

SLUP-10
of
2011

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BANKHEAD TRANSFER STATION
AN EXISTING INDUSTRIAL TRANSFER STATION
FOR
BANKHEAD TRANSFER STATION, LLC
1490 VETERANS MEMORIAL HIGHWAY
MABLETON, GEORGIA 30158
PHONE: 678-296-1888

REVIS

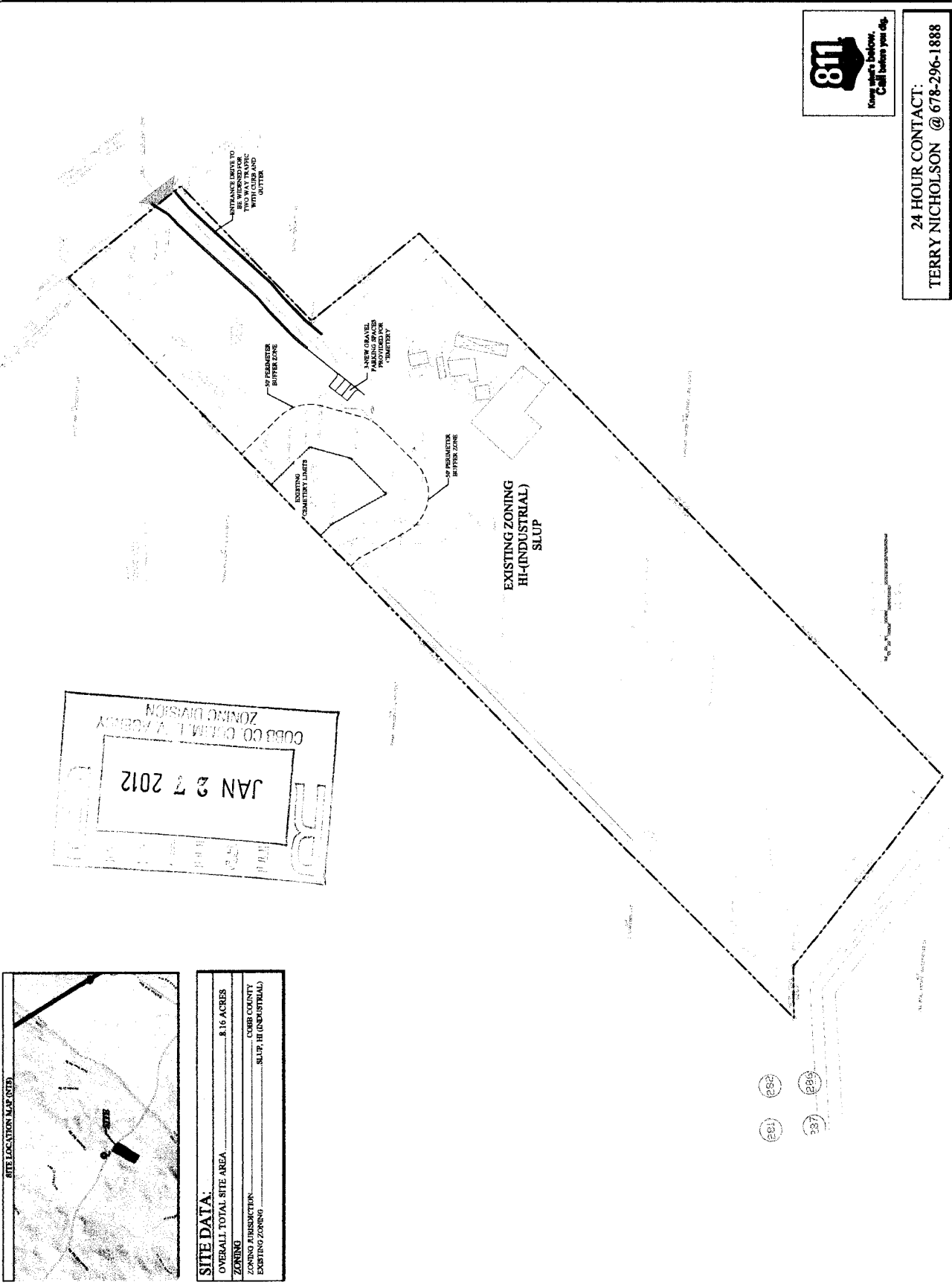
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SHEET TITLE
SLUP
PLAN

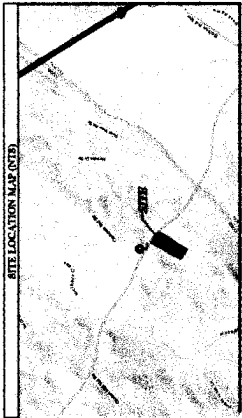


SCALE: 1" = 50'
DATE: SEPTEMBER 1, 2011
PROJECT: 11107.00

THIS SEAL IS ONLY VALID IF COPIED FROM
THE ORIGINAL SHEET AND DATED BY AN ORIGINAL SURVEYOR.



24 HOUR CONTACT:
TERRY NICHOLSON @ 678-296-1888



SITE DATA:

OVERALL TOTAL SITE AREA	8.16 ACRES
ZONING	COBB COUNTY
ZONING JURISDICTION	SLUP, HI (INDUSTRIAL)
EXISTING ZONING	

APPLICANT: Bankhead C & D Transfer Station, LLC
(678) 296-1888

REPRESENTATIVE: Garvis L. Sams, Jr. (770) 422-7016
Sams, Larkin & Huff, LLP

TITLEHOLDER: Bankhead C & D Transfer Station, LLC

PROPERTY LOCATION: On the southwest side of Veterans Memorial Highway, east of Discovery Boulevard

ACCESS TO PROPERTY: Veterans Memorial Highway

PHYSICAL CHARACTERISTICS TO SITE: Existing transfer station

PETITION NO: SLUP-10

HEARING DATE (PC): 11-01-2011

HEARING DATE (BOC): 11-15-2011

PRESENT ZONING: GC & HI

PROPOSED ZONING: Special Land Use Permit

PROPOSED USE: Expanding Existing Transfer Station

SIZE OF TRACT: 8.16 acres

DISTRICT: 18

LAND LOT(S): 282, 286

PARCEL(S): 8

TAXES: PAID DELINQUENT *

COMMISSION DISTRICT: 4

*As of April 18, 2012

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** CRC Developed Retail Center and HI/Undeveloped
- SOUTH:** HI/Developed Industrial Uses
- EAST:** HI/Developed Industrial Uses
- WEST:** CRC Developed Retail Center and HI/Undeveloped and Developed Industrial Uses

