

**BEFORE THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF WEST DEER,
ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA**

IN THE MATTER OF:)
)
Olympus Energy, LLC)
Application for Conditional Use Approval)
Leto Well Pad)
Oak Road (Block and Lot No. 1668-R-91))

FINDINGS, CONCLUSIONS AND DECISION

WHEREAS, on or about October 30, 2019, the Applicant, Olympus Energy, LLC, (“Applicant”) filed a Conditional Use Application and supporting documents seeking approval from the Township of West Deer (“Township”) to construct an unconventional natural gas well pad for operation of a Deep Well Site on property located on Oak Road (Allegheny County Block and Lot No. 1668-R-91) in the Township (the “Property”);

WHEREAS, the Property is located in the I Industrial District Zoning District in the Township;

WHEREAS, a Deep Well Site may be authorized as a conditional use in the I Zoning District of the Township subject to the requirements of the Zoning Ordinance of West Deer Township, including Section 210-120(A)(21) (“Zoning Ordinance”), and the Code of the Township of West Deer (“Code”); and

WHEREAS, after a number of extensions were requested/granted by the Applicant, a timely and duly advertised conditional use hearing was commenced before the Township Board of Supervisors (“the Board”) on February 22, 2023, which hearing was subsequently continued to March 1, 2023 and March 7, 2023, before concluding on

March 14, 2023, for a total of four (4) nights of hearings which included hours of testimony presented by the Applicant, party-objectors as well as public comment.

NOW THEREFORE, after careful review of the testimony and evidence presented at the above-referenced public hearings, the West Deer Township Board of Supervisors hereby makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The foregoing recitals are incorporated herein by reference.

Background / Introduction

2. On October 30, 2019, Applicant submitted a conditional use application and supporting plans, studies, and other documents (collectively hereafter, the “Application”) to the Township seeking approval to construct an unconventional natural gas well pad to be known as the Leto Well Pad for operation of a Deep Well Site pursuant to Section 210-120(A)(21) of the Code. Applicant’s Ex. A, Tab 1.

3. The Township Planning Commission reviewed the Application at multiple meetings on November 26, 2019, February 27, 2020, April 22, 2021, May 27, 2021, and June 24, 2021 meeting, the Planning Commission deadlocked 2-2 on a motion recommending approval of the conditional use application with conditions, resulting in no recommendation to the Board.

4. At the February 22, 2023 public hearing, at the commencement of its case in chief, counsel for Applicant introduced and the Board admitted into evidence, an updated project narrative. Applicant’s Ex. B.

5. The Property is owned by Tricia Gizienski. Tr. 2/22/23, at 38.

6. The Property is located off of Oak Road in the Township. Tr. 2/22/23, at 38-39.

7. The Property is located in the Township's I Industrial District Zoning District. Applicant's Ex. A.

Overview off the Proposed Deep Well Site

8. The entrance to the Leto Well Pad is proposed by Applicant to be accessed by turning onto Oak Road from Route 910. Tr. 2/22/23, at 38-39; Applicant's Ex. C.

9. Applicant has obtained its highway occupancy permit ("HOP") from PennDOT for the proposed driveway. Tr. 2/22/23, at 38-39; Applicant's Ex. B and C.

10. Vehicular access to the Property will be from State Route 910 to Oak Road, and there are no weight restrictions on Route 910. Tr. 2/22/23, at 38-39; Applicant's Ex. C.

11. The well pad will be accessed via a 24 to 34-foot wide, 1,068-foot-long access drive that runs off of Oak Road, with the first 50 feet from Oak Road being paved in accordance with PennDOT HOP requirements. The variable width of the access drive allows for the passage of two trucks heading in the opposite direction for over half the length of the access drive. The balance of the access drive will be constructed of gravel. Tr. 2/22/23, at 39-40; Applicant's Ex. C.

12. The Leto Well Pad is proposed to be 350 feet by 500 feet and will be surfaced with gravel. Tr. 2/22/23, at 40; Applicant's Ex. C.

13. A wet pond, approximately 110 feet by 150 feet, is proposed to be located near the northwestern corner of the Leto Well Pad for stormwater management purposes. While not related to any oil and gas generation or processing, the wet pond is designed to

mitigate any potential stormwater runoff from the site, similar to what would be seen in any typical residential or commercial development. Tr. 2/22/23, at 40-41; Applicant's Ex. C.

14. There will be no pumps, motors, or other equipment related to the wet pond that would generate noise or any emissions. Tr. 2/22/23, at 41.

15. Applicant applied to the DEP for an Erosion and Sedimentation Control General Permit – 3 ("ESCGP-3") for the Leto Well Pad, and received approval for its application on March 9, 2020. Tr. 2/22/23, at 42.

16. Fencing will be installed around the perimeter of the well pad. Tr. 2/22/23, at 42-43; Applicant's Ex. C.

17. A 16-foot wide, lockable security gate will be installed at the Leto Well Pad while an additional 12-foot-wide security gate will be located on the access drive near Oak Road. Tr. 2/22/23, at 43-44.

18. Applicant will also provide at least one off-street parking space. Tr. 2/22/23, at 44-45; Applicant's Ex. C.

Township Zoning Ordinance Requirements for a Deep Well Site

19. On August 29, 2012, the Township Board of Supervisors adopted Ordinance No. 394, now codified as amended at Chapter 210 of the West Deer Township Code of Ordinances, Zoning ("Zoning Ordinance"). Applicant's Ex. U.

20. The Zoning Ordinance regulates oil and gas development, including unconventional gas wells, within the Township, and sets forth specific requirements and restrictions. Zoning Ordinance, Section 210-120.A(21).

21. More specifically, Section 210-120.A(21) of the Zoning Ordinance provides by way of introduction:

A deep well site which would be placed more than 650 feet from any preexisting building located off the property where the deep well site is sited may be permitted as a conditional use in the R, R-1, R-2, R-3 and I Zoning Districts, provided such property upon which the oil and gas well site would be placed is 1/2 acre or more in size. Otherwise, such siting and/or use shall be prohibited in the residential and commercial zones not otherwise permitted above. Zoning Ordinance, Section 210-120.A(21).

22. A "Deep Well Site" is defined by Section 210-6 of the Zoning Ordinance as:

The areas occupied by the facilities, structures, materials and equipment, whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, fracturing, production or operation of a deep well. This definition also includes any exploratory wells. If multiple areas are used, then the total combined areas shall be considered the deep well site area. Zoning Ordinance, Section 210-6.

23. A "Building" is defined by the Zoning Ordinance as "A structure that is enclosed, and portions of which are protected from the weather are usually climate controlled (heated and/or air-conditioned) and that is usable for habitation or as a working environment." Zoning Ordinance, Section 210-6.

24. The Zoning Ordinance at Section 210-117 also sets forth general "health and safety" criteria applicable to all conditional uses, including this Application. Zoning Ordinance, Section 210-117.

25. Section 210-117 of the Zoning Ordinance provides, in pertinent part:

A conditional use shall be granted approval, predicated upon the submission of a written application demonstrating that the development:

(1) Will not endanger the public health, safety, morals and general welfare if located where proposed, and that the use will not deteriorate the environment and will meet all performance standards of § 210-110.

(2) Meets all other requirements of this Chapter in the zoning district where the use is proposed.

(3) Is in general conformity with the Township's Comprehensive Plan.

(4) Is an appropriate use on the proposed site. Zoning Ordinance, Section 210-117.

The Public Hearings On The Application

26. A duly advertised public hearing on the Application was held before the Board of Supervisors commencing on February 22, 2023, which hearing was subsequently continued to March 1, 2023 and March 7, 2023, before concluding on March 14, 2023.

27. At the commencement of the public hearing on February 22, 2023, and on several occasions thereafter, a number of Township residents sought Individual Party Objector status.

28. The Board granted Individual Party Objector status to those individuals residing within three-quarters of a mile (0.75 miles) of the proposed Leto Well Pad because the Board determined that those individuals were aggrieved parties and met the requirements to establish standing.¹ Tr. 3/1/23, at 7. A list of those individuals granted party status (“Individual Objectors”) is attached as **Appendix A**.

29. At the public hearing on February 22, 2023, Tim Resciniti testified that he represented an unincorporated association known as Concerned Residents of West Deer (“CROWD”). The Board granted party status to CROWD. Tr. 2/22/23, at 16-18.

30. The following witnesses testified on February 22, 2023:

- i. For Applicant, Joseph Blickenderfer, P.E., Civil Engineer, direct, cross-examination, re-direct and recross-examination; and

¹ Applicant did not object to the standing of those individuals who testified that they resided within one-half mile of the Leto Well Pad, but did object to those who testified that they resided at greater distances. This objection was overruled. Tr. 2/22/23, at 26-27.

- ii. For Applicant, Scott Rasmussen, principal with Civil and Environmental Consultants, direct, cross-examination, and redirect examination.
31. The following witnesses testified on March 1, 2023:
- i. For Applicant, Joseph Blickenderfer, P.E., direct and cross-examination;
 - ii. For Applicant, Manny Johnson, P.E., Vice President of Operations, Olympus Energy, LLC, direct, cross-examination, redirect, and recross examination; and
 - iii. For Applicant, Joseph Guley, direct, cross-examination, and redirect examination.
32. The following witnesses testified on March 7, 2023:
- i. For Applicant, Tage Rosendahl, Acoustical Consultant, direct, cross-examination, redirect, and recross examination;
 - ii. For CROWD, Tim Resciniti;
 - iii. Individual Objector, Laura Henderson; and
 - iv. Individual Objector, Abby Koenig.
33. The following witnesses testified on March 14, 2023:
- i. Individual Objector, Jim Shuey;
 - ii. Individual Objector, Ronald Zielinski;
 - iii. Individual Objector, Susan Drum;
 - iv. Individual Objector, Victoria Austin;
 - v. Individual Objector, Norann Shuey;
 - vi. Individual Objector, Julie Cousley;
 - vii. Individual Objector, Yvonne Hutchinson;
 - viii. Individual Objector, Kara Randza;
 - ix. Individual Objector, Jonathan Randza;

- x. Individual Objector, Mark Thompson;
- xi. Individual Objector, Emilie Thompson; and
- xii. For Applicant on rebuttal, Manny Johnson, direct and cross-examination.

34. On March 14, 2023, other non-party Township residents/taxpayers made public comments.

35. Additionally, at the March 1, 2023 public hearing, two Township residents, Jack Rearick and Marcia Brissett, sought standing based on their testimony that their property, located at 37 Corbriwood Lane in the Township, was three-fourths of a mile or less from the well pad. Tr. 3/1/23, at 7.

36. Township resident, Carol Lawrence, also sought standing on the basis of her testimony that she lived at 597 Bairdford Road, although she did not know the distance from her home to the well site. Tr. 3/1/23, at 8.

37. After Applicant presented evidence² establishing that they did not live within 0.75 miles of the Leto Well Pad, Jack Rearick, Marcia Brissett, and Carol Lawrence were not granted Individual Party Objector status by the Board.

² Applicant's witness Joseph Blickenderfer testified that through Google Earth mapping, he was able to locate the Rearick/Brissett and Lawrence properties. Using this information, along with design engineering drawings, Mr. Blickenderfer prepared mapping to illustrate a three-fourths of a mile standing radius to indicate the distances of the Rearick/Brissett and Lawrence properties to the well site. Tr. 3/1/23, at 8-9; Applicant's Ex. H. He determined that the distance from the edge of the well pad to the Rearick/Brissett property line on Corbriwood Lane is 4,483 feet or .85 miles. The distance from the edge of the well pad to the Lawrence property line at 597 Bairdford Road is 5,900 feet or 1.12 miles. Tr. 3/1/23, at 9-10; Applicant's Ex. H. Mr. Blickenderfer also prepared a map using Google Earth mapping and design engineering drawings, to illustrate the limit of disturbance ("LOD") and the three-fourths of a mile standing radius distance to the Rearick/Brissett property. Tr. 3/1/23, at 10-11; Applicant's Ex. I. The distance from the edge of the nearest point of the LOD to the Rearick/Brissett property line on Corbriwood Lane is 4,050 feet or .77 miles. Mr. Blickenderfer testified that the margin of error on the mapping he prepared, from the well site itself, is less than one inch. Due to the use of tax mapping to locate property lines, Mr. Blickenderfer stated that the margin of error is plus or minus ten feet. Tr. 3/1/23, at 11.

38. During the course of the hearings, the Township, Applicant, CROWD, Individual Objectors, and members of the public introduced, or attempted to introduce, into the record various exhibits. A list of these exhibits is attached as **Appendix B**.

Applicant's Witnesses and Evidence In Support Of The Application

Witness—Joseph Blickenderfer

39. Applicant's first witness was Joseph Blickenderfer, the technical manager for oil and gas operations site design for Michael Baker International who is the project manager and principal in charge of the civil and environmental plan design for the Leto Well Pad. Tr. 2/22/23, at 35-36.

40. Mr. Blickenderfer provided general testimony as to the site and the proposed location of the well pad. Tr. 2/22/23, at 35-109.

