost production and placed into conservation practices. All sedimentation and control measures must be located entirely outside the stream valley buffer.



A Final Soil Conservation Plan consistent with the Sediment and Erosion Control Plan and the Forest Conservation Plan must be approved by the Natural Resource Conservation Service and submitted to the M-NCPPC Environmental staff prior to issuance of sediment and erosion control permits. This Plan must reflect these conditions of approval.

## **G. OUTSIDE/INDEPENDENT CONTRACTORS**

*This appears to be the area of greatest concern to the opposition. There appears to be a fear that there may be hidden elements of the proposed business that will bring excessive numbers of vehicles and workers to the property on a regular basis through this guise. The People's Counsel has noted the continuing problems with the "vagueness" of the information submitted by the Petitioner that have strengthened these fears. To address these legitimate concerns, the staff believes that the conditions for approval must clarify and limit more fully the extent to which these contractors may come to and from the site. This provision should pertain only to standard types of maintenance and process work that may be necessarily performed by outside contractors. Several of the types of maintenance work that may be anticipated during a work year should be specified.*

*To address these concerns, the staff recommends limits on the cumulative number of outside contractors allowed on the property in any month, and a limit on the number of employees an outside or independent contractor may bring to the site to perform the work. Further, the staff recommends that this provision should specifically allow only contractors performing functions related to necessary maintenance or elements of process on an occasional basis. In order to limit commercial traffic at this remote rural location third party contractors who are party to jobs contracted by the Petitioner should not be authorized to deliver materials to the site*

### **For All Uses**

4. For the three special exceptions, a total of one outside contractor may be on the property per day, and no more than 10 (ten) per month. Such contractor may have ~~more than one~~ up to five employees to carry out the work on the site.

The type of work that can be anticipated to be performed by outside or independent contractors on the site will include (but not necessarily be limited to) tasks related to the care and maintenance of the property, equipment, or structures; or to provide special limited and occasional services related to the business process such as maintenance of the gravel driveways, "mucking out" sediment traps and ponds on the site, or processing of large plant material. Such activities are anticipated to be infrequent, generally on an as-needed basis (usually annually or semi-annually).

No third party contractor deliveries of materials for customers or storage are permitted unless specifically authorized by the terms of the special exceptions.

## H. EMPLOYEES

### **Landscape Contractor**

*In order to address the concerns of the opposition, the Hearing Examiner's recommended conditions of approval reflect language related to contracted work on the site. The staff recommends additional language to further clarify the type of work that might be anticipated by outside contractors working on the site from time to time, as already noted in the Wholesale Nursery use.*

21. Petitioner is limited to no more than twenty-eight (28) employees for this special exception, excluding the three individual members of the Petitioner-LLC. This use is also authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4. and outside contractors.

### **Wholesale Nursery**

*This modification clarifies the status of the wholesale nursery employees as part of the larger scope of operations, not solely dedicated to this use.*

20. No more than two (2) employees (who are primarily employees of the landscape contracting operation) may be used to maintain the Nursery, excluding the three individual members of the Twin Ponds LLC and the occasional use of outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4.

### **Mulch Manufacture**

*The Hearing Examiner listed the condition for the Certified Compost Operator separately from the condition for employees for the Mulch Manufacture use. The modification to Condition 28 sets the scope for allowing an outside contractor to perform certain necessary occasional operations related to this use, clarifies that the compost operator is an employee of the use, and defines the relationship of other employees as part of the larger scope of operations, not solely dedicated to this use*

25. A duly qualified Certified Compost Operator (as defined by COMAR 15:18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, and as well as supervise the inspection and maintenance of the windrows. The A Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.

28. Employees associated with this use are limited to one full-time employee to manage the operation who must be a qualified certified compost operator as described in Condition 25), with assistance from up to two (2) additional employees (who are primarily employees of the landscape contracting operation). This excludes excluding the three individual members of the Petitioner LLC.

However, an independent contractor hired to perform a raw materials processing operation associated with this special exception on an occasional basis for the use as defined in Condition 4 and limited in Condition 18, may bring up to three (3) additional employees to assist in this work. ~~up to three (3) additional employees, employed by an outside party, are permitted to assist an independent contractor associated with this special exception.~~

And the use is authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions as defined and limited in Condition 4.

## I. EQUIPMENT

### Wholesale Nursery

*The modification to Condition 18 clarifies the limits on vehicles associated with the Landscape Contractor use, and the number of trips they are authorized to make per day. It also adds the limitation on the tractor-trailer delivery as already noted in the Landscape Contractor Condition on the same topic.*

18. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pickups from the property (after the initial installation of all plant material), excluding deliveries and/or pickups via the 12 (twelve) vehicles used for the Landscape Contractor Special Exception operation (that are anticipated to make no more than one round trip per day). Only one vehicle per month may be a tractor-trailer, all other vehicles may be no larger than a thirty cubic yard capacity truck. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

*The modification to Condition 19 establishes the difference between customer or contractor vehicles visiting the site, and employee vehicles.*

19. Petitioner shall keep a log of all vehicles (except employees' personal vehicles) entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.).