OPPOSITION: NO. OPPOSED **PETITION NO:** **SPOKESMAN**

PLANNING COMMISSION RECOMMENDATION

APPROVED **MOTION BY**

REJECTED **SECONDED**

HELD **CARRIED**

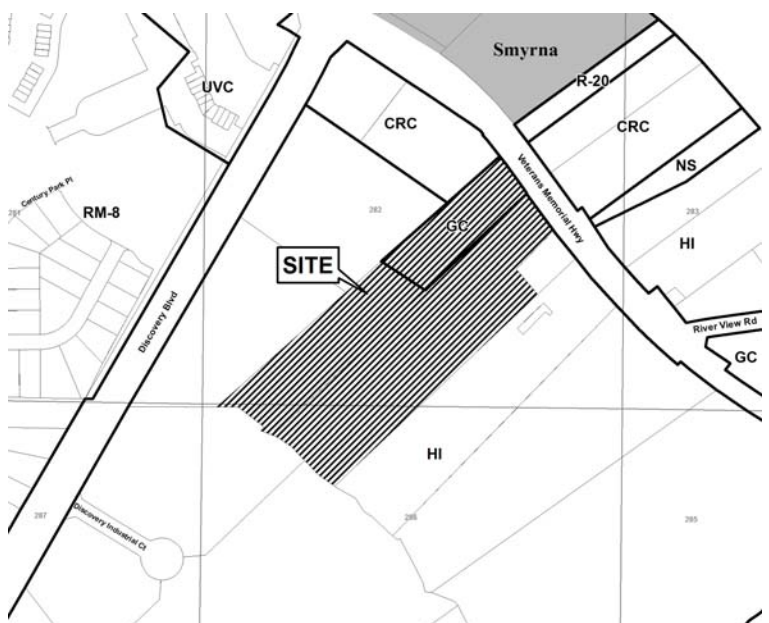
BOARD OF COMMISSIONERS DECISION

APPROVED **MOTION BY**

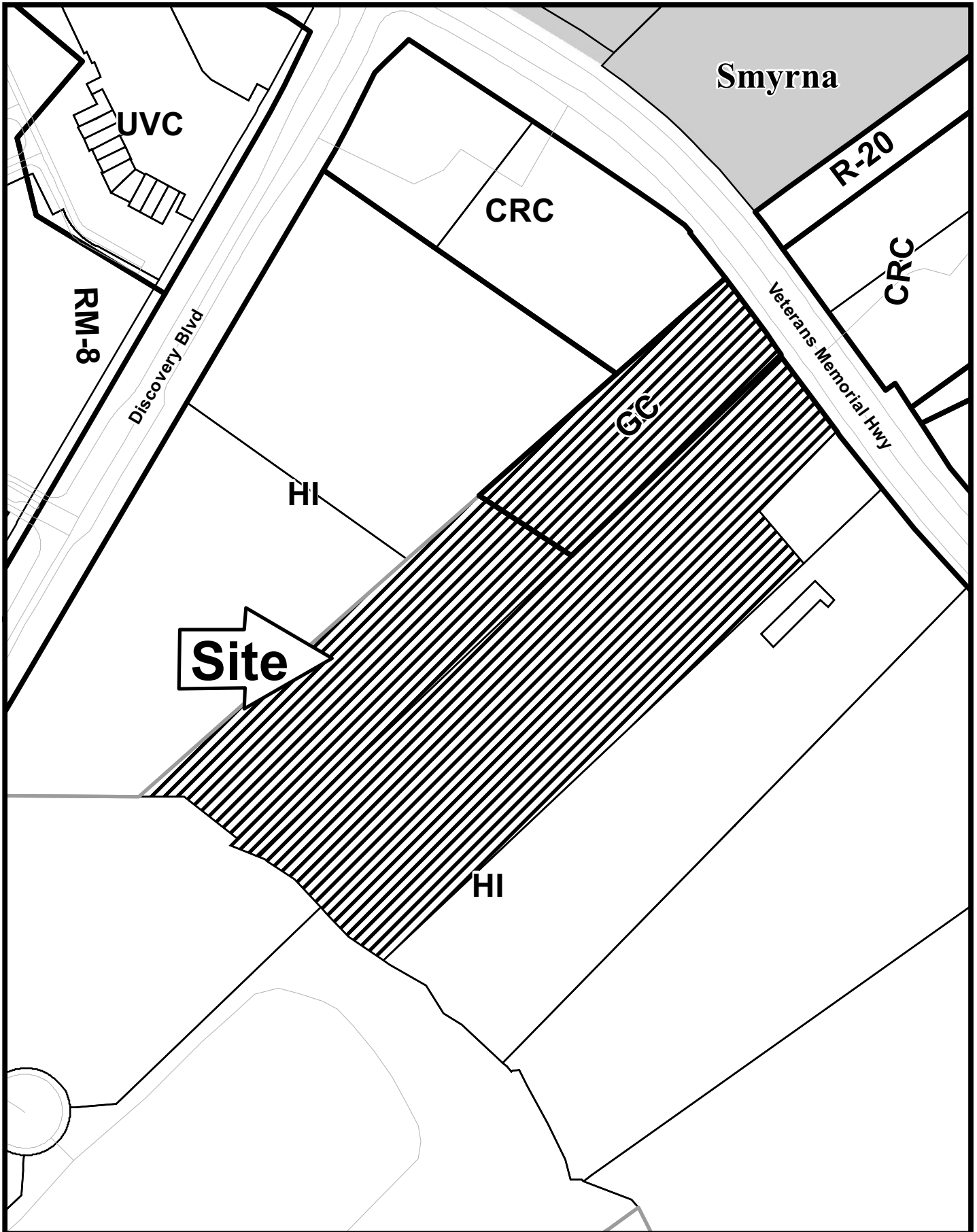
REJECTED **SECONDED**

HELD **CARRIED**

STIPULATIONS:



SLUP-10



This map is provided for display and planning purposes only. It is not meant to be a legal description.