41. Mr. Blickenderfer testified that access to the well pad will be via Oak Road, which is a state road, and that Applicant has obtained a highway occupancy permit ("HOP") from PennDOT for the proposed driveway. Tr. 2/22/23, at 38-39; Applicant's Ex. B and C.

42. He testified that vehicular access to the Property will be from State Route 910 to Oak Road, and that there are no weight restrictions on Route 910. Tr. 2/22/23, at 38-39; Applicant's Ex. C.

43. He also testified that the well pad will be accessed via a 24 to 34-foot wide, 1,068-foot-long access drive that runs off of Oak Road, with the first 50 feet from Oak Road being paved in accordance with the PennDOT HOP requirements. Tr. 2/22/23, at 39-40; Applicant's Ex. C.

44. Mr. Blickenderfer explained that the variable width of the access drive allows for the passage of two trucks heading in the opposite direction for over half the length of the access drive. He also testified that the balance of the access drive will be constructed of gravel. Tr. 2/22/23, at 39-40; Applicant's Ex. C.

45. The well pad will be 350 feet by 500 feet and will be surfaced with gravel. Tr. 2/22/23, at 40; Applicant's Ex. C.

46. Additionally, a wet pond, approximately 110 feet by 150 feet, will be located near the northwestern corner of the Leto Well Pad for stormwater management purposes. The wet pond is not related to any oil and gas generation or processing and is designed to mitigate any potential stormwater runoff from the site. Tr. 2/22/23, at 40-41; Applicant's Ex. C.

47. Mr. Blickenderfer stated that as part of Department of Environmental Protection's ("DEP") approval process, Applicant and any other operators are required to employ various best management practices as part of the design of a facility. Tr. 2/22/23, at 41.

48. Mr. Blickenderfer also testified that there will be no pumps, motors, or other equipment related to the wet pond that would generate noise or emissions. Tr. 2/22/23, at 41.

49. He explained that Applicant applied to the DEP for an Erosion and Sedimentation Control General Permit – 3 ("ESCGP-3") for the Leto Well Pad and received approval for its application on March 9, 2020. Tr. 2/22/23, at 42.

50. Mr. Blickenderfer testified that non-barbed wire fencing that is embedded in concrete will be installed around the perimeter of the well pad. Tr. 2/22/23, at 42-43; Applicant's Ex. C.

51. Mr. Blickenderfer testified that Applicant will install a 16-foot wide, lockable security gate at the Leto Well Pad and an additional 12-foot-wide security gate on the access drive near Oak Road. Tr. 2/22/23, at 43-44.

52. Mr. Blickenderfer testified that permanent facilities on the Leto Well Pad after drilling and hydraulic fracturing will not exceed the height limit of 35 feet. Tr. 2/22/23, at 44.

53. Mr. Blickenderfer testified that Applicant will provide at least one off-street parking space in order to comply with the off-street parking requirements of the Zoning Ordinance. Tr. 2/22/23, at 44-45; Applicant's Ex. C.

54. Further, Mr. Blickenderfer acknowledged that Section 210-120.A(21) of the Zoning Ordinance requires a Deep Well Site to be at least 650 feet from any existing building. Tr. 2/22/23, at 45; Applicant's Ex. C.

55. Mr. Blickenderfer testified that the closest building to the edge of the Leto Well Pad is located on Hemlock Street, 688 feet from the edge of the Leto Well Pad, with such distance being determined through survey and aerial mapping with a margin of error of less than one foot. Tr. 2/22/23, at 45; Applicant's Ex. C.

56. Mr. Blickenderfer confirmed that a previous version of the setback map showed a separate additional structure, a shed, in the yard of the closest house on Hemlock Street. Tr. 2/22/23, at 45-47; Applicant's Ex. C.

57. However, he also confirmed that the shed, which is no longer standing, was located 668 feet from the edge of the Leto Well Pad and has been removed from the current setback map. Tr. 2/22/23, at 45-47; Applicant's Ex. C.

58. Mr. Blickenderfer testified that a property owned by the Clean Streams Foundation (“CSF Property”) is located to the southeast of the Leto Well Pad. Tr. 2/22/23, at 47; Applicant’s Ex. C.

59. While Mr. Blickenderfer acknowledged that he did not personally evaluate the condition of the structures, he confirmed that the current setback map does not include these distances based on information provided by another consultant regarding the condition of those structures. Tr. 2/22/23, at 47; Applicant’s Ex. C.

60. Mr. Blickenderfer confirmed that there is no equipment at the stormwater detention pond near the Leto Well Pad, and that no noise or emissions come from the pond. Tr. 2/22/23, at 48-49; Applicant’s Ex. C

61. The pond is greater than 650 feet from any protected structure or any existing building, as defined by the Zoning Ordinance. Tr. 2/22/23, at 48-49; Applicant’s Ex. C.

62. A soil stockpile, located immediately to the west of the Leto Well Pad, will be at least 650 feet from any existing building and the guard shack, located on the Leto Well Pad at the end of the access road, will also be at least 650 feet from any existing building. Tr. 2/22/23, at 49; Applicant’s Ex. C.

63. Mr. Blickenderfer provided an overview of the limit of disturbance (“LOD”) for the development of the Leto Well Pad and testified that it is Applicant’s position that only the Leto Well Pad and not the LOD that should be considered for purposes of what is considered the “deep well site.” Tr. 2/22/23, at 49-50; Applicant’s Ex. C.

64. Mr. Blickenderfer confirmed while the LOD overlaps with the 650-foot radius drawn from the nearest home on Hemlock Street, no grading will be taking place in that area. Tr. 2/22/23, at 50; Applicant’s Ex. C.

65. He also confirmed that some erosion and sedimentation controls, such as filter socks on the slope, and an upstream diversion berm are located within the overlap area to direct stormwater runoff away from the disturbance area. Tr. 2/22/23, at 50-51; Applicant's Ex. C.

66. Mr. Blickenderfer explained that Michael Baker completed a view-shed analysis in September 2019 and February 2023 to evaluate the visibility of the well site by the traveling public and nearby residents. As part of the analysis, Michael Baker took photographs and looked at sight line information that included the existing vegetation and topography. This analysis delineated eleven points where these photographs were taken in order to provide sight line information. Tr. 2/22/23, at 52-57; Applicant's Ex. D.

67. As part of the analysis, Mr. Blickenderfer testified that a marker was placed on the Leto Well Pad to simulate the approximate height of a wellhead. Mr. Blickenderfer admitted that the wellhead could be visible, based on existing vegetation, at points L5, L9, and L10. Point L9, located to the far west of the Leto Well Pad, is at a higher elevation and approximately 2,322 feet from the pad, Point L10, also at a higher elevation, is approximately 2,483 feet from the pad, and Point L5 which looks directly down the access drive. Tr. 2/22/23, at 55-57; Applicant's Ex. D.

68. With respect to all other sightline points, Mr. Blickenderfer opined that the permanent facilities associated with site operations, based on existing vegetation and topography, should not be visible, including point L1, located on Hemlock Street, which is approximately 1,032 feet away from where the wellheads would be located. Tr. 2/22/23, at 54, 98; Applicant's Ex. D.

69. Mr. Blickenderfer testified that for safety reasons, pine trees cannot be planted immediately around wellheads and the trees would also have difficulty surviving

being planted in the gravel that makes up the pad area. Tr. 2/22/23, at 57-58; Applicant's Ex. C.

70. The Board finds Mr. Blickenderfer to be a credible witness.

Witness—Scott Rasmussen

71. Applicant's second witness was Scott Rasmussen, a principal with Civil and Environmental Consultants who graduated with a Bachelor of Science in Chemistry from Syracuse University, a Bachelor of Science and Environmental Chemistry from the State University of New York, and a Masters Degree in Environmental Pollution Control from Penn State University. Tr. 2/22/23, at 110-111.

72. Mr. Rasmussen also testified that he has professional experience working with legacy treatment of coal mines, which involves evaluating mining-related discharges to improve systems and improve efficiencies in water treatment. Tr. 2/22/23, at 11.

73. Mr. Rasmussen explained that he is familiar with a CSF Property, a former mine drainage facility that was built to dewater and treat water from the Russellton Mine. Tr. 2/22/23, at 113.

74. He stated that he has personally visited this property and is familiar with its history. Tr. 2/22/23, at 113.

75. The Board qualified Mr. Rasmussen as an expert in mine closure and water treatment. Tr. 2/22/23, at 116.

76. Mr. Rasmussen provided testimony that the Berry Mine was first developed in 1915. In the 1960s, a mine drainage treatment facility was built on what is now the CSF

Property, the purpose of which was to dewater and treat the water from the Berry mine. Tr. 2/22/23, at 111, 118.

77. He went on to explain that the facility stopped operating in 2016 as a result of the DEP recognizing that bringing the mine pool up slightly in elevation would allow it to flow into the Russellton Mine and then into the Indianola Mine, which could treat the water from all three mines centrally without the need to pump water. Tr. 2/22/23, at 117-118.

78. Mr. Rasmussen testified that he observed various structures on the site and provided information about the functions of the pump station, treatment tower, and peroxide tank. Tr. 2/22/23, at 116-118.

79. Mr. Rasmussen stated that AMD Industries, the operator of the treatment facility, still comes on-site once per month to run the deep well pump for approximately two (2) hours, which is necessary to keep the pumps functional. Tr. 2/22/23, at 119.

80. During his testimony, Mr. Rasmussen identified a series of photographs depicting the current condition of structures located on the CSF Property. Tr. 2/22/23, at 122-23; Applicant's Ex. G.

81. The CSF Property has three structures which are located within 650 feet of the well site: an electric structure, a treatment tower, and a hydrogen peroxide tank. Tr. 2/22/23, at 116- 122; Applicant's Ex. F.

82. There is also a pump station structure located 1,257 feet from the Leto Well Pad, which is turned on once a month; however, no water from the pump station is actually pumped to the pond. Tr. 2/22/23, at 117, 125, 161; Applicant's Ex. F and G.

83. The pump station structure has no running water, sewer service, bathrooms, heating, or air conditioning. Tr. 2/22/23, at 125; Applicant's Ex. G.

84. Mr. Rasmussen's opined that the pump station structure is not suitable for habitation or personal use, as there is no room for anything other than an electrical panel and large electric motor. Tr. 2/22/23, at 125-26; Applicant's Ex. G.

85. Mr. Rasmussen further testified that in his professional opinion, the pump will not be needed in the future. Tr. 2/22/23, at 126.

86. The hydrogen peroxide tank structure was previously used to treat water from the pump station, but the tank is currently empty and is not in use and the structure does not have running water, sewer service, bathrooms, heating, or air conditioning. Tr. 2/22/23, at 127-128; Applicant's Ex. G.

87. Mr. Rasmussen testified that in his professional opinion, the peroxide tank structure will not be needed for treatment in the future and is not suitable for habitation or as a working environment. Tr. 2/22/23, at 127-128.

88. The electrical structure was previously used for storage and provides large electrical cutoffs for the electrical supply. Tr. 2/22/23, at 128; Applicant's Ex. G.

89. However, the electrical structure is not currently in use, as it does not have running water, sewage service, or a bathroom. Tr. 2/22/23, at 129; Applicant's Ex. G.

90. Mr. Rasmussen testified that he observed evidence of rodent infestation and in his opinion, the electrical structure is not safe for human habitation and is not usable as a working environment. Tr. 2/22/23, at 129; Applicant's Ex. G.

91. Mr. Rasmussen testified that the electrical structure serves no mine reclamation purpose and in his professional opinion should be demolished and replaced with a simple electrical board. Tr. 2/22/23, at 131.

92. The treatment tower was previously used to feed lime into water from the pump station, however, Mr. Rasmussen does not believe that the treatment tower will be

needed for future mine water treatment because DEP test results show that the water is neutral to alkaline. Tr. 2/22/23, at 131; Applicant's Ex. G.

93. Furthermore, Mr. Rasmussen testified that the treatment tower equipment is corroded and clogged and would have to be rebuilt to operate. Tr. 2/22/23, at 132.

94. He also testified that the treatment tower does not have running water, sewage service, a bathroom, heating or air conditioning. Tr. 2/22/23, at 132-33; Applicant's Ex. G.

95. Mr. Rasmussen testified that in his professional opinion, the facility on the CSF Property as a whole is not operational and it is unlikely that this site will be a working mine reclamation site in the future because water from the Berry Mine is now being transferred to the Russellton and Indianola Mines. Tr. 2/22/23, at 133-134.

96. The Board finds Mr. Rasmussen to be a credible witness.

Witness—Manny Johnson

97. Applicant's third witness was Manny Johnson, the Vice President of Operations for Olympus that oversees all operations, including drilling, completions, and production. Tr. 3/1/23, at 17-18.

98. Mr. Johnson testified that he has worked for Olympus for six (6) years and has overseen the development of approximately 700 unconventional wells and approximately 620 miles of pipelines. Tr. 3/1/23, at 17-18.

99. He explained that upon approval, pad construction is projected to begin in April of 2024 with drilling commencing in approximately June of 2024, and completions (hydraulic fracturing) activity expected to begin in October of 2024. Permanent

production is anticipated to begin in February of 2025. However, the schedule is subject to change. Tr. 3/1/23, at 21, 32, 55.