In addition to company vehicles, the log will record vehicles of customers delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.

*The modification to Condition 21 clarifies the storage location of the equipment used for the Wholesale Nursery use.*

21. Equipment to be used for this special exception shall be stored within the equipment storage area or storage structures so that the equipment is not visible from the street, in the locations noted on the Special Exception Site Plan. Vehicles to be used and stored on the site will include the following, or similar, machinery: (1) a front-end loader and (2) a "Bobcat" with spade attachment (both of which are also used on the farm and/or mulch/composting operation).

### **Landscape Contractor**

*The modification to Condition 18 clarifies the limits on vehicles associated with the Landscape Contractor, and the number of trips they are authorized to make per day. Since the use is the primary user of the parking area, the modification also notes the need to expand the parking area as discussed previously. And it expands and clarifies the equipment to be used for the Landscape Contractor.*

18. This special exception is limited to using no more than twelve (12) commercial pickup trucks, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 pounds (trailers may be attached to such vehicles) that are anticipated to make no more than one round trip per day, in addition to one tractor-trailer per month to make deliveries. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

The parking /storage area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan. The parking area must be expanded to create a parking area for 30 vehicles in order to accommodate anticipated vehicles of workers and storage for the 12 trucks associated with this use, and occasional use by customers or contractors performing tasks as defined and limited in Condition 4.

Equipment and supplies to be used for this special exception must be stored so that the equipment is not visible from the street, in the locations noted on the Site Plan. Equipment to be stored on the site will include the following, or similar:

- 12 trailers for hauling equipment,
- lawn mowing equipment,
- snow removal equipment, and
- assorted smaller equipment.

Materials to be occasionally stored on the site will include auxiliary supplies such as mulch and plant materials required for larger jobs.

Petitioner shall keep a log of all vehicles, except employees' personal vehicles, entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.).

In addition to company vehicles, the log will record vehicles of customers delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or process functions on the site as limited in Condition 4.

### **Mulch Manufacture**

*The modification to Condition 17, as with the other uses, clarifies the limits on vehicles associated with the use and the number of trips they are authorized to make per day.*

17. No more than eight (8) vehicles per day may make deliveries and/or pickups from the property, excluding deliveries and/or pickups via the 12 (twelve) vehicles used for the Landscape Contractor operation (that are anticipated to make no more than one round trip per day).

Petitioner shall keep a log of all vehicles (except employees' personal vehicles) entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.), and the times and dates of each delivery and/or pickup, ~~excluding Landscape Contractor pickups and deliveries~~. In addition to company vehicles, the log will record commercial vehicles of customers delivering or picking up materials from the site as well as commercial vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.

*The modification to Condition 18 clarifies the relationship between the equipment described here and the equipment discussed in Condition 26. This Condition modified the Planning Board's recommendation that this equipment should be used no more than 25 days per year, and not used on Sundays.*

18. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month, that will usually be sequential. Use of this machine (as described in condition 26 below) is limited to weekdays between 8:30AM and 4:30PM. A log...shall be maintained to identify the days and hours of operation of the processor.

*For consistency, this modification adds the tractor-trailer limitation as added for the other uses.*

19. Only one tractor-trailer per month may visit the site in connection with this special exception. This visit may not be on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

*The modifications to Condition 26 clarify where the Mulch Manufacturing equipment will be stored and the conditions for the use of the processing equipment.*

26. Equipment to be used and/or stored on the site will include the following, or similar machinery:

(1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm) to be stored in the mulch manufacture area.

(2) a processor run by a typical tractor/combine diesel engine (such as a "Bendit" recycler) to break down raw materials into smaller sizes (this item will be transported to the site and may be left in the mulch manufacture area on a temporary as needed basis consistent with the limits requirements for use of the item in of Condition 18 above (no more than 3 weekday days per month);

(3) up to two tractors (also used on the farm) to manage and move materials that will generally be stored in the equipment storage buildings behind the office structure ;

(4) up to two front-end or track loaders (2.5 – 5 cubic yard bucket) to manage and move materials (as also used as part of the nursery and farm operation that will generally be stored in the mulch manufacture area;

(5) an additional two (2) loaders may be brought to the site on an as needed basis to expedite organic debris material processing by independent contractors as discussed in Condition 18 haulers when material or equipment is taken to the site, provided the loaders are not stored on the site; and

(6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product to be stored in the proximity of the pole barn in the mulch manufacture area.