100 0 100
Feet



City Boundary
Zoning Boundary

APPLICANT: Bankhead C & D Transfer Station, LLC

PETITION NO.: SLUP-10

PRESENT ZONING: GC & HI

PETITION FOR: SLUP

PLANNING COMMENTS: Staff Member Responsible: Jason A. Campbell

The applicant is requesting a Special Land Use Permit to develop and operate a waste transfer station that accepts municipal solid waste (msw). The proposal is to add municipal solid waste to the existing construction and demolition transfer station. It is anticipated that the project will transfer 150,000 tons of waste annually. All processing operations will be carried on inside the building, including the delivery of materials and the removal of same for transport. The applicant would employ technology to abate and control unpleasant odors, and to eliminate contaminated runoff. The proposed hours of operation for the waste transfer station and recycling facility will be Monday through Friday from 5:00 am to 6:00 pm, and on Saturday from 8:00 am to 1:00 p.m. The applicant has a Special Land Use Permit (SLUP-9 of 2004) for construction and demolition transfer only. The applicant has submitted a Statement of Intent and stipulation letter, which are attached for review. The Georgia Regional Transportation Authority and the Atlanta Regional Commission have approved the applicant's request. The Georgia Department of Transportation (GDOT) represents the Federal Aviation Administration (FAA) in local matters, and they have sent a letter dated April 18, 2012 (see attached) regarding this application. The letter from GDOT recommends this request not be approved due to the negative effect the proposal may have on air navigation safety and liability for Fulton County Airport.

Historic Preservation: No comments.

Cemetery Preservation: The Cobb Cemetery Preservation Commission is satisfied with the current stipulations that were placed on the cemetery land by Bessemer Properties in May 1996. We wish to continue the stipulations and ensure that there will be no parking in the cemetery buffer; also that access to the cemetery is not inhibited by persons parking in or along the cemetery access.

WATER & SEWER COMMENTS:

Connection to sanitary sewer required for wash down of tipping floor. Industrial Discharge Permit issued by CCWS most likely required.

APPLICANT: Bankhead C & D Transfer Station, LLC

PETITION NO.: SLUP-10

PRESENT ZONING: GC & HI

PETITION FOR: SLUP

TRAFFIC COMMENTS:

Recommend installing sidewalk along the road frontage.

Recommend removing existing unused driveway apron.

Recommend a deceleration lane at the main access driveway.

GDOT permits will be required for all work encroaching upon state right-of-way.

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

FIRE DEPARTMENT COMMENTS:

NO COMMENTS: After analyzing the information presented for a Preliminary Review, the Cobb County Fire Marshal’s Office is confident that all other items can be addressed during the Plan Review Stage.

APPLICANT: Bankhead C & D Transfer Station, LLC

PETITION NO.: SLUP-10

PRESENT ZONING: GC & HI

PETITION FOR: SLUP

DRAINAGE COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Chattahoochee River FLOOD HAZARD INFO: Zone X

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake – need to keep residential buildings out of hazard.

WETLANDS: YES NO POSSIBLY, NOT VERIFIED

Location: _____

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE: YES NO POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000’ of Chattahoochee River) ARC (review 35’ undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area – County review (_____ undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance – **County Review**/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: **50’, 75’, 100’ or 200’** each side of creek channel.

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream _____.
Additional BMP’s for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on downstream **receiving stream**.

APPLICANT: Bankhead C & D Transfer Station, LLC

PETITION NO.: SLUP-10

PRESENT ZONING: GC & HI

PETITION FOR: SLUP

DRAINAGE COMMENTS CONTINUED

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill _____ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown.
- Copy of survey is not current – Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS

1. A Notice of Intent must be filed with the Georgia Environmental Protection Division for coverage under the NPDES General Permit to discharge stormwater associated with industrial activities. This facility will likely be classified under the Standard Industrial Classification (SIC) Code 4953 as a solid waste transfer operation. Any requirements associated with this permit must be addressed including the development of a written stormwater pollution prevention plan (SWPPP) for the site.
2. In addition to other best management practices (BMPs) that may be required for this site during Plan Review, the detention pond outlet control structure design should include a “snout type” device for any low flow orifices.
3. This site is located within the Chattahoochee River Corridor and is therefore subject to provisions of the Metropolitan River Protection Act.

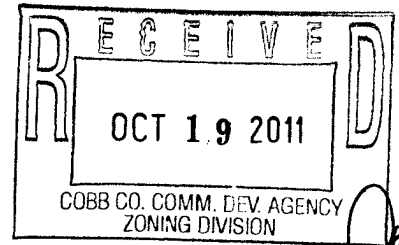
STAFF RECOMMENDATIONS

SLUP-10 BANKHEAD TRANSFER STATION, LLC

The applicant's property has been used as a transfer station and is seeking to add the additional use of municipal solid waste to its operation. The property is within the Industrial land use category and is zoned Heavy Industrial (with the exception of a small portion currently zoned GC that is the subject of rezoning request Z-42 being considered concurrently with this SLUP application). The applicant's property is located in an area that is predominantly zoned and used for Heavy Industrial uses. The applicant's current designation as Industrial on the *Cobb County Comprehensive Plan* makes the request for the rezoning of the GC portion compatible with the overall zoning and proposed use of the property. These land use and zoning designations provide for the most intense land uses in Cobb County. Those uses may contain large-scale outdoor storage, uses that may be noisy, may cause vibrations, operate constantly, generate heavy truck traffic, emit odors and/or emissions and may require federal and/or state permits. The applicant's proposal will be located within close proximity to major regional transportation corridors such as Veterans Memorial Highway, Discovery Boulevard and River View Road. The Georgia Regional Transportation Authority has issued findings that support the applicant's request and the Atlanta Regional Commission has approved the applicant's request. There are other waste transfer stations in the county that are situated much closer to residential properties than this proposal. Those waste transfer stations have employed various measures to substantially reduce negative effects on nearby properties; these measures have included odor and noise abatement systems and heavy landscaping. The Georgia Department of Transportation (GDOT) represents the Federal Aviation Administration (FAA) in local matters, and they have sent a letter dated April 18, 2012 (see attached) regarding this application. The letter from GDOT recommends this request not be approved due to the negative effect the proposal may have on air navigation safety and liability for Fulton County Airport.

Based on the above analysis, Staff recommends DENIAL.

The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.