100. While a schedule has not yet been determined, six additional wells are planned to be drilled in the future. Tr. 3/1/23, at 21-22.

101. Applicant's haul route will utilize Interstate 79 to Route 910 to the west before turning onto Oak Road. Tr. 3/1/23, at 22; Applicant's Ex. C.

102. Route 910 is a state road and is not weight-restricted and Oak Road is a state road that has a 10-ton weight limit. Tr. 3/1/23, at 23; Applicant's Ex. C.

103. Applicant intends to work with PennDOT to determine any necessary repairs that may be required on Oak Road. Any necessary road base repairs would be completed by Applicant prior to the start of construction of the Leto Well Pad. Tr. 3/1/23, at 25.

104. Mr. Johnson acknowledged that Applicant is responsible for any damage to Oak Road related to its activities under its PennDOT bond. Tr. 3/1/23, at 25.

105. Mr. Johnson testified that the width of Oak Road allows large trucks to pass in both directions at the same time and would include the largest vehicles traveling to the site, such as sand trucks and water trucks, which range in length from 60 to 80 feet. There are no turning radius issues related to large trucks turning onto Oak Road from Route 910 to the access drive entrance. Tr. 3/1/23, at 23-24.

106. There are no "pinch points" along the length of Oak Road from Route 910 to the access drive entrance with regard to its width, and there will be no stacking of vehicles onto Oak Road or at any other location in the Township. 3/1/23, at 25.

107. Applicant does not anticipate the need to utilize flaggers, convoys, or escort vehicles for any water or sand truck traffic. Tr. 3/1/23, at 59-60.

108. Mr. Johnson testified that the Applicant has developed data on the projected truck traffic that would occur during the completions/hydraulic fracturing stage, and even assuming a worst-case scenario which requires trucking one hundred percent (100%) of the required freshwater to the Leto Well Pad with no piping of water to the site, the volumes of projected truck traffic are typical for the development of unconventional well pads in southwestern Pennsylvania. Tr. 3/1/23, at 26-27, 30.

109. Mr. Johnson confirmed that Applicant provided its projected truck traffic data to its traffic consultant, Stahl Sheaffer Engineering, who used this information to prepare an updated traffic impact study ("TIS"). Tr. 3/1/23, at 26-27.

110. Mr. Johnson provided an overview of the process for water sourcing, which includes the use of piped or trucked freshwater along with the trucking in of produced water related to its water recycling program. Tr. 3/1/23, at 27.

111. Applicant's preference is to pipe freshwater to its well sites, as opposed to trucking it. Accordingly, Applicant has finalized a letter of intent with the Hampton-Shaler Water Authority to provide water to the Leto Well Pad. As part of its agreement, Applicant would upgrade some portions of the Hampton-Shaler Water Authority's system, which would benefit the community with the installation of pipe providing additional capacity to the area. Tr. 3/1/23, at 28-29; Applicant's Ex. J.

112. The proposed tap location for the connection with the Hampton-Shaler Water Authority would be to the west of the Leto Well Pad off of Middle Road Extension. Tr. 3/1/23, at 29-30.

113. Mr. Johnson testified that Applicant has also engaged in conversations and has a letter of intent with the Oakmont Water Authority to provide water to the Leto Well

Pad, and the tap location for the connection with the Oakmont Water Authority would be off of Oak Road. Tr. 3/1/23, at 29-30; Applicant's Ex. K.

114. Further, Mr. Johnson clarified that water truck traffic could be reduced by 60 percent or more by purchasing water from the Oakmont Water Authority and the Hampton-Shaler Water Authority, but to the extent water needs to be trucked in, there will be no staging area located in the Township and there will be no stacking of vehicles on any public roads. Tr. 3/1/23, at 30-31.

115. Applicant will utilize an aboveground storage tank ("AST") to hold its freshwater on site. Tr. 3/1/23, at 44.

116. Mr. Johnson testified that Applicant will implement a written complaint procedure, in addition to its 24-hour contact number, for individuals to contact in the event of any traffic issues may arise. Tr. 3/1/23, at 31.

117. He explained that Applicant will also work with the local school district to establish "blackout" periods on Oak Road during school bus hours to minimize interaction between heavy truck traffic and district buses. Tr. 3/1/23, at 31-32.

118. Mr. Johnson testified that after the wells have been hydraulically fractured, cleaned, and ready to be put into line for sales, truck traffic will be reduced to an initial 10 to 15 trucks per day hauling water off-site. Tr. 3/1/23, at 32-33.

119. Furthermore, after a few months, truck traffic is reduced to approximately one truck per day, which would continue throughout permanent production at the Leto Well Pad, which is expected to last 30-plus years. Tr. 3/1/23, at 32-33.

120. Mr. Johnson confirmed Mr. Blickenderfer's testimony that the total area of the Property is 48 acres, with the LOD comprising 17.3 acres, which equates to a lot

coverage percentage of 36 percent. The LOD does not include buildings, structures or anything of a similar nature. Tr. 3/1/23, at 36.

121. Mr. Johnson testified that it is Applicant's position that the Township's Zoning Ordinance requirement for lot coverage relates only to permanent buildings and structures. Tr. 3/1/23, at 36-37.

122. The area of midstream and production facilities on the Leto Well Pad is approximately 0.18 acres or approximately 0.4 percent of the 48 total acres of the Property. Tr. 3/1/23, at 37.

123. Including all impervious areas of the well pad and the access drive, the total acreage, once the Leto Well Pad is built, is 4.66 acres or approximately 9.7 percent of the 48 total acres of the Property. Tr. 3/1/23, at 37.

124. Mr. Johnson testified that gas from the Leto Well Pad will connect to the Eastern Gas Transmission Line. Tr. 3/1/23, at 38-39.

125. Applicant has determined that the location of the interconnect to the Eastern Gas Transmission Line will be on property that borders Route 910 owned by Allison Park Contractors. While the interconnect is not part of the Leto Well Pad conditional use application, Applicant will be filing a separate conditional use application with the Township in the near future for the interconnect facility. Tr. 3/1/23, at 38-39.

126. Furthermore, Mr. Johnson testified that if Applicant determines that compression is necessary at the Leto Well Pad, Applicant will submit the appropriate application to the Township. Tr. 3/1/23, at 39.

127. Applicant will discourage any driver coming to or from the Leto Well Pad from utilizing "Jake brakes" except in emergency situations. Tr. 3/1/23, at 55.

128. Mr. Johnson testified that the lighting provided on the drill rig is necessary for the safety of the workers on the Leto Well Pad site. Tr. 3/1/23, at 63.

129. The Board finds Mr. Johnson to be a credible witness.

Witness – Joe Guley, P.E.

130. Applicant's fourth witness was Joe Guley, P.E., a project manager with Stahl Sheaffer Engineering. In this capacity, he oversees highway design projects, permitting, traffic impact studies, traffic impact assessments, and highway development projects. Tr. 3/1/23, 84-85.

131. Mr. Guley testified that he has been involved in approximately 50 to 60 traffic impact studies in his career. Tr. 3/1/23, at 86-87.

132. Stahl Sheaffer was retained by Applicant to undertake a TIS in connection with its development of the Leto Well Pad, which Mr. Guley oversaw and sealed. A TIS is used to assess the existing roadway infrastructure and operations and any impact of a proposed development on a study network in order to identify on or off-site improvements that may be required due to a proposed development. Tr. 3/1/23, at 86-87; Applicant's Ex. N.

133. The TIS identifies the study area, collects traffic counts and crash data to calculate the traffic generation based on the proposed development, which is then distributed through the study area to complete a traffic analysis at intersections within the study area. The TIS may recommend or not recommend that certain improvements be undertaken. Tr. 3/1/23, at 86.

134. While a TIS was submitted to the Township Planning Commission in 2021, Stahl Sheaffer updated that study to reflect new traffic count data, and to include additional intersections for review. In conjunction with the updated TIS, Stahl Sheaffer conducted turning movement counts in early February 2023, and PennDOT has posted updated average daily traffic counts within the study area from 2022. Tr. 3/1/23, at 87-88; Applicant's Ex. N.

135. Mr. Guley testified that Applicant's haul route will utilize Interstate 79 to Route 910 to Oak Road to the Leto Well Pad, as Route 910 is a state road and is not weight-restricted and Oak Road is a state road and has a 10-ton weight limit. Tr. 3/1/23, at 89; Applicant's Ex. O.

136. The portion of the haul route that is within the Township on Route 910 is approximately 0.95 miles from its western border to the intersection of Oak Road, while the length of the haul route along Oak Road is approximately 1.29 miles. Tr. 3/1/23, at 89; Applicant's Ex. O.

137. The TIS evaluated seven intersections with respect to the Leto Well Pad: Route 8 and Route 910, Route 910 and Lori Road, Route 910 and McIntyre and Turner Roads, Route 910 and Middle Road, Route 910 and Middle Road Extension, Route 910 and Oak Road, and Oak Road and Muller Street and the proposed Leto Well Pad driveway. 3/1/23, at 89-90; Applicant's Ex. O.

138. Mr. Guley provided an overview of what a traffic level of service ("LOS") is. A LOS provides a letter grade from A through F to an intersection based on capacity and the delay associated with a particular intersection. An "A" grade represents the best condition with a minimal amount of delay while an "F" represents the worst condition

with the longest amount of delays. PennDOT considers “A” through “D” grades as acceptable levels of service. Tr. 3/1/23, at 90-912.

139. Mr. Guley explained that for a TIS, a.m. and p.m. peak hour traffic volumes are used to analyze the highest traffic volume time period in order to measure the maximum delay that would occur during that time period. Tr. 3/1/23, at 91.

140. The TIS analyzed what the impact of the proposed Leto Well Pad would have on the existing a.m. and p.m. peak hour traffic in order to determine how much, if any, additional delays could occur due to the development of the Leto Well Pad. Tr. 3/1/23, at 96.

141. The TIS provided information on the 2023 existing operation levels of service for the identified intersections without any type of proposed well site traffic and concluded that six of the seven intersections pre-Leto Well Pad development operated at acceptable levels of service during a.m. and p.m. peak hours. The exception was the Route 8 and Route 910 intersection that functions in the p.m. peak at an E LOS southbound and an F LOS northbound. Tr. 3/1/23, at 91-94; Applicant’s Ex. O.

142. The TIS then evaluated a 2024 “no-build” traffic scenario, which took 2023 traffic volumes and grew them to 2024 based on the growth rate provided by the Southwestern Pennsylvania Commission. Tr. 3/1/23, at 94; Applicant’s Ex. O.

143. Mr. Guley testified that there is basically no change from the existing 2023 operation levels and the projected 2024 levels. Tr. 3/1/23, at 94.

144. Stahl Sheaffer then took data provided by Applicant regarding projected Leto Well Pad traffic volumes during the highest level of truck traffic, the Completions A stage, and added it to the 2024 no-build scenario. Tr. 3/1/23, at 94-95; Applicant’s Ex. O.

145. Mr. Guley explained that the TIS assumed a worst-case scenario that 100 percent of the water would need to be trucked to the Leto Well Pad during the Completions A stage, making the projected daily truck traffic volumes approximately 1,110 daily truck trips during the Completions A stage. Estimated hourly truck volumes would be 44 heavy truck trips and two passenger vehicle trips. Tr. 3/1/23, at 95-96; Applicant's Ex. O.

146. He further explained that if Applicant pipes 50% of the freshwater to the Leto Well Pad, the TIS determined that the projected peak hour truck traffic volume would be reduced to approximately 26 vehicle trips, which equates to 13 vehicles in and 13 vehicles out of the site. Tr. 3/1/23, at 96; Applicant's Ex. O.

147. The TIS concluded that the operations at the Leto Well Pad during the Completions A stage, assuming 100 percent trucking of water to the site, would not result in an unacceptable LOS at any of the studied intersections. The TIS also showed that the traffic impacts are minimal when compared with the 2024 Leto Well Pad no-build scenario. Tr. 3/1/23, at 97, 99-100; Applicant's Ex. O.

148. The highest anticipated additional delay projected along the proposed haul route, assuming 100 percent trucking in of fresh water to the Leto Well Pad, would cause a maximum delay of 2.4 seconds at the Turner Road approach on Route 910. Tr. 3/1/23, at 97; Applicant's Ex. O.

149. Mr. Guley testified that PennDOT has criteria to calculate, based on turning vehicles and vehicles coming from the opposite direction, if a left or right turn lane would be needed at an intersection. However, operations at the Leto Well Pad during the Completions A stage, assuming 100 percent trucking in of freshwater, will not trigger any

additional warrants for left-turn lanes or any traffic signals along the haul route beyond any that currently exist. Tr. 3/1/23, at 97-98; Applicant's Ex. O.

150. Further, Mr. Guley testified that Applicant's projected truck traffic during the Completions A stage will not obstruct any adjacent intersections or driveways not already obstructed by existing traffic. Tr. 3/1/23, at 98.