STATEMENT OF INTENT

OF

BANKHEAD C & D TRANSFER STATION, LLC

**Special Land Use Permit Application (SLUP – 10)
For an 8.16 Acre Tract of Land located in
Land Lot 282 & 286, 18th District, 2nd Section,
Cobb County, Georgia**

Submitted for the Applicant by:

**Garvis L. Sams, Jr.
Sams, Larkin & Huff, LLP
Suite 100
376 Powder Springs Street
Marietta, GA 30064
(770) 422-7016
gsams@samslarkinhuff.com**

I. INTRODUCTION

This Application seeks a Special Land Use Permit ("SLUP") to allow for the expansion of an existing Construction and Demolition (C & D) transfer station to include Municipal Solid Waste ("MSW"). The proposed expansion to include MSW is located on a 8.16 acre tract of land located on Veterans Memorial Highway in Land Lots 282 & 286 of the 18th District, 2nd Section, Cobb County, Georgia ("subject property"). The subject property is zoned Heavy Industrial ("HI") and is delineated as "Industrial" on Cobb County's Future Land Use Map ("FLUM"). Both the zoning district of HI and the FLUM designation allow for the uses which presently exist and those proposed with the SLUP pursuant to § 134-37 and § 134-231 of the Cobb County Zoning Ordinance.

A preponderance of the subject property is developed with the existing C & D Transfer Station and is "grandfathered" under the Metropolitan Protection Act ("MRPA") requirements as it lies within the Chattahoochee River MRPA Corridor. The subject property is surrounded on the south, east and west by a variety of Heavy Industrial uses, including heavy contractors, a trucking transport company, a crane company, and industrial manufacturers to name but a few. It is also located in close proximity to major, regional transportation corridors such as Interstate 285, South Cobb Drive and Veterans Memorial Highway from which the present C & D Transfer Station operates.

The Applicant plans to modify its existing buildings to accommodate an enclosed Recovered Material Processing Facility ("RMF"). On the subject property the trash collection trucks will discharge their loads in order for the trash can be relocated onto larger vehicles (see Cobb County Code of Ordinances Code § 102-5, where a "Transfer Station" is defined as a "facility used to transfer solid waste from one transportation vehicle to another for transportation to a disposal facility or processing operation.". The combination of a C & D and MSW Transfer

Station provides for a number of benefits. It will reduce the truck traffic on the County's highways by serving as a waste delivery consolidation point. Generally speaking, for every five (5) vehicles which enter the facility, only one is needed to haul waste on the final leg of the disposal journey. It has beneficial effects upon emissions, energy use and road wear and tear. It will also lower collection costs, as crews spend less time traveling to and from distant disposal sites and more time collecting waste, reducing the costs for labor, fuel and collection and vehicle maintenance. There are presently only five (5) private transfer stations now operating in Cobb County. The Applicant anticipates that the Waste Transfer Station with the added MSW component will receive approximately 150,000 tons of solid waste per year (12,500 tons per month) in roughly nine (9) truck loads leaving the facility per day.

The Applicant proposes the following hours of operation for the combined C & D and MSW Facility.

The Applicant proposes that the hours of operation for the facility shall be as follows:

Monday through Friday: 5:00 a.m. until 6:00 p.m.

Saturday: 8:00 a.m. until 1:00 p.m.

Sunday: Closed

Further, the facility will comply with all applicable federal, state and local requirements, including the County's Solid Waste Ordinance which "regulates the storage, collection, transportation and disposal of solid waste within the unincorporated areas of Cobb County". Cobb County Code of Ordinances, § 102-1, et seq.

All processing operations of the RMF shall be carried on inside of the building, including the delivery of materials and the removal of same for transport with the facility constituting a "clean RMF", meaning that it shall not separate recyclable materials from general garbage and waste and shall accept source separated recyclable materials. Additionally, the doors to the

facility used to allow vehicles to deliver materials shall be closed except when active deliveries are occurring. The RMF will also contain a dust and odor suppression system, including overhead misters which will apply water and deodorizer periodically to control dust and odor within the building, air disbursement exhaust fans and will provide for manual application of water provided from wash down stations within the building.

In addition to the foregoing, the Applicant will agree to make any necessary repairs to the odor control systems within forty-eight (48) hours or notify the County if repairs cannot be made within that time frame. In that event, it will be incumbent upon the Applicant to obtain a temporary replacement system or secure approval from the Community Development Director for an extension of time in which to repair. The RMF will also contain a tipping floor where recyclable materials will be dumped and it will be washed down at least two (2) times per week with all liquid waste and wastewater from inside the building being routed to the sanitary sewer with the plan to be approved by the County during the Plan Review Process. There will be no outdoor storage of trash or trucks which have trash in them and the Applicant will be responsible for the installation of an oil/water separator to treat stormwater as required by the County. Operationally, the RMF will designate an on-site project manager during construction and an on-site operational manager/supervisor during the operation of the facility.

Recently, the Board of Commissioners ("BOC") voted to approve a settlement of litigation to approve SLUP-6 (1999 S&S Investment Company) to allow for a Recycling Recovery Facility and Transfer Stations. The staff report recommending "approval" and upon which the BOC's ultimate decision after litigation was commenced was presumably based could have easily been describing the subject property when it stated in pertinent part, as follows:

“The Applicant’s property has been zoned Heavy Industrial without any rezoning conditions or stipulations since the Zoning Code and Zoning Map were adopted in 1972. The Applicant’s property is located in an area predominately zoned and used for Heavy Industrial uses. The Applicant’s property has been designated as Industrial by the Cobb County Comprehensive Land Use Plan since it was adopted. The Heavy Industrial zoning category and the Industrial Future Land Use category provides [sic] for the most intensive land uses in Cobb County. There are uses that may contain large scale outdoor storage, uses that may be noisy, uses that may cause vibrations, uses that may operate constantly, uses that may generate heavy truck traffic, uses that may emit odors and/or emissions and uses that may require federal and/or state permits. Industrial uses on adjacent and nearby properties include warehouses, trucking companies, heavy contractors, manufacturing and distributors. The Applicant’s proposal is located within close proximity to major regional transportation corridors such as Veterans Memorial Highway, South Cobb Drive and Interstate 285. The Applicant’s property is located within the boundaries of the *Industrial Land Inventory and Protection Policy* which is a study that the Cobb County Planning Division generated to protect industrial property in the County. There are other Waste Transfer Stations in the County that are situated much closer to residential properties than this proposal. Those Waste Transfer Stations have employed various measures to substantially reduce negative impacts on nearby properties; these measures have included odor and noise abatement systems and heavy landscaping. Based on the above analysis, **STAFF RECOMMENDS APPROVAL** subject to the following:

- Site plan received by the Zoning Division.
- Applicant incorporate odor control measures such as odor neutralizing spray systems at each door, overhead odor neutralizing misters throughout the building and high velocity air dispersion exhaust fans; all transfers . . . take place inside the buildings, with a tipping floor to be cleaned at least once daily;
- All liquid waste from inside the building be routed to sanitary sewer, with plan to be approved by Water System engineers at Plan Review;
- An Arborist approved landscape plan at Plan Review that would ensure a visual and noise abatement screen with [sic] five-years of land disturbance.
- Fire Department Comments;
- Water and Sewer Comments and Recommendations;
- Development of regional impact from ARC and GRTA;
- Applicant meet all state permitting requirements;
- Stormwater Management Comments and Recommendations;
- and,
- DOT Comments and Recommendations.”

For the same reasons and the reasons stated herein, the BOC should approve this requested SLUP-10 as well.

In addition to the existing C & D component and the proposed MSW component, the Applicant's proposal includes plans for a Recycling Center as a part of the proposed facility consistent with Cobb County's stated desire to encourage the recycling of materials:

"The goal of the citizens of Cobb County is to cooperate by reducing their waste and by 'Reusing, Recycling and Composting', both at home and at work. Everyone must be involved in reducing waste generation and disposal." Draft of Cobb County Comprehensive Solid Waste Management Plan (2009-2019), P.ES-2.

The County's goal is designed to promote sustainability and to divert renewable waste away from landfills. In fact, a 2006 study revealed "that nearly 2.6 million tons – or approximately forty percent (40%) of the municipal solid waste Georgians throw away per year are recyclable material with existing end markets within the state."

To address that issue, the Applicant proposes the recycling component within the RMF within which paper, aluminum/steel cans, plastic and glass (materials which would otherwise become solid waste) are collected, separated and ultimately reused or returned to use in the form of new materials or products. Data indicates that the type of recyclable materials which the Applicant intends to focus upon collectively make up approximately Fifty-One Percent (51%) of Cobb County's waste composition. Draft Comprehensive Solid Waste Management Plan at P.2-4.

II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

A. Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.

The subject property is bordered on its east, south and west sides by HI zoned and utilized properties and on the north by Veterans Memorial Highway, a major arterial right of way. It is surrounded by all manner of Heavy Industrial uses, including trucking transport facilities, heavy contractors, industrial manufacturers, a crane company and all manner of industrial users to name just a few. The "neighborhood" or area in which the proposed expansion to the existing use will be located was specifically designed to contain large scale outdoor storage uses that may be noisy, uses that may cause vibration, uses that may operate constantly, uses that may generate heavy truck traffic, uses that may emit odors and/or emissions and uses that may require federal and/or state permits. Therefore, the proposed expansion to the existing use is consistent with uses on adjacent and nearby properties and will have no adverse effect upon them.

B. Whether or not the use is otherwise compatible with the neighborhood.

The neighborhood within which the subject property is located is zoned HI and has a designation of Industrial on the County's FLUM. As referred to previously, both the zoning district and the land use category are specifically designed to contain large-scale outdoor storage uses that may be noisy, uses that may cause vibrations, uses that may operate constantly, uses that may generate heavy truck traffic, uses that may omit odors and/or emissions and uses that may require federal and/or state permits. Given these facts and the reality that the area already consists of Heavy Industrial uses like warehouses, heavy contractors, trucking companies, a crane company and a veritable plethora of Industrial users, the proposed use is compatible with the neighborhood.

C. Whether or not the use proposed will result in a nuisance as defined under state law.

The proposed use will not result in a nuisance, either public or private, as that term is defined by Georgia law. The expansion of the proposed C & D with an MSW component will be enclosed. Moreover, the Heavy Industrial area in which the subject property is located specifically allows and is compatible with uses which create noise, smoke, dust, odor or vibrations. Finally, the proposed expansion to the existing use is located in close proximity to Interstate 285, South Cobb Drive and Veterans Memorial Highway, limiting heavy truck traffic on minor roadways.

D. Whether or not quiet enjoyment of surrounding property will be adversely affected.

The surrounding properties consist exclusively of Heavy Industrial uses and are used in a manner similar to that which the Applicant proposes. Further, the proposed use is located in close proximity to Interstate 285, South Cobb Drive and Veterans Memorial Highway, limiting heavy truck traffic on minor roadways.

E. Whether or not property values of surrounding property will be adversely affected.

The surrounding properties consist exclusively of Heavy Industrial uses and are used in a manner similar to that which the Applicant proposes. Therefore, the values of surrounding properties will not be adversely affected.

F. Whether or not adequate provisions are made for parking and traffic considerations.

The proposal will meet the County's parking requirements. The Heavy Industrial area in which the subject property is located was specifically designed for uses which may generate heavy truck traffic, given its proximity to Interstate 285, South Cobb Drive and Veterans Memorial Highway. The Applicant also notes that the proposal will be

reviewed as a Development of Regional Impact ("DRI") by both the Atlanta Regional Commission ("ARC") and the Georgia Regional Transportation Authority ("GRTA"). Traffic impacts will be considered during this process and additional improvements is presently being added.

G. Whether or not the site or intensity of the use is appropriate.

The subject property consists of over eight (8) acres of land. The Applicant proposes utilizing the existing footprint to modify the existing building to a Recovered Material Processing Facility ("RMF"). Total impervious coverage is only sixty-six percent (66%) of the site. The size of the property is more than adequate to accommodate the proposed expansion to the existing use.

H. Whether or not special or unique conditions overcome the Board of Commissioners' general presumption that residential neighborhoods should not allow non-compatible business uses.

The area at issue is not residential and the proposed use is entirely compatible with existing contiguous Heavy Industrial uses.

I. Whether or not adequate provisions are made regarding hours of operation.

The hours of operation will mirror those of existing Heavy Industrial uses on adjacent and nearby properties as mentioned above.