151. Mr. Guley provided a summary of the calculations regarding traffic queue times at the studied intersections based on the 2024 traffic data that includes the Leto Well Pad testified that in his opinion, all of the additional queue extensions are minor in nature. Tr. 3/1/23, at 99; Applicant's Ex. O.

152. Mr. Guley testified that the overall intersection of Oak Road and the Leto Well Pad access drive meets PennDOT requirements during the hydraulic fracturing stage, as PennDOT permits driveways for oil and gas development as minimum-use driveways that require one lane of traffic in and one lane of traffic out, along with the placement of a stop sign at the end of the access drive at Oak Road. Tr. 3/1/23, at 100-101.

153. He explained that the PennDOT standard for its minimum-use driveway template, found in PennDOT Publication Number 282, is a 24-foot minimum-width access road. PennDOT also requires a larger radii to allow for the anticipated vehicles that will be accessing a well site. For the Leto Well Pad access drive, PennDOT requires approximately 72 feet to one side of the access drive and approximately 92 feet on the other side of the access drive, as measured from the center line of Oak Road. This PennDOT standard provides for the "throat" of the access drive where it ties into Oak Road to be wide enough to facilitate the movement of larger vehicles entering and exiting the site. Tr. 3/1/23, at 102-103; CROWD Ex. 5.

154. Mr. Guley testified that in his professional opinion, based upon his experience working with PennDOT, he does not believe that PennDOT will approve driveway widths less than those proposed for the Leto Well Pad access drive. Mr. Guley further explained that if an applicant does not use PennDOT's template, it will require an application to run auto turns to demonstrate that whatever is being proposed can handle the anticipated traffic entering and exiting the site. Tr. 3/1/23, at 103.

155. Mr. Guley's further opined that if a 24-foot wide access road were to intersect directly with Oak Road at a 90-degree angle without an apron or throat, vehicles would not be able to safely maneuver in and out of the site. Tr. 3/1/23, at 103-104.

156. Mr. Guley testified that he has examined the access driveway for the Dollar General which is located next to the Property, and the width of the Dollar General driveway where it intersects with Oak Road is approximately 80 feet at the throat and that PennDOT has issued the HOP for the access drive design proposed by Applicant. Tr. 3/1/23, at 104.

157. Mr. Guley testified that the width of Oak Road is approximately a minimum of 11 feet for each travel lane. Oak Road varies in width as it gets closer to Route 910, where it gets slightly wider. The road shoulders vary between two and four feet on each side of the road. Tr. 3/1/23, at 104-105; Applicant's Ex. O.

158. Based on the measurements taken by Stahl Sheaffer, as provided in the TIS, it is Mr. Guley's professional opinion that Oak Road will allow for the safe passage of 62-foot-long sand trucks and water trucks in both directions. There would be no need to stop traffic to allow those sized vehicles to pass in both directions. Tr. 3/1/23, at 105; Applicant Exhibit O.

159. Mr. Guley concluded that it was his professional opinion within a reasonable degree of scientific certainty that traffic associated with the development of the Leto Well Pad traffic will have minimal impact at intersections Stahl Shaeffer studied in its TIS. During the highest truck traffic period, the Completions A stage, traffic will continue to operate at its current levels of service, and during production and permanent operations there will be no impact on traffic conditions. Tr. 3/1/23, at 105.

160. The Board finds Mr. Guley to be a credible witness.

Witness—Tage Rosendahl

161. Applicant's fifth witness was Tage Rosendahl, a regional manager for Acoustical Control, covering operations in the Northeast United States and Canada. Tr. 3/7/23, at 8.

162. In his capacity as regional manager, Mr. Rosendahl oversees sound impact assessments, noise monitoring, and the development and implementation of noise mitigation strategies for oil and gas customers, utilities, construction companies, transportation, data centers, and waste facilities. Tr. 3/7/23, at 8.

163. A sound impact assessment ("SIA") is a prediction created to determine the impact of some produced noise on a surrounding area and is created by taking acoustical information, feeding it into software that considers elevation, direction, and other inputs, and producing a map of anticipated sound levels. However, the SIA does not take into account the noise mitigation impact of tree foliage. Tr. 3/7/23, at 9-10.

164. Mr. Rosendahl testified that he oversees and finalizes the creation of any SIA report. Tr. 3/7/23, at 11.

165. Acoustical Control has prepared and updated several SIA reports for the Leto Well Pad. The current SIA for the Leto Well Pad assumes a 32-foot sound wall around all sides of the well pad with the exception of the opening for the access road. Tr. 3/7/23, at 16; Applicant Ex. P.

166. Mr. Rosendahl testified that the SIA was created by taking acoustical data for specific equipment such as the rig configurations for drilling work and hydraulic fracturing and running it through the Bruel and Kjaer software model. Tr. 3/7/23, at 17; Applicant Ex. P.

167. Mr. Rosendahl explained that the acoustical data inputted into the program is based on sound level measurements taken from similar drill rig configurations to those planned for the Leto Well Pad, which includes measurements taken for one drill rig, nine generators, and two shakers during vertical drilling, one drill rig, four generators, three mud pumps and two shakers during horizontal drilling, one blender, two wireline trucks, 10 water trucks and 20 frack trucks during hydraulic fracturing. Tr. 3/7/23, at 17, 34-35; Applicant Ex. P.

168. The Township Zoning Ordinance section regulating oil and gas operations provides for a default ambient measurement of 65 decibels (“dBA”) with an allowable increase of 5 dBA during drilling and 10 dBA during hydraulic fracturing. As a result, the Zoning Ordinance effectively allows for a maximum of 70 dBA during drilling, and 75 dBA during hydraulic fracturing, to be measured at the nearest protected structure. Tr. 3/7/23, at 17-18; Applicant’s Ex. U.

169. While preparation of an SIA is not required by the Zoning Ordinance, Applicant, as a matter of best practice, undertook one in order to determine whether mitigation measures should be implemented to reduce impacts. Tr. 3/7/23, at 20.

170. The updated SIA prepared by Acoustical Control included approximately 40 receptor points and analyzed projected sound levels during vertical drilling, horizontal drilling, and the completions stages of the project. Tr. 3/7/23, at 20-21; Applicant's Ex. P.

171. Without sound walls, the highest projected sound levels are at Receptor R-1, with a level of 53.1 dBA during vertical drilling, 50.4 dBA during horizontal drilling, and 59.6 dBA during completions or hydraulic fracturing. Tr. 3/7/23, at 22-23; Applicant's Ex. P.

172. Mr. Rosendahl testified that even without sound walls, the SIA predicted that Applicant will remain well under the Zoning Ordinance requirements at all receptor points during all stages of development. Tr. 3/7/23, at 24; Applicant's Ex. P.

173. Applicant has committed to providing 32-foot high sound walls, constructed of mass-loaded vinyl with an STC rating of 32. Tr. 3/7/23, at 25.

174. With sound walls, the highest projected sound levels are at Receptor R-9, with a level of 49.9 dBA during vertical drilling, 46 dBA during horizontal drilling, and 55.8 during completions or hydraulic fracturing and the projected sound levels for all other receptors are less than at Receptor R-9. Tr. 3/7/23, at 26-27; Applicant's Ex. P.

175. Receptor R-1 is at a home located slightly less than 700 feet east of the Leto Well Pad and 25 feet below the level of the pad. With sound walls, the SIA projects that the sound level during vertical drilling will be 44.9 decibels. Tr. 3/7/23, at 28; Applicant's Ex. P.

176. Mr. Rosendahl testified that in his professional opinion, based on the SIA prepared and overseen by him, Applicant's operations at the Leto Well Pad with or

without a 32-foot high sound wall will be less than 70 dBA during all phases of well development. Tr. 3/7/23, at 30-31.

177. The Board finds Mr. Rosendahl to be a credible witness.

CROWD's and Individual Party Objectors' Testimony And Evidence In Opposition Of The Proposed Deep Well Site.

Witness— Tim Resciniti

178. On behalf of CROWD, Tim Resciniti presented testimony regarding the status of the facilities on the CSF Property and whether those facilities qualified as existing buildings. Specifically, Mr. Resciniti argued that Applicant did not meet its burden of demonstrating compliance with certain provisions of the Zoning Ordinance. Tr. 3/7/23, at 121-130; CROWD Ex. 20.

179. With respect to the facilities on the CSF Property, Mr. Resciniti presented an email exchange between himself and Mr. Dean Hunt, identified as the Administrator of the Clean Streams Foundation, Inc., from an address in Lexington, Kentucky, in which Mr. Hunt states that the water treatment plant on the site is active and treating water. Tr. 3/7/23, at 125-26; CROWD Ex. 15.

180. Mr. Resciniti also submitted into the record a print-out from the Allegheny County Office of Property Assessment for the CSF Property, which provides a separate “land value” and “building value” for that property. Tr. 3/7/23, at 126-27; CROWD Ex. 16.

181. On behalf of CROWD, Mr. Resciniti asserted that Olympus did not comply with the Zoning Ordinance in the following respects:

- a. The structures on the CSF Property qualify as “buildings” for purposes of the 650-foot setback requirement of Section 210-120.A(21)(a)[1]. Tr. 3/7/23, at 122-27;

- b. A helipad noted on Olympus's emergency response plan will be closer than 650 feet from homes along Locust Road, and therefore violates Section 210-120.A(21)(a)[1]. Tr. 3/7/23, at 127; Applicant's Ex. A.5;
- c. The width of the access drive at the intersection with Oak Road does not comply with Section 210-110(H), and PennDOT does not mandate a width greater than that permitted by the Zoning Ordinance. Tr. 3/7/23, at 123-124; and
- d. The application references the Property, which is located in the I-1 District, but a portion of the stormwater pond is located on adjacent property owned by Ms. Gizienski located in the R-3 District. Tr. 3/7/23, at 128.

Cases of Individual Objectors

Witness—Laura Henderson

182. Ms. Henderson is a party objector who resides at 204 Locust Street. Ms. Henderson expressed concerns about safety, use of Township resources in the event of an emergency, and the evacuation zone. Tr. 3/7/23, at 108-115.

Witness—Abby Koenig

183. Ms. Koenig is a party objector who resides at 233 Oak Road. Ms. Koenig expressed concerns about her family and children, lighting, truck traffic, and the overall negative impact to her family's quality of life. Tr. 3/7/23, at 115-119.

Witness—James Shuey

184. Mr. Shuey is a party objector who resides at 147 Bryson Road. Mr. Shuey expressed concerns about water well testing. He mentioned a water well complaint related to Olympus's Midas Well Pad in Plum Borough, Allegheny County, erosion and sedimentation violations at Olympus's Plutus Well Pad and Ceto Tank Pad in Elizabeth Township, Allegheny County, and an incident in Indiana Township which occurred in 2010. Tr. 3/14/23, at 8-19; Shuey Ex. 1-4.

Witness—Ronald Zielinski

185. Mr. Zielinski is a party objector who resides at 188 Bryson Road. Mr. Zielinski expressed concerns about light, noise, air, and traffic. Tr. 3/14/23, at 20-23.

Witness—Susan Drum

186. Ms. Drum is a party objector who resides at 247 Ash Lane. Ms. Drum expressed concerns about light, vibration, mine subsidence, and impacts on infants and the elderly. Tr. 3/14/23, at 23-25.

Witness—Victoria Austin

187. Ms. Austin is a party objector who resides at 19 Hemlock Street. Ms. Austin expressed concerns about pollution, light, noise, and traffic, visibility of the Leto Well Pad from various points, and impacts on property values. She criticized the line of sight analysis prepared by Mr. Blickenderfer and the traffic impact study prepared by Mr. Guley. She also mentioned an incident occurring in December 2022 in connection with Olympus's operations in Allegheny Township, Westmoreland County. Tr. 3/14/23, at 25-40; Austin Ex. 1-20.

Witness—Norann Shuey

188. Ms. Shuey is a party objector who resides at 147 Bryson Road. Ms. Shuey expressed concerns about her water well, the cost of water well testing, and the use of temporary water buffaloes. She also expressed concerns about noise, traffic, lights, the cost of mine subsidence insurance, and the impact on property values. Tr. 3/14/23, at 42-59; Shuey Ex. 5.

Witness—Julie Cousley

189. Ms. Cousley is a party objector who resides at 61 Lick Road. She expressed concerns about her well water. Tr. 3/14/23, at 60-62.

Witness— Yvonne Hutchinson

190. Ms. Hutchinson is a party objector who resides at 425 Bairdford Road. She expressed concerns about safety, evacuation procedures, insomnia, and noise. She also cited a news article mentioning alleged notices of violation issued to Olympus by DEP. Tr. 3/14/23, at Tr. 62-71; Hutchinson Ex. 1.

Witness— Kara Randza

191. Ms. Randza is a party objector who resides at 210 Locust Street. She expressed concerns about her family and children, traffic, noise, air pollution, water pollution, vibration, light, and safety. Tr. 3/14/23, at Tr. 72-77.