J. Whether or not adequate controls and limits are placed on commercial and business deliveries.

Deliveries to the subject property will be commensurate in number and type to existing deliveries on adjacent and nearby Heavy Industrial properties.

K. Whether or not adequate landscape plans are incorporated to ensure appropriate transition.

Not applicable in view of the fact that the subject property is surrounded by HI properties.

L. Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.

The surrounding "neighborhood" consists of Heavy Industrial uses, all of which are comparable to the use proposed.

M. Whether the Application complies with any applicable specific requirement set forth in this chapter for a Special Land Use Permit for particular types of uses.

The application meets all of the requirements for a Special Land Use Permit pursuant to § 134-37 and all required information has been supplied.

N. Whether the Applicant has provided sufficient information to allow a full consideration of all relevant factors.

The Applicant has addressed all issues raised by law. The Applicant also remains available to respond to any questions or issues raised by the County's professional staff or by Members of the Planning Commission or Board of Commissioners.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Zoning Ordinance of Cobb County, Georgia lacks adequate standards for the Board of County Commissioners to exercise its power to issue Special Land Use Permits. In essence, the standards are not sufficient to contain the discretion of the Board of Commissioners and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners, the Zoning Ordinance violates the Fifth and Fourteenth Amendments

of the Constitution of the United States in matters of zoning. The Zoning Resolution also violates Article I, Section III, Paragraph 1; and Article 1, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983.

The Board of Commissioners is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of Cobb County, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinances presently in effect is contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance is unconstitutional in that it renders the subject property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of the Applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to approve the requested Special Land Use Permit for the subject property would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of

Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the Application for the Special Land Use Permit would be contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America..

Any limitation on the time for presentation of the issues before the Board of Commissioners who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

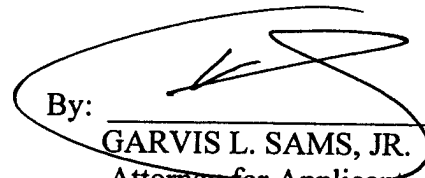
The Zoning Ordinance of Cobb County, Georgia is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

IV. CONCLUSION

Based upon the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit at issue be approved and the Applicant also solicits any comments from staff or other officials of Cobb County so that such recommendations or input may be incorporated as conditions of approval of the Application.

Respectfully submitted, this the 17th day of October, 2011.

SAMS, LARKIN & HUFF, LLP

By: 
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Attorney for Applicant

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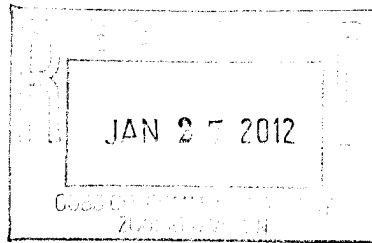
MELISSA P. HAISTEN
JUSTIN H. MEEKS

SAMSLARKINHUFF.COM

January 26, 2012

VIA E-MAIL AND HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Community Development Agency
Zoning Division
1150 Powder Springs Road, Suite 400
Marietta, GA 30064



Re: Application of Bankhead C & D Transfer Station, LLC to Rezone a 0.30 Acre Tract from GC to HI (No. Z-42)

Application of Bankhead C & D Transfer Station, LLC for a Special Land Use Permit (No. SLUP-10)

Dear John:

You will recall that this firm represents Bankhead C & D Transfer Station, LLC ("Bankhead") concerning the above-captioned Applications for Rezoning and for a Special Land Use Permit ("SLUP"). The Applications were heard, considered and unanimously recommended for approval by the Planning Commission on December 5, 2011. Thereafter, the Applications were continued by the Board of Commissioners and are now scheduled to be heard by the Board at its next regularly scheduled zoning hearing on February 21, 2012. As you know, Bankhead's proposal has been approved by the Atlanta Regional Commission ("ARC") as being in the best interest of the State of Georgia and the region. Additionally, the Georgia Regional Transportation Authority ("GRTA") approved the proposal as has the Cobb County's professional staff.

During the pendency of the Applications, we have continued our dialogue with representatives of the Mableton Improvement Coalition ("MIC"), representatives of the Cobb County Cemetery Preservation Commission ("CCCPC"), representatives of the Riverline Historic Area ("RLHA"), the County staff and area business and property owners. In that regard, I have been authorized by Bankhead to submit this revised letter of agreeable stipulations which, if the rezoning and SLUP Applications are approved as submitted, shall become conditions and a part of the grant of the rezoning and SLUP and binding upon the subject property thereafter. The referenced revised stipulations are as follows, to wit:

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1. The revised stipulations and conditions set forth herein shall replace and supercede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned Rezoning and SLUP Applications.
2. The development of the subject property shall be in substantial conformity to the revised site plans prepared by Planners and Engineers Collaborative which are being filed concurrently herewith. The future construction of any buildings on the subject property shall be accomplished only after review and approval by the District Commissioner. Any new building(s) added to the property shall be completed within one-hundred and eighty (180) days from the commencement of the construction of same.
3. The total site area of the subject property consists of 8.16 acres with an existing Construction & Demolition ("C&D") Transfer Station which shall be modified and/or rebuilt to include Municipal Solid Waste ("MSW") and Recycling components consistent with the Statement of Intent which was submitted under separate cover on October 19, 2011, said Statement of Intent being incorporated herein and made a part hereof by reference.
4. Approval of the Rezoning and SLUP Applications shall be subject to GRTA's Notice of Decision, dated October 21, 2011 and ARC's Regional Review Finding, dated November 27, 2011.
5. Minor modifications to the within stipulations/conditions and the plans filed with the Applications and herewith may be reviewed and approved by the District Commissioner as needed or necessary during the Plan Review process and/or thereafter.
6. All setbacks and buffer areas (except those designated for CCCPC use) may be penetrated for purposes of detention, utilities and stormwater management as long as such encroachments satisfy Cobb County and the Metropolitan River Protection Act ("MRPA") regulations.
7. An agreement to comply with Cobb County Development Standards and Ordinances related to project improvements except as otherwise approved by the Board of Commissioners, the Cobb County Department of Transportation or the Cobb County Community Development Agency, as their respective authority may allow.