Witness— Jonathan Randza

192. Mr. Randza is a party objector who also resides at 210 Locust Street. He expressed concerns about lighting and general code compliance, and criticized Mr. Guley's traffic impact study. Tr. 3/14/23, at 78-83

Witness— Mark Thompson

193. Mr. Thompson is a party objector who resides at 358 Oak Road. He expressed concerns about noise, traffic, and safety. He believes that Olympus is not a

good neighbor. He criticized the site line analysis of Mr. Blickenderfer, the traffic impact study prepared by Mr. Guley, and the testimony of Mr. Rasmussen, and questioned their impartiality. Tr. 3/14/23, at 84-93.

Witness— Emilie Thompson

194. Ms. Thompson is a party objector who also resides at 358 Oak Road. She expressed concerns about traffic, noise, subsidence, safety, and housing values. Tr. 3/14/23, at 94-97; Thompson Ex. 1.

Applicant's Rebuttal Case

Witness—Manny Johnson

195. At the commencement of its rebuttal case, Applicant introduced additional exhibits and one additional witness.

196. Mr. Johnson testified that the Applicant's conditional use application does not include a helipad and the Applicant does not intend to build a helipad at the Leto Well Pad site. Tr. 3/14/23, at 99.

197. During his testimony, Mr. Johnson identified an updated letter of intent from the Hampton-Shaler Authority to allow for the piping of freshwater to the Leto Well Pad. Tr. 3/14/23, at 100; Applicant's Ex. R.

198. Mr. Johnson clarified that if Applicant is able to arrange for the piping of freshwater to the Leto Well Pad, the impact on local roads will be even less than what Mr. Guley assumed in his traffic impact study. Tr. 3/14/23, at 100-101.

199. Mr. Johnson also identified the surface use agreement between Applicant (previously named Huntley & Huntley Energy Exploration) and the surface owner Tricia Gizienski covering both County Block and Lot No. 1668-R-91, on which the well pad and a portion of the stormwater pond is located, and County Lot and Block No. 1218-B-150, on which a portion of the stormwater pond is located. Tr. 3/14/23, at 101-103; Applicant's Ex. S.

200. The total leased acreage for the Leto Well Pad units is approximately 3,000 acres and encompasses approximately 200 leases from surface owner lessors. Tr. 3/14/23, at 103-104.

201. Mr. Johnson testified that he personally measured the width of the Dollar General driveway and confirmed the testimony of Mr. Guley, in that the width of the driveway is approximately 80 feet. Tr. 3/14/23, at 104-105; Applicant's Ex. T.

202. Mr. Johnson confirmed that Applicant offers pre-drill well water sampling for wells within 3,100 feet of a well pad and if the DEP concludes that Applicant is responsible for a problem with a water well, Applicant is required to provide a temporary fix, such as a water buffalo, and if necessary a permanent fix, such as municipal water. Tr. 3/14/23, at 105-106.

203. Mr. Johnson clarified that Applicant, formerly known as Huntley & Huntley Energy Exploration, was created in 2012 and drills unconventional wells while Huntley & Huntley Inc. has been in existence for roughly a century and drills conventional wells. Tr. 3/14/23, at 107.

204. Mr. Johnson further clarified that the fatal incident mentioned during Mr. Shuey's testimony occurred in 2010 at a Huntley & Huntley, Inc. well site. Tr. 3/14/23, at 107.

205. However, none of Applicant's current operations or environmental health and safety employees were previously employed by Huntley & Huntley Inc. in 2010. Tr. 3/14/23, at 107-108.

206. The Board finds Mr. Johnson to be a credible witness.

Public Commenters

207. At the March 14, 2023 public hearing, Township residents were permitted to provide public comment. Tr. 3/14/23, at 144-188.

208. During the public comment period, fifteen residents indicated that they were opposed to the Application, three residents were in favor of the Application, and one resident was neutral and encouraged the Board to "use its heart" when making a decision. Tr. 3/14/23, at 144-188.

CONCLUSIONS OF LAW

1. The Subject Property is located in the I Zoning District where, according to Section 210-120.A(21)(a) of the Zoning Ordinance, a "Deep Well Site" use is permitted as a conditional use.

2. A conditional use is a permitted use to which an applicant is entitled if the applicant demonstrates compliance with the specific, objective requirements contained in the zoning ordinance. *McGinty v. Zoning Bd. of Adj. of the City of Pittsburgh*, 717 A.2d 34 (Pa. Commw. Ct. 1998).

3. The respective burdens of an applicant and any potential objector to a conditional use application were delineated by the Pennsylvania Commonwealth Court in *Bray v. Zoning Board of Adjustment*. *Bray* articulated three types of standards

applicable to a conditional use case. Those standards, and the applicable burdens are as follows:

- a. Specific requirements, ‘*e.g.*, categorical definition of the [conditional use] as a use type or other matter, and objective standards governing such matter as a special exception and generally: The applicant has both the duty [of presenting evidence] and the burden [of proof].’
- b. General detrimental effect, ‘*e.g.*, to the health, safety and welfare of the neighborhood: Objectors have both the duty and burden.’
- c. General policy concern, ‘*e.g.*, as to harmony with the spirit, intent or purpose of the ordinance: Objectors have both the duty and the burden.’ 410 A.2d 909, 913 (Pa. Commw. Ct. 1980).

4. Initially, the applicant for a conditional use has both the persuasion burden and the initial evidence presentation duty to show that the proposal complies with the “terms of the ordinance” which expressly govern such a grant. *Bray*, 410 A.2d at 910.

5. Once the applicant for a conditional use meets its burden of persuading a governing body that its proposed use satisfies the ordinance’s specific requirements, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance. *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 221-22 (Pa. Commw. Ct. 1995).

6. The burden then shifts to the objectors to rebut the presumption and persuade the governing body that the proposed use will have a generally detrimental effect. *Broussard v. Zoning Bd. of Adjustment*, 831 A.2d 764, 772 (Pa. Commw. Ct. 2003).

7. It is the duty of the Board in the exercise of its discretionary power to determine whether a party has met its burden of proof. *Pennsy. Supply, Inc. v. Zoning Hearing Bd.*, 987 A.2d 1243, 1250-1251 (Pa. Commw. Ct. 2009). Determinations as to

the credibility of witnesses and the weight to be given to the evidence are matters left solely to the Board in the performance of its fact-finding role. *Id.*

8. A local governing body is entitled to considerable deference in interpreting its zoning ordinance. *Aldridge v. Jackson Twp.*, 983 A.2d 247 (Pa. Commw. Ct. 2009).

9. The proposed Leto Well Pad is a “Deep Well Site” use within the meaning of the Zoning Ordinance. *See* Zoning Ordinance § 210-6.

10. A Deep Well Site is permitted as a conditional use in the I Industrial Zoning District of the Township provided that the applicant complies with all of the Deep Well Site-specific criteria of Section 210-120.A(21) and the general conditional use criteria of Section 210-117 of the Zoning Ordinance.

11. The Board of Supervisors finds that the substantial evidence presented at the public hearing, including the documents, plans, studies, testimony, and other evidence presented, demonstrates that the proposed Leto Well Pad complies with all of the applicable criteria for a “Deep Well Site” in the Zoning Ordinance.

12. Accordingly, it is the decision of this Board of Supervisors to approve Applicant’s application for the Leto Well Pad subject to the conditions set forth herein.

Scope of Application

13. CROWD argued that Applicant’s application must be denied because the application form cover sheet only references the block and lot number of the property on which the Leto Well Pad is located, and does not specifically identify the second parcel on which a portion of stormwater pond is located.

14. As a preliminary matter, although CROWD asked questions of Mr. Blickenderfer about the second parcel, no objection was made by CROWD as any alleged

procedural error in the advertisement or validity of the hearing and because CROWD failed to raise this argument during the public hearings, it is waived.

15. CROWD has suffered no prejudice and cannot after the hearing is closed raise this issue. *In re McGlynn*, 974 A.2d 525 (Pa. Commw. Ct. 2009).

16. Applicant submitted a very detailed and robust application that delineates in detail all of its proposed facilities, including those located on the second parcel. Applicant's Ex. A, B.

17. The Board acknowledges that a stormwater pond and related facilities are located on an adjacent parcel as depicted in the Application.

18. To the extent that CROWD's argument was not waived, the Board finds that the stormwater pond and related facilities are not part of the Deep Well Site for the Leto Well Pad as these facilities are not necessary for or incidental to the preparation, construction, drilling, fracturing, production or operation of a deep well. Such facilities are not specific to a drilling or deep well operation.

19. Applicant submitted a very detailed and robust application that delineates in detail all of its proposed facilities, including those located on the second parcel. Applicant's Ex. A, B.

Application Requirements

20. CROWD asserts that Applicant did not meet all of the conditional use application requirements for a Deep Well Site, including failing to submit a map showing the route how water is to be supplied to the Leto Well Pad. Section 210-120(21)(e)[1][g].

21. The Board finds that the Applicant has provided sufficient information regarding proposed haul routes for all of its materials (and associated Traffic Impact Studies), including water.

22. Should Applicant be able to pipe the water to the site, which is preferred by the Township due to the resulting reduction in traffic, the Applicant will be required to provide such mapping information for the pipelines.

23. CROWD also claims that Olympus has not met the requirement of Zoning Ordinance Section 210-120(21)(e)[1][q] regarding the submission of water quality test for properties within 1000 feet.

24. However, Section 210-120(21)(e)[1][q] only requires that such results be provided “prior to construction of any oil and gas development,” not as part of the application.

Setback Requirements

25. The Board finds that the proposed Leto Well Pad complies with the setback requirements of the Zoning Ordinance for a Deep Well Site.

26. Section 210-120.A(21)(a)[1] of the Township Zoning Ordinance provides in pertinent part that a “deep well site . . . be placed more than 650 feet from any pre-existing building located off the property where the where the deep well site is located.” Section 210-6 of the Zoning Ordinance defines “deep well site” as follows:

The areas occupied by the facilities, structures, materials and equipment, whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, fracturing, production or operation of a deep well. This definition also includes any exploratory wells. If multiple areas are used, then the total combined areas shall be considered the deep well site area.

27. Additionally, Section 210-6 of the Township Zoning Ordinance defines the term “building” as follows:

A structure that is enclosed, and portions of which are protected from the weather and are usually climate controlled (heated and/or air-conditioned), and that is usable for habitation or as a working environment.

28. While CROWD argued that certain structures located several hundred feet to the southeast of the Property on the CSF Property qualify as “existing buildings” for the purposes of the 650-foot deep well site setback requirement, the Board disagrees.

29. During the February 22, 2023 Public Hearing, Applicant presented Scott Rasmussen of Civil & Environmental Consultants as an expert on mine closure and water treatment. FOF, ¶ 71-96.

30. The Board qualified Mr. Rasmussen as an expert on that subject matter and found his testimony to be credible. FOF, ¶ 75.

31. Mr. Rasmussen confirmed that the acid mine drainage remediation facility on the CSF property has not operated for its intended purpose since 2016, and introduced photographs showing the disrepair of the facility as a whole and the specific structures located on the CSF Property. FOF, ¶¶ 77, 80.

32. Mr. Rasmussen also opined that the facility is unlikely to operate in the future as a working mine reclamation site and that the only structure operated on a regular basis is a water pump, located approximately 1,250 feet from the Leto Well Pad, which is operated once each month to show that it could be operated in the future if needed. FOF, ¶ 95.

33. There are three structures located on the CSF Property within 650 feet of the Leto Well Pad: (1) a non-functioning dilapidated lime tower that has no heat, air

conditioning, water, sewer or bathroom facilities; (2) a second structure that houses an empty non-functioning peroxide tank and has no heat, air conditioning, water, sewer or bathroom facilities; (3) a structure whose sole function is to house an electrical panel and has no water, sewer or bathroom facilities. FOF, ¶ 81.

34. While there is evidence that the third structure at some point in the past contained a desk, it is quite evident from photographs that the structure is in deplorable condition, is rodent infested, and has not been used for a long period of time and is not usable for habitation or as a working environment. FOF, ¶ 90.

35. CROWD entered into evidence a print-out from the Allegheny County Office of Property Assessment for the CSF Property, which provides a separate “land value” and “building value” for that property. FOF, ¶ 180; CROWD Ex. 16.

36. However, the use of that terminology in the context of a property tax assessment is not relevant to a determination of whether anything on the CSF Property qualifies as a “building” for purposes of the Township Zoning Ordinance.

37. Based on the foregoing, the Board concludes that the structures on the CSF Property clearly are not usable “for habitation or as a working environment” and therefore do not qualify as “buildings” for purposes of the Zoning Ordinance and the deep well site setback requirement.

38. CROWD pointed out that a draft of Olympus’s emergency response plan depicted a helipad located to the southwest of the Leto Well Pad.

39. CROWD further suggested that the helipad would be within 650 feet of an unidentified building, and therefore would violate Section 210-120.A(21)(a)[1] of the Township Zoning Ordinance. FOF, ¶ 181(b).

40. However, as Applicant's witness, Manny Johnson testified, the Applicant's application does not include and Applicant does not intend to build a helipad in conjunction with the Leto Well Pad. FOF, ¶ 196.

41. CROWD also asserts that because the stormwater pond is bisected by the property line between the two Gizienski parcels (both of which are vacant, one of which is approximately 48 acres, and the second which is approximately 43 acres) the Applicant's application does not meet the setback requirements of the Zoning Ordinance. FOF, ¶ 181(d); Applicant Ex. A.