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8. Compliance with recommendations of the CCCPC with respect to the Turner-Sewell Cemetery which is located on the subject property as follows:
 - a. The cemetery area has been surveyed by a qualified archaeologist who has identified the location of all gravesites and established the cemetery boundary as reflected in the Archaeological Reconnaissance prepared by R. S. Webb & Associates, dated July 17, 1997.
 - b. The reestablishment of a fifty foot (50') cemetery preservation buffer and conveying same to Cobb County in the form of a Conservation Easement.
 - c. Relocating the existing six foot (6') high chain-link fence (with the inclusion of a gate) around the perimeter of the cemetery and/or constructing an additional fence so that the positioning of said fence encompasses the cemetery and the fifty foot (50') cemetery preservation buffer.
 - d. The installation of orange protective fence along the outside of the cemetery preservation buffer during any construction on the site.
 - e. With respect to that portion of the cemetery preservation buffer which may have been inadvertently cleared, replacing said buffer in full.
 - f. There is an existing twenty foot (20') easement to the cemetery and a parking easement at the cemetery gate. The cemetery shall remain accessible from dawn to dusk seven (7) days a week from Veterans Memorial Highway and continual access provided by way of key code gate.
 - g. Bankhead shall undertake whatever remedial measures are needful or necessary in order to ensure that the cemetery and its preservation buffer are not subject to erosion and/or stormwater management problems.
 - h. Bankhead shall undertake remedial measures in order to remove any and all dead trees from the cemetery's preservation buffer and to preserve the integrity of the existing fence and any new fencing.
9. The building which will be utilized in connection with the Transfer Station shall consist of an enclosed, Recovered Material Process Facility ("RMF").

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10. All processing operations of the RMF shall be carried on inside the building, including the delivery of materials and the removal of same for transport.¹
11. There will be approximately forty-eight (48) truck trips per day to and from the subject property predicated upon the approval of the Applications. Additionally, it is anticipated that employee vehicular trips to and from the subject property will consist of approximately ten (10) trips per day.²
12. The hours of operation for the Transfer Station will be from 5:00 a.m. until 6:00 p.m. Monday through Friday and Saturday from 8:00 a.m. until 1:00 p.m. with the business being closed on Sundays.
13. The RMF facility shall be a "clean RMF" meaning that it shall not separate recyclable materials from general garbage and waste and shall accept source-separated recyclable materials.
14. The doors used to allow vehicles to deliver materials shall be closed except when active deliveries are occurring.
15. The RMF shall contain a dust and odor suppression system including overhead misters which will apply water and deodorizer periodically to control dust and odor within the building.
16. The RMF shall contain air dispersion exhaust fans and provide for the manual application of water provided from wash down stations within the building.

¹ It is anticipated that the project will transfer 150,000 tons of waste annually.

² The route taken for the C & D component is from Veterans Memorial Highway to I-285 South to 85 South in order to access Safeguard C & D Landfill in Fairburn, Georgia. With respect to the MSW component, the routes are either from Veterans Memorial Highway West to Highway 278 towards Rockmart or from Veterans Memorial Highway to Discovery Boulevard to I-20 West then taking the Thornton Road exit towards Rockmart to the Grady Road Landfill.

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17. Any necessary repairs to the odor control systems shall be made within forty-eight (48) hours or notifications shall be provided to the County if the repairs can not be made within that time frame. In such an event, it will be necessary to obtain a temporary replacement system or secure approval from the Community Development Director for an extension of time in which to perform the necessary repair work.
18. The tipping floor where recyclable materials are dumped shall be washed out at least two (2) times per week or more if deemed necessary.
19. All liquid waste and waste water from inside the building shall be routed to the sanitary sewer with the plan to be approved by Cobb County during the Plan Review process.
20. There shall be no outdoor storage of trash or trucks which have trash in them.
21. The County Arborist shall approve a landscaping plan at Plan Review which will ensure a visual and noise abatement screen. Additionally, an agreement to form a Landscape Advisory Committee consisting of Bankhead, a representative from MIC, a representative from CCCPC and the Director of the Community Development Agency who shall facilitate decisions and be the final arbiter with respect to issues upon which Bankhead, MIC and CCCPC can not agree.

The Landscape Plan which shall be submitted during the Plan Review process shall include the planting of Leland Cypress trees along the northwestern property line from the perimeter of the Turner Sewell Cemetery going southwesterly along said property line and the planting of Leland Cypress trees (to the extent that topography allows for same) along the subject property's southeasterly property line. Said Leland Cypress trees shall consist of a five (5) gallon minimum and will be monitored for three (3) years to ensure adequate growth and health.

The construction of an eight foot (8') privacy fence to be erected along the southeastern side of the property beginning behind the existing office and continuing back to the southeast corner of the subject property. Additionally, the construction of an eight foot (8') privacy fence to be erected along the southwesterly side of the subject property, including the perimeter of the cemetery, which will also encompass the fifty foot (50') cemetery preservation buffer.

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If, during construction, the dirt mound presently located on the northwest side of the subject property is disturbed, then an eight foot (8') fence shall be erected along with complementary Leland Cypress trees along said fence. Lastly, an eight foot (8') fence shall be constructed along the entire length of the rear property line with complementary Leland Cypress trees.

22. An agreement to designate an on-site project manager during construction and an on-site operational manager/supervisor during the operation of the RMF. The Operations Manager shall be on duty at all times while the facility is open for business.
23. An agreement to incorporate odor control measures such as odor neutralizing spray systems at each door, overhead odor neutralizing misters throughout the buildings and high velocity air dispersion exhaust fans.
24. Manual application of water shall be provided from the wash down stations from inside of the building with water and oil separators also included inside of the building.
25. The subject property shall be kept clear of debris at all times.
26. Bankhead shall be responsible for cleaning up any litter/debris on Veterans Memorial Highway which may inadvertently come off of trucks delivering to the site and this clean-up should occur at a minimum of once per week or more as needed or necessary.
27. Compliance with recommendations from the Cobb County Water System with respect to the availability of water and sewer to the subject property. This will include connecting the development to sewer which is located on an adjacent tract. Additionally, it will require the submission of an application for a revised Industrial Discharge Service Permit.
28. Compliance with recommendations from Stormwater Management Division with respect to hydrology, detention and downstream considerations, including the following:
 - a. The formulation of a Spill Prevention Plan notwithstanding the fact that no hazardous materials are planned for the site.
 - b. A revision to Bankhead's NPDES permit for purposes of discharge.