42. However, Ms. Gizienski, who has consented to the development through her execution of a surface use agreement covering both parcels, is the only property owner who conceivably could be impacted. FOF, ¶ 199.

43. Any setback issue related to the two parcels will have no impact on CROWD or its members, and they therefore lack standing to raise such an argument.

44. Historically, the Township has not applied setback requirements to stormwater ponds for commercial, residential, and other developments, and has permitted setbacks as low as zero. *See* Applicant Ex. F.

45. Accordingly, the Board concludes that there no violation of Section 210-120.A(21)(a)[1].

Access Driveway Width

46. The width of access road to the Leto Well Pad at the point where it intersects Oak Road is approximately 80 feet. FOF, ¶ 156.

47. Section 210-110(H) of the Zoning Ordinance provides that “[t]he width of any entranceway leading from a public right-of-way shall not exceed 30 feet at the point of intersection with the public right-of-way.”

48. While CROWD asserts that Olympus’s application violates Section 210-110(H), the Board disagrees with this argument.

49. First, there is no such requirement in Township Zoning Ordinance Section 210-120(21)(g)(1) that specifically addresses the design and installation requirements for access drives to oil and gas well sites and this provision takes precedence over the provisions applicable to all uses contained in Section 210-110(H).

50. Specifically, Section 1933 of the Pennsylvania Statutory Construction Act states that if a general statutory (or ordinance) provision is in conflict with a special provision, the special provision prevails. 1 Pa. C.S. § 1933.

51. Moreover, where such a conflict exists, the provisions adopted later in time prevail. 1 Pa. C.S. § 1934; *Heck v. Zoning Hearing Bd.*, 397 A.2d 15 (Pa. Commw. Ct. 1979).

52. The specific oil and gas provisions of Section 210-120(21)(g)(1) were incorporated into the current Zoning Ordinance when it was adopted in 2012 while the provision cited by CROWD was contained in Section 21.4.8 of the previous version of the Zoning Ordinance, adopted 25 years earlier in 1997, at which time the concept of unconventional natural gas drilling did not even exist. Applicant’s Ex. U and V.

53. Even if the 30-foot maximum width requirement of Section 210-110(H) were found to be applicable, it is inconsistent with and preempted by the regulations and requirements of PennDOT, the owner of Oak Road.

54. PennDOT has approved Olympus's application for a highway occupancy permit for a minimum use driveway for oil and gas operations based design standards set forth in PennDOT Publication No. 282. FOF, ¶¶ 9, 41; *see also* Applicant Ex. B; CROWD Ex. 5.

55. The details of Publication No. 282 show the minimum use driveway flaring out to a width of 162 feet at the intersection point with Oak Road.

56. One of Applicant's witnesses, Joseph Guley, opined that based on his experience, PennDOT will not approve a highway occupancy permit for an oil and gas operations minimum use driveway unless these design requirements are met. FOF, ¶ 154.

57. Widening of the access road throat to this width is necessary to facilitate the smooth and safe turning radius for larger vehicles entering or exiting the access drive. FOF, ¶ 105.

Noise

58. Prior to 2012, the Township Zoning Ordinance was silent with regard to the authorization and regulation of oil and gas wells in the Township. Applicant's Ex. V; FOF, ¶¶ 52, 79.

59. When the Township's current Zoning Ordinance was adopted in 2012, it contained extensive provisions authorizing and regulating a variety of oil and gas operations, including deep well sites in obvious recognition of the advent of unconventional oil and gas development in Western Pennsylvania region. Applicant's Ex. U.

60. Among the many Zoning Ordinance requirements for oil and gas operations are extensive limitations on noise set forth in Section 210-120.A.(21)(g)[6]:

- a. The applicant shall take the following steps to minimize, to the extent possible, noise resulting from the oil or gas well development.
- b. Prior to drilling of an oil or gas well or the operation of a natural gas compressor station or a natural gas processing plant, the applicant shall establish by generally accepted testing procedures, the continuous seventy-two-hour ambient noise level at the nearest property line of a residence or public building, school, medical, emergency or other public facility, or 100 feet from the nearest residence or public building, medical, emergency or other public facilities, whichever point is closer to the affected residence or public building, school medical, emergency or other public facility. In lieu of the establishment of the ambient noise level established by the continuous seventy-two-hour test the applicant may assume and use, for the purpose of compliance with this Chapter, a default ambient noise level of 65 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standards Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment, which will provide equivalent data.
- c. The applicant shall provide the Township documentation of the established ambient noise level prior to starting oil or gas drilling and/or production operations.
- d. The noise generated during the oil and gas operations or the natural gas compressor station or the natural gas processing plant shall not exceed the average ambient noise level established in Subsection A(21)(g)[6][b] by more than:
 - i. Five decibels during drilling activities.
 - ii. Ten decibels during hydraulic fracturing operations.
 - iii. Five decibels for a natural gas compressor station or a natural gas processing plant.
 - iv. Allowable increase in Subsection A(21)(g)[6][d] shall not exceed the average ambient noise level for more than 10 minutes within any one-hour period.
- e. Effective sound mitigation devices shall be installed to permanent facilities to address sound levels that would otherwise exceed the noise level standards when located near a residence, public building, school, medical, emergency or other public facilities.
- f. Exemption from the standards established in this subsection may be granted by the Township during the drilling stage or at the oil or gas

well site, or the gas compressor station, or at the natural gas processing plant for good cause shown and upon written agreement between the applicant and the Township.

61. In summary, the key provisions of these subsections provide that:

- a. An operator can take a 72-hour average ambient measurement at a point 100 feet from the nearest protected structure or at the protected structure property line, whichever is closer to the protected structure; or the operator can assume a default ambient level of 65 dBA;
- b. An operator is required to provide the ambient noise level prior to starting drilling or production operations;
- c. During drilling, noise may not exceed the average ambient level by more than 5 dBA, and during hydraulic fracturing by more than 10 dBA; and
- d. The Township can grant an exemption from the above standards for good cause shown.

62. The requirements of Section 210-120.A.(21)(g)[6], are performance standards, meaning that there is no requirement that compliance be proven as part of a conditional use hearing, only that Applicant ultimately comply with those standards.

63. Subsection [6][c] only requires that the ambient level be established prior to drilling, and even then does not require the submission of any sound impact assessment modeling projected sound levels.

64. Although not required to do so, Applicant submitted an SIA with its original application, and an updated one during the public hearings before the Board.

65. Applicant's witness. Tage Rosendahl, who oversaw the preparation of the SIA, testified in detail about its conclusions, and the Board found both the SIA and his testimony to be credible. FOF, ¶¶ 162-177.

66. The SIA concluded that without a sound wall, the highest projected average sound level at any receptor point would be 53.1 dBA during vertical drilling, 50.4 dBA during horizontal drilling, and 59.6 dBA during hydraulic fracturing. FOF, ¶ 171.

67. All of the projected sound levels are well below the 65 dBA ambient default level, without taking into account the higher levels allowed during drilling and hydraulic fracturing. FOF, ¶¶ 60(b), 61(a).

68. Although the projected sound levels without a sound wall establish that a sound wall is not necessary to meet the requirements of Section 210-120.A.(21)(g)[6], Applicant has committed, and the Board will include as a condition of approval, that Applicant install a 32-foot high sound wall around the well pad, excluding the access road opening. FOF, ¶¶ 165, 173.

69. The SIA concluded that with a sound wall, the highest projected average sound level at any receptor point would be 49.9 dBA during vertical drilling, 46 dBA during horizontal drilling, and 55.8 during hydraulic fracturing. FOF, ¶ 174.

70. All of these projected sound levels are well below the 65 dBA ambient default level, again not even taking into account the higher levels allowed during drilling and hydraulic fracturing. FOF, ¶¶ 60(b), 61(a).

71. While the Board acknowledges that CROWD criticized certain aspects of the methodology utilized by Mr. Rosendahl in the SIA, CROWD did not provide expert testimony regarding the same, nor did it submit its own SIA to be considered by the Board.

72. Accordingly, the Board concludes that the SIA and testimony of Mr. Rosendahl establish that Applicant will comply with the maximum noise levels required by Section 210-120.A.(21)(g)[6].

73. Additionally, the Board intends to monitor Applicant's compliance with the Township Zoning Ordinance requirements while it is developing the Leto Well Pad.

74. During the public hearings CROWD also insinuated that operations at the proposed Leto Well Pad are governed by a different noise standard than the one set forth in Section 210-120.A.(21)(g)[6].

75. Article XIV of the Zoning Ordinance sets forth requirements for the I Industrial District.

76. Section 210-54.B in turn provides that in the Township's Industrial Zoning District "[n]o noise, as measured along the boundary separating residential or commercial districts or uses from an Industrial District, shall exceed 50 decibels, whether or not such noise is intermittent or steady."

77. This provision is superseded by the detailed oil and gas industry specific noise standards set forth in Section 210-120.A.(21)(g)[6] of the Zoning Ordinance.

78. As previously discussed with respect to the driveway width issue, when a general ordinance provision is in conflict with a specific ordinance provision, the specific one controls. See COL ¶ 50.

79. Accordingly, the specific oil and gas provisions of Section 210-120(21)(g)[6] were incorporated into the current Zoning Ordinance when it was adopted in 2012. Applicant's Ex. U.

80. Contrarily, the provision cited by CROWD was contained in Section 15.5.3 of the previous version of the Zoning Ordinance, adopted 25 years earlier in 1997. Applicant's Ex. V. See COL ¶ 46.

Internal Site Design Impact on Public Roads

81. During the public hearings CROWD also suggested that Applicant's application does not comply with Subsection 210-120.A(21)(e)[1][e] of the Township's Zoning Ordinance.

82. Subsection 210-120.A(21)(e)[1][e] of the Township's Zoning Ordinance states:

A location map of the oil or gas well site showing the location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural and other surroundings. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use of the site. Such location shall be configured to allow the normal flow of traffic on public streets shall be undisturbed.

83. CROWD asserts that because Olympus will employ flaggers and convoys to bring in heavy equipment and water trucks, the last sentence of Subsection 210-120.A(21)(e)[1][e], providing that "[s]uch location shall be configured to allow the normal flow of traffic on public streets shall be undisturbed," will not be met.

84. However, this Subsection as a whole requires Applicant to provide a map "showing the location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site" and indicates that "[i]ncluded in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use to the site." Thus, the "such location" mentioned in the last sentence is referring to how parking and access are to be configured on the site and requires that that this design not impact the flow of traffic on public streets.

85. The Board finds that Applicant meets this requirement, as the length of the access road between Oak Road and the pad itself is over 1000 feet, equipment and vehicles will park within the pad, and there will no queueing or backup of truck traffic onto Oak Road. FOF, ¶¶ 44, 151

86. Although language of Subsection 210-120.A(21)(e)[1][e] is clear, to the extent there is any ambiguity, Section 603.1 of the MPC requires that it be construed in favor of Olympus and against any implied extension of the restriction. 53 P.S. § 10603.1.

87. Additionally, pursuant to CROWD's interpretation of Subsection 210-120.A(21)(e)[1][e], it would be impossible to develop a deep well site anywhere in the Township, as escorted movements of overweight vehicles bringing in drilling rigs and other heavy equipment will always be required regardless of well site location and truck route.

88. This Board is constrained to interpret the Zoning Ordinance in a fashion that avoids an interpretation likely to render it exclusionary and unconstitutional. *Upper Salford Twp. v. Collins*, 669 A.2d 335, 336 (Pa. 1995) ("Uncertainties in the interpretation of an ordinance are to be resolved in favor of a construction which renders the ordinance constitutional."); *Ficco v. Bd. of Sup'rs of Hempfield Twp.*, 677 A.2d 897, 900-01 (Pa. Commw. Ct. 1996) ("Where an ordinance is reasonably susceptible of two conflicting constructions, a court should adopt that interpretation which would uphold the validity of the ordinance.").

Road Condition Inventory/Videoing

89. CROWD argues that Applicant has not complied with Subsection 210-120.A(21)(f)[1] of the Township Zoning Ordinance because it has not inventoried the

condition of the roads and provided video and photo documentation to the Township regarding Oak Road and Route 910.

90. Subsection 210-120.A(21)(f)[1] provides:

The well operator shall comply with any generally applicable bonding and permitting requirements **for Township roads** that are to be used by overweight vehicles and equipment for development activities. For state and county roads located within the Township, the well operator shall provide a copy of the highway occupancy permit for overweight vehicles to the Township. The well operator shall provide a transportation route map which depicts the roads to be utilized in the Township. The well operator shall inventory the condition of the roads and provide video and photo documentation to the Township. The well operator shall also submit at the time of application a road restoration plan that indicates how the well operator plans to address damage **to Township roads** during construction and after construction is complete. Within 30 days following the approval of a conditional use application for oil and gas development by the Township, and in any event, prior to the commencement of any activity at the approved oil and gas well site, the applicant shall enter into a Township roadway maintenance and repair agreement (the “repair agreement”) with the Township, in a form acceptable to the Township, regarding maintenance, repair and bonding **of Township roads** that are to be used by vehicles for oil and gas development activities. Without limiting the generality of the foregoing, the repair agreement shall address the bonding requirements to be imposed against the applicant, in the Township’s sole reasonable discretion, and shall identify the responsibilities of the applicant to prepare, maintain, and repair **Township roads**, before, during, and immediately after drilling operations associated with oil and gas development. Corrective action shall be taken by the well operator as and when directed by the Township.