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- c. Compliance with MRPA Corridor Regulations.³
 - d. The installation of an oil/water separator to treat stormwater as required by Cobb County.
 - e. The installation of curb and gutters on the northeast side of the entrance from Veterans Memorial Highway to the exiting office building. Additionally, the construction of two (2) new lanes on the property for the purposes of ingress and egress for a length of at least fifty feet (50') from the subject property's entrance.
29. Bankhead shall create and maintain a Vector Control Plan on the subject property which shall detail the program for domesticated animal control as well as rodent and insect extermination. An outside exterminating company shall be utilized to exterminate insects and rodents which includes exterminating sprays, poisonous baits and traps. Said service shall be provided on a monthly basis and increased as situations may warrant.
30. Compliance with recommendations of the Cobb County Department of Transportation as follows:
- a. The installation of sidewalk along the subject property's frontage on Veterans Memorial Highway.
 - b. The installation of a one-hundred fifty foot (150') deceleration lane with a fifty foot (50') taper at the subject property's point of ingress/egress on Veterans Memorial Highway.
 - c. Securing approval from the Georgia Department of Transportation with respect to any encroachments or work done within the right-of-way of Veterans Memorial Highway which is a State right-of-way.

³ The preponderance of the subject property is "grandfathered" with respect to impervious surfaces and vulnerability requirements.

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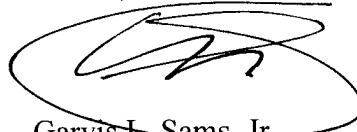
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The subject property is bordered by HI and GC zoned and utilized properties and on the north by Veterans Memorial Highway, a major arterial right-of-way. It is surrounded by all manner of Heavy Industrial uses, including trucking transport facilities, heavy contractors, industrial manufacturers, a crane company and other industrial users. The proposal to add MSW and Recycling components to an existing C & D Transfer Station is consistent with Cobb County's Comprehensive Land Use Plan and Future Land Use Map which reflect that the property is in an Industrial area under the Future Land Use Map. The proposal by Bankhead is entirely appropriate considered in the context of development in which the subject property is situated.

Please do not hesitate to call should you or your staff have any questions or require additional information or documentation prior to the Application being heard and considered for final action by the Board of Commissioners next month. With kind regards, I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP



Garvis L. Sams, Jr.
gsams@samslarkinhuff.com

GLS, Jr./dsj
Attachment

cc: Members, Cobb County Board of Commissioners (via email & hand delivery w/attachment)
Mr. Robert L. Hosack, Jr., AICP, Director (via email and hand delivery w/attachment)
Mr. Dana Johnson, AICP, Manager Planning Division (via email and hand delivery w/attachment)
Mr. Jason Campbell, Planner II
Cobb County Community Development Agency (via email and hand delivery w/attachment)
Mr. Ken Suddreth, Director
Smyrna Community Development Agency (via email w/attachment)
Ms. Jane Stricklin, P.E. (via email w/attachment)

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Mr. David Breaden, P.E. (via email w/attachment)
Ms. Karen King, Assistant County Clerk (via email w/attachment)
Ms. Lori Presnell, Deputy County Clerk (via email w/attachment)
Mr. Ben Clopper, Mableton Improvement Coalition (via email w/attachment)
Mrs. Helga Hong, CCCPC (via email w/attachment)
Ms. Robin Meyer, MIC (via email w/attachment)
Ms. Roberta Cook, RLHA (via email w/attachment)
Mr. Kenneth J. Wood, P.E., LEED AP
Planners and Engineers Collaborative, Inc. (via email w/attachment)
Mr. Terry Nicholson, Bankhead C & D Transfer Station, LLC (via email w/attachment)

Keith Golden, P.E., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

April 18, 2012

Mr. Karl Von Hagel
Airport Manager
Cobb County Airport – McCollum Field
1723 McCollum Pkwy, Bldg 100
Kennesaw, GA 30144

Dear Mr. Von Hagel,

We understand Bankhead C & D Transfer Station, LLC has submitted a Statement of Intent to the Cobb County Zoning Division for consideration of expanding the existing Construction and Demolition Transfer Facility to include an enclosed Municipal Solid Waste Transfer Facility. Per the County's request for further review, our evaluation and recommendation follows and is given so as to ensure the safe operation of the airport is not compromised by incompatible land use.

Our analysis shows the existing C&D Transfer Station is located approximately 5,500 linear feet from the threshold of Fulton County Airport's Runway 26. It is also approximately 2,000 feet from the Fulton County Airport's proposed North Terminal Area, which is slated for imminent development.

According to the Federal Aviation Administration's Advisory Circular (AC) 150/5200-33B, "Hazardous Wildlife Attractants on or Near Airports" Section 2-2.d, enclosed waste transfer stations are generally deemed compatible with airports provided they are not on airport property or within the Runway Protection Zone (RPZ). However, Section 2-2.h states "a C&D landfill co-located with another waste disposal operation should be located outside of the separations identified in Sections 1-2 through 1-4." The referenced sections identify a preferred recommendation of a five mile separation between the waste disposal facility and the closest aircraft operating area. However, it also gives consideration to a 10,000 foot separation.

The proposed facility expansion meets the requirements set forth in Section 2-2.d but fails to meet the stipulation stated in Section 2-2.h regarding co-location of facilities. Since the proposal is a request to co-locate an enclosed Municipal Solid Waste Transfer Facility with an existing Construction and Demolition Transfer Facility and does not meet the guidelines set forth by the FAA the Department does not recommend approval of this request.

Cobb County is reviewing a proposal that has the potential if not sited properly to create an adverse safety and liability impact to an airport and airport sponsor (Fulton County) outside of its jurisdiction. Although Cobb County and its airport will not be directly affected by this request, we urge Cobb County to consider the bearing their decision has on the safety and operation of the Fulton County Airport.

While the Department does not recommend approval of this specific location, there are other alternatives that may be considered. A relocation of the co-located facility outside of the 10,000 foot separation area is one option. Please contact Carla Sands, Airport Development Engineer, at (404) 505-4866 if you have any further questions.

Sincerely,

Carol L. Comer, Director
Division of Intermodal Programs

cc: Hon. Tim Lee, Cobb County
Doug Barrett, Fulton County Airport Manager
Scott Seritt, FAA