91. However, this Subsection is not applicable because the roads in question, Route 910 and Oak Road, are state roads, not Township roads. FOF, ¶¶ 41, 102.

92. As evidenced by the emphasized language above, the requirements of Subsection 210-120.A(21)(f)[1] exclusively refers to “Township” roads. COL, ¶90.

93. The only specific requirement for a state road is that the operator provide a copy of the HOP, which Applicant has done. Applicant’s Ex. B; FOF, ¶ 41.

94. Additionally, even if Township roads were involved, Subsection 210-120.A(21)(f)[1] does not require that any inventory/videoing of a road be submitted with the application.

95. Significantly, the sentence cited by CROWD is silent as to when the inventory/videoing is to take place.

96. Moreover, it is not practical for Applicant to submit this information with its conditional use application, as the purpose of providing this information is to establish a benchmark of what road conditions are immediately before an operator commences use of the subject road. Doing so years in advance (the application was submitted in 2019) of when operations are currently projected to commence (April 2024) would defeat the purpose of the required inventory/videoing.

97. CROWD also asserts that Subsection 210-120.A(21)(f)[1] requires Applicant to submit for state and county roads a “highway occupancy permit for overweight vehicles.”

98. However, Applicant previously provided its HOP to the Township for a minimum use driveway issued by PennDOT. Applicant’s Ex. B. FOF, ¶¶ 9, 41.

99. Although a “highway occupancy permit for overweight vehicles,” does not exist, Applicant has an excess maintenance agreement and road bonding with PennDOT for Oak Road. FOF, ¶ 104.

100. Moreover, applicable law provides that “where zoning approval requires a permit or license from an outside agency, conditional zoning approval based on the issuance of such permit or license is appropriate.” *Bloomsburg Industrial Ventures, LLC v. Town of Bloomsburg Zoning Hearing Bd.*, 247 A.3d 1197 (Table), 2021 WL 269923

(Pa. Commw. Ct. Jan. 27, 2021) citing *Kohr v. L. Windsor Twp. Bd. Of Supervisors*, 910 A.2d 152, 159 (Pa. Commw. Ct. 2006).

Outdoor Storage of Liquids

101. CROWD asserts that Olympus must comply with Section 210-53(B) of the Township Zoning Ordinance.

102. Section 210-53(B) provides that “outdoor storage of liquids shall be either vented in underground tanks, required if liquids are flammable, or in tanks set at grade, surrounded by a dike of sufficient height and capacity to contain the maximum capacity of the tanks thus provided.”

103. However, the tanks being utilized by Applicant are for the storage of freshwater and dikes are not incorporated into Applicant’s temporary tank designs. FOF, ¶ 115.

104. Additionally, the requirements of Section 210-53(B) are contained in the general Industrial District requirements of the Zoning Ordinance and are superseded by the subsequently adopted Zoning Ordinance requirements applicable specifically to oil and gas operations, where no such requirement exists.

105. CROWD’s position would lead to the absurd result that freshwater tanks for well pads located in the I Industrial District must be surrounded by dikes, while tanks in any residential district would not be subject to this requirement.

106. Furthermore, the applicability of Section 210-53(B) to oil and gas operations is preempted by applicable DEP regulations.

107. Section 78a.56 and Section 78a.64a of DEP’s regulations set forth specific requirements for temporary storage of regulated substances, including minimum

requirements for minimum freeboard and secondary containment. 25 Pa. Code § § 78a.56, 78a.64a.

108. The DEP's regulations specifically exempt tanks storing only freshwater, which is not a regulated substance, from these requirements.

109. Section 210-53(B) is also preempted by the Oil and Gas Act, as it attempts to regulate the "how" instead of the "where" of well pad development. *Range Res. - Appalachia, LLC v. Salem Twp.*, 600 Pa. 231, 964 A.2d 869 (2009); *Huntley & Huntley, Inc. v. Borough Council*, 600 Pa. 207, 964 A.2d 855 (2009).

Signs

110. CROWD asserts that the size of Olympus's access road signs exceed the 10 square foot maximum requirement of Section 210-95(S), applicable to properties located in the Village Overlay District.

111. However, CROWD incorrectly asserts that the total square footage of the sign is 32 feet, when in actuality it is 12 square feet (three feet high and four feet wide). Applicant's Ex. B.

112. Twelve (12) square Feet is the minimum size require by applicable Pennsylvania Department of Environmental Protection ("DEP") regulations. 25 Pa. Code § 78a.55, which preempt any contrary provision in the Township Zoning Ordinance.

Lighting

113. CROWD appears to suggest that Applicant does not comply with Subsection 210-120.A(21)(g)[5][a] of the Township Zoning Ordinance because it has not submitted a lighting plan.

114. Subsection 210-120.A(21)(g)[5][a] provides as follows:

Lighting at the oil or gas well site, or other facilities associated with oil and gas drilling development, either temporary or permanent, shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and nearby buildings within 100 feet of the oil or gas well development.

115. Subsection 210-120.A(21)(g)[5][a] does not require the submission of a lighting plan as part of the conditional use application or hearing process, as the Subsection is a “performance standard”, which Applicant stated that it is committed to meeting by utilizing downcast inward-facing lighting to minimize glare on nearby public roads.

116. CROWD also asserts that the Industrial District lighting requirements of Section 210-54(K) apply to the Leto Well Pad, which requires that site lighting be reduced to 0.0 footcandles at the property line.

117. This provision is not applicable to the Leto Well Pad, as it is superseded by the Zoning Ordinance provision specifically applicable to oil and gas operations – Section 210-120.A (21)(g).

118. CROWD’s position leads to the absurd result that a zero footcandle requirement exists for oil and gas development in the I Industrial zoning district, but no such requirement exists if a well is to be placed in the adjacent residential districts.

119. Even if the zero footcandle requirement were found to be applicable, it is a “performance standard,” compliance with which can only be determined during operations.

Screening

120. For the first time, in its proposed Findings of Fact and Conclusions of Law, CROWD argued that Applicant is required to comply with Sections 210-53(A) and (C) of the Township Zoning Ordinance.

121. Because CROWD failed to raise this argument during the public hearings, it is waived.

122. Section 210-53(A) requires that “all outdoor storage of materials shall be screened from view from any adjacent public street or from beyond the edge of the Industrial District in accordance with Subsection C.”

123. Section 210-53(C) goes on to provide that developers of property adjacent to residential districts must provide screening along the rear and side property lines consisting of a hedge, which when mature must be at least six feet in height, or pine trees at least three feet in height when planted, and a fence at least six feet in height, at least 50% of the area of which must be solid or opaque materials.

124. However, Section 210-53(C) only applies if there is going to be outdoor storage.

125. While CROWD argues that Applicant will have outdoor storage as it relates to soil stockpiles, that is clearly not the “materials” envisioned by Section 210-53(A).

126. If the Board were to agree with CROWD’s position, Applicant would be required to plant hedges or pines and install a six foot fence for over seven thousand feet in length around most of the border of the 48-acre tract on which the Leto Well Pad will be located.

127. This requirement would apply to those portions of the property already heavily vegetated, would apply to the boundary with the other Gizienski tract on which

part of the stormwater pad is located, and would not effectively screen anything from view.

128. Additionally, if the well pad were placed on the adjacent Gizienski tract, located in the R-3 District, there would be no such screening requirement.

General Industrial District Standards

129. For the first time, in its proposed Findings of Fact and Conclusions of Law, CROWD argued that Applicant is required to comply with a number of general Industrial District standards set forth in Article XIV; specifically certain subsections of Sections 210-53 and 210-54 related to landscaping, lighting, storage tanks and noise.

130. Again, because CROWD failed to raise this argument during the public hearings, it is waived.

131. Additionally, these provisions are inconsistent with and superseded by the oil and gas specific provisions incorporated into the current Zoning Ordinance when it was adopted in 2012.

132. CROWD's position also would mean that the aforementioned requirements only apply to a well pad placed in the Industrial District, and not to a well pad placed in a residentially zoned district.

CROWD/Party Objectors' Burden

133. CROWD and the Individual Party Objectors had the presentation burden with regard to all general policy concerns and general detrimental effects.

134. Once the Applicant satisfies the first two inquiries outlined above, objectors seeking to defeat the conditional use must show that the impact of the proposed use “will be greater than would normally be expected [for that use] and would pose a substantial threat to the health, safety and welfare of the community.

135. Objectors must provide ““evidence that there is more than a mere speculation of harm.”” *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 224 (Pa. Commw. Ct. 1995), *citing Abbey v. Zoning Hearing Bd.*, 559 A.2d 107, 110 (Pa. Commw. Ct. 1989) (emphasis in original).

136. In fact, they must come forward with evidence establishing with a high degree of probability that the use in question will have an impact on the community beyond that normally associated with that use. *In re Cutler Grp., Inc.*, 880 A.2d 39, 43 (Pa. Commw. Ct. 2005) (*quoting* Robert S. Ryan, 1 Pennsylvania Zoning Law and Practice §5.2.6 (2003)) (“Moreover, the degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use.”)

137. The requirement that objectors bear the burden of evidence presentation as to general ordinance criteria is true regardless of any contrary terms contained in a zoning ordinance.

138. A conditional use applicant never has the initial presentation burden with regard to the general, subjective criteria. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212-13 (Pa. Commw. Ct. 2014).

139. The Board has, pursuant to its legislative authority, designated oil and gas operations as a permitted conditional use in the I-1 District and R-3 District.

140. It is well-established Pennsylvania law that a zoning ordinance’s designation of a use as a conditional use creates a legislative presumption that the

particular use is appropriate in the zoning district in question and consistent with the public health, safety and welfare. *See e.g., MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*, 184 3d 1048 (Pa. Commw. Ct. 2018).

141. Because the Board, by ordinance, has authorized oil and gas development as a conditional use in the I-1 District and R-3 District, the Township has already decided that oil and gas development at the proposed Leto Well Pad site is consistent with the general public health, welfare, and safety.

142. Furthermore, because Olympus has satisfied its burdens of presentation and proof with respect to the specific objective criteria of the Zoning Ordinance as outlined in Section 210-120.A(21), the presumption that the use is consistent with the health, safety, and welfare of the community applies and Applicant was not required to present evidence with respect to the same. *See MarkWest*, 184 A.3d at 1059; *Allegheny Tower Assoc. v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123-24 (Pa. Commw. Ct. 2017); *Greaton Properties v. Lower Merion Twp.*, 796 A.2d 1038, 1045-46 (Pa. Commw. Ct. 2002).

143. The Board does not believe that CROWD and the Individual Objectors have met their burden, as it was not enough for CROWD and the Individual Objectors to express vague “concerns” about alleged impacts of Applicant’s proposed development, nor was it enough for them to present evidence of alleged adverse impacts from oil and gas development generally.

144. Instead, they were required to present specific evidence that Applicant’s proposed development of the Leto Well Pad would create adverse impacts beyond those normally associated with oil and gas development.

145. Virtually all of the general health and safety issues CROWD and the Individual Objectors raised were aimed at alleged impacts of the oil and gas industry generally, not specific to any unusual or abnormal impacts at the Leto Well Pad, or involved broader environmental or operational impacts within the jurisdiction of DEP and other regulatory agencies.

146. While the Board acknowledges that environmental issues are certainly important, they are not within the jurisdiction of the Township and this Board.

147. While the Board is sympathetic to the understandable concerns residents have about a new use, CROWD and the Individual Objectors failed to meet their burden.

148. Under Sections 603(c)(2) and 913.2(a) of the Municipalities Planning Code, the governing body has the statutory authority to attach “reasonable conditions and safeguards . . . as it may deem necessary to implement the purposes of [the Municipalities Planning Code] and the zoning ordinance” *See* 53 P.S. §§ 10603(c)(2); 10913.

149. Accordingly, it is the decision of the Board to grant approval of Applicant’s Conditional Use Application subject to reasonable conditions.

DECISION

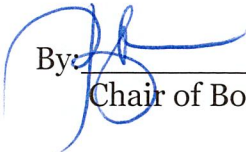
For the reasons set forth above, the Olympus Energy's Conditional Use Application seeking approval for the Leto Well Pad is hereby GRANTED subject to the conditions set forth in Appendix C.

ATTEST:

Township of West Deer



Daniel Mator, Manager

By: 

Chair of Board of Supervisors

I, Daniel J. Mator, Jr., as Township Manager for the Township of West Deer, County of Allegheny, Commonwealth of Pennsylvania, certify that this document constitutes an official communication by the Township of West Deer and accurately reflects its decision in this matter.



Daniel J. Mator, Jr.
Township Manager

Appendix A
Individual Objectors

1. Concerned Residents of West Deer (CROWD) represented by Timothy and Jo Resciniti
2. Abby Koenig
3. Andrew Matvya
4. Emilie Thompson
5. Eva Burch
6. George Tymas
7. Gregory Pietrone
8. James Shuey
9. Jason Miller
10. Jeremy Koenig
11. Jonathan Randza
12. Julie Cousley
13. Kara Randza
14. Laura Henderson
15. Leonard Verdetto, III
16. Mark Thompson
17. Mark Werner
18. Norann Shuey
19. Paula Brown
20. Perry Drum
21. Rachel Malecki
22. Robert Hutchinson
23. Ronald Zielinski
24. Sharon Maher
25. Sue Drum
26. Thomas Balentine
27. Victoria Austin
28. Yvonne Hutchinson

Appendix B
List of Exhibits

1. Applicant Exhibit A Conditional Use Application for Leto Well Pad
2. Applicant Exhibit B Leto Well Pad Conditional Use Updated Project Narrative
3. Applicant Exhibit C Olympus Leto Well Pad Site Location Overview
4. Applicant Exhibit D Existing Screening Exhibit Photo Location Map
5. Applicant Exhibit E Resume of Scott Rasmussen
6. Applicant Exhibit F Clean Streams Property Map
7. Applicant Exhibit G Clean Streams Property Photos (11)
8. Applicant Exhibit H Leto Well Pad Standing Map ¾ Mile from Well Pad
9. Applicant Exhibit I Leto Well Pad Standing Map ¾ Mile from Well Pad
10. Applicant Exhibit J Letter of Intent from Olympus Energy to Hampton Shaler Water Authority
11. Applicant Exhibit K Letter of Intent from Olympus Energy to Oakmont Water Authority
12. Applicant Exhibit L Photo
13. Applicant Exhibit M Photo
14. Applicant Exhibit N Stahl Sheaffer Engineering Leto Well Pads Traffic Impact Study Report
15. Applicant Exhibit O Haul Map and Leto Well Pad Traffic Impact Study
16. Applicant Exhibit P Olympus Energy Sound Impact Assessment
17. Applicant Exhibit Q Photo Zeus Well Pad
18. Applicant Exhibit R Letter of Intent from Olympus Energy to Hampton Shaler Water Authority
19. Applicant Exhibit S Cooperation and Surface Use Agreement
20. Applicant Exhibit T Photo
21. Applicant Exhibit U Township of West Deer Zoning Rules
22. Applicant Exhibit V West Deer Township Zoning Ordinance #269
23. CROWD Exhibit 1 Official List of Members for the Concerned Residents of West Deer (CROWD)
24. CROWD Exhibit 2 Submission of Land Development Application & Conditional Use Application
25. CROWD Exhibit 3 Leto Well Pad Setback Exhibit
26. CROWD Exhibit 4 Zoning Ordinance §210
27. CROWD Exhibit 5 Highway Occupancy Permit Operations Manual
28. CROWD Exhibit 6 Zoning Ordinance §210-120(A)(21)(g)
29. CROWD Exhibit 7 Huntley & Huntley Energy Exploration, LLC Project Narrative
30. CROWD Exhibit 8 Emergency Response Plan Map
31. CROWD Exhibit 9 Pennsylvania Department of Environmental Protection Letter enclosing two Administrative Orders
32. CROWD Exhibit 10 Contract for Services between The Clean Streams Foundation, Inc. and AMD Industries, Inc.
33. CROWD Exhibit 11 AMD Industries, Inc. Case Studies

34. CROWD Exhibit 12 Commonwealth of Pennsylvania Department of Transportation Bureau of Design and Delivery Standards for Roadway Construction Series RC-1M to 101M
35. CROWD Exhibit 13 Olympus Energy Sound Impact Assessment February 6, 2020
36. CROWD Exhibit 14 Olympus Energy Sound Impact Assessment March 12, 2020
37. CROWD Exhibit 15 Email from Dean K. Hunt of Clean Streams Foundation, Inc. to Tim Resciniti
38. CROWD Exhibit 16 Property Information at 311 Oak Road, Gibsonia, PA 15044
39. CROWD Exhibit 17 Emergency Response Plan Map - Hera Well Pad
40. CROWD Exhibit 18 Township of West Deer Resolution No. 2031-32
41. CROWD Exhibit 19 Opinion of Judge James dated August 23, 2022
42. CROWD Exhibit 20 Exhibits from CROWD
43. Shuey Exhibit 1 Huntley & Huntley Subsidiaries & Affiliates
44. Shuey Exhibit 2 United States Environmental Protection Agency Private Drinking Water Wells
45. Shuey Exhibit 3 Pennsylvania Department of Environmental Protection - Recommended Basic Oil and Gas Pre-Drill Parameters
46. Shuey Exhibit 4 Kevco Laboratory & Consulting Services Recommended PA DEP Basic Oil & as "Pre-Drill Marcellus Testing"
47. Thompson Exhibit 1 Letter from Emilie Thompson, 358 Oak Road, Gibsonia, PA
48. Austin Exhibit 1 Google Earth Map
49. Austin Exhibit 2 Subdivision and Land Development Application
50. Austin Exhibit 3 Leto Hemlock Backyard
51. Austin Exhibit 4 Video clip
52. Austin Exhibit 5 CBS Pittsburgh news story: 3,500 Pound Natural Gas Main Crashes into Westmoreland County Family's Home - December 30, 2022
53. Austin Exhibit 6 Photo from CBS Pittsburgh news story: Pipe Crashes into Family's Home in Westmoreland County - December 30, 2022
54. Austin Exhibit 7 Photo from CBS Pittsburgh news story: Pipe Crashes into Family's Home in Westmoreland County - December 30, 2022
55. Austin Exhibit 8 News Story from Ross Guidotti
56. Austin Exhibit 9 Email from Laura Karosic to Amanda Marsch dated January 3, 2023
57. Austin Exhibit 10 Commonwealth of Pennsylvania Department of Environmental Protection Surface Inspection Report
58. Austin Exhibit 11 Existing Screening Exhibit Photo Location Map
59. Austin Exhibit 12 Existing Screening Exhibit Sight Line Profile and Photo
60. Austin Exhibit 13 Line of Site Inaccuracies (L9) Photos of Site March 1, 2023
61. Austin Exhibit 14 Line of Site Inaccuracies (L11)
62. Austin Exhibit 15 Line of Site Inaccuracies (L3)
63. Austin Exhibit 16 Line of Site
64. Austin Exhibit 17 Line of Site Inaccuracies (L4)
65. Austin Exhibit 18 Line of Site Inaccuracies (L5)
66. Austin Exhibit 19 Traffic Study Deficiencies
67. Austin Exhibit 20 Township of West Deer Code Article XXIII Conditional Use
68. Drum Exhibit 1 Letter from Susan and Perry Drum, 247 Ash Lane, Bairdford, PA

69. Hutchinson Exhibit 1 PA Environment Digest - Environmental Groups Raise Serious Compliance Issues with Olympus Energy -- Over 600 Violations on 13 DEP Permits--In Comments on Proposed Shale Gas Drilling Pad in Allegheny County
70. Township Exhibit A Official Notice of the Township of West Deer
71. Township Exhibit B Photo of Notice posted
72. Township Exhibit C West Deer Township Planning Commission Meeting Minutes for June 24, 2021

Appendix C

Conditions of Approval

1. Applicant shall have obtained from the appropriate Commonwealth, and if applicable, Federal regulatory agencies or authorities all permits required to be issued in accordance with applicable laws and regulations for the proposed use and specific number of proposed wells to be drilled at the Applicant's site and copies of said permits shall be provided to the Township prior to any activity taking place authorized by those permits.

2. Applicant shall at all times comply with all applicable laws and regulations of the Commonwealth of Pennsylvania and the United States Federal Government as they relate to activities conducted by the Applicant within West Deer Township ("Township"). If the Applicant receives notice of any notice of violation from any State or Federal agency of any such law or regulation causing a public safety or serious environmental hazard in the Township, it shall give the Township notice as soon as practical, but in no event later than 24-hours of the Applicant receiving notice.

3. Applicant shall comply with Chapter 210-Section 120.A(21) — Gas and Oil Production contained in the Township Code of Ordinances.

4. Said application submitted by the Applicant is for the construction of one well pad to consist of an initial six wells. Applicant may construct an additional six wells on the site without having to seek conditional use approval provided (a) the Applicant obtains and provides to the Township a copy of the well permit and any other applicable permits issued by the Pennsylvania Department of Environmental Protection ("DEP"), and (b) the Applicant notifies the Township at least 15 days before commencing any drilling activity for any such well, and complies with the conditions of approval contained herein for any additional well on the site.

5. The Applicant shall provide to the Township and first responders its Preparedness, Prevention and Contingency Plan and any updates thereto.

6. Prior to any construction activity, the Applicant shall meet with the Township emergency management individuals designated by the Township Board of Supervisors to discuss or provide information regarding any proposed emergency responses to the Preparedness, Prevention and Contingency Plan.

7. The Applicant shall provide proof of the required blanket bond, or other financial security, provided to or being held by DEP to ensure proper plugging when the well is classified as inactive by the DEP.

8. There shall be no bunk houses or any such employee residential type housing of employees on site. However, temporary on-site housing during vertical or horizontal drilling for essential personnel to provide 24-hour supervision/security/safety,

is permitted, subject to written approval by the Township Manager or his designee

9. Applicant shall comply with the idling limitations contained in the Pennsylvania Diesel-Powered Motor Vehicle Idling Act, Act 124 of 2008.

10. There shall be no activities associated with the proposed use that will result in malodorous gas or matter discernible at any point on or beyond the property lines of the site.

11. Applicant will provide adequate and obvious truck route signage, including no well traffic on unpermitted roads signage, where necessary, to ensure the approved truck routes are utilized. Additionally, Applicant shall notify all contractors, subcontractors, suppliers and vendors of the approved truck route.

12. Applicant shall continue to review the efficiency and safety of all traffic plans and routes and will meet with the Township representatives to address issues regarding said plan or route, including traffic flow and safety.

13. Applicant agrees to restrict the operation of vehicles exceeding a gross weight of 10,000 pounds ("Heavy Truck Traffic") on Oak Road during those periods of time in which the Deer Lakes School District schedules morning and afternoon school bus drop-off and pickup on those roads. Applicant also shall provide a contact to each school's transportation office.

14. Applicant shall provide traffic control, including flag persons, traffic control devices and escorts, in accordance with its water hauling plan presented during the public hearings on the conditional use application, or upon Township request, when reasonable, in order to maintain the safe flow of traffic. Said escorting shall be comprised of groups no larger than six trucks per grouping.

15. Oak Road shall be improved and maintained as required by PennDOT.

16. Applicant shall comply with the water hauling plan it presented during the conditional use hearings.

17. Applicant shall inform its contractors and subcontractors that Jake brake or engine brake usage on trucks is to be restricted.

18. West Deer Township Police shall be utilized for all traffic control, excluding truck escorting, except that the Chief of Police may approve an alternative means of traffic control where the West Deer Township Police are not able to provide the requested traffic control services. All associated costs for said traffic controls shall be paid exclusively by the well pad operator

19. Applicant shall post "Gas Well Truck Traffic 25 MPH" signs on Oak Road prior to construction starting, if permitted by PennDOT.

20. Applicant shall undertake reasonable efforts to prevent water, sediment, or debris from being carried onto any public street. Additionally, the access road shall be installed per PADEP and PennDOT permit approvals. If upon Township inspection of public roads it is determined that mud is causing a public safety issue the roadway shall be cleared, cleaned and/or swept immediately. If through time, originally installed surfacing and/or implemented measures result in water, sediment or debris being carried onto any public street, said surfacing and measures shall be reevaluated and reconstructed to achieve the aforementioned results.

21. Applicant shall provide a schedule to the Township identifying anticipated dates for site preparation, anticipated drilling activity, anticipated completion, and anticipated stimulation or fracturing work to begin. The Township recognizes that said dates may be dependent upon variables such as weather, availability of equipment, leasing, permitting, production and the like. However, such scheduling shall be updated and provided to the Township on a periodic basis (no less than monthly) as requested by the Township.

22. Applicant, during drilling operations and completion operations, shall provide twenty-four (24) hour security, seven days a week at the access road. All other times the Applicant shall secure the site, as necessary.

23. There shall be no activities associated with the proposed use that will emit electrical disturbances adversely affecting the operation of radio or other equipment not located at the subject property.

24. All earth moving activities and stormwater management on the subject property shall be subject to the terms and conditions of a DEP approved erosion and sedimentation control plan and all related applicable permits. A copy of said plan and permit are to be provided to the Township prior to such work is to begin and shall be on file at the construction site.

25. Applicant shall provide the Township with contact information which will allow representatives of the Applicant to be contacted 24 hours a day, seven days a week to address an emergency as well as other issues and complaints. Said contact information shall also be clearly posted at the entrance to the site.

26. If a reasonable complaint is registered with the Township, the Applicant will respond to said complaint within 24 hours of notification and take whatever reasonable means necessary to alleviate and cure said complaint, should it be found to be with merit.

27. Applicant shall comply with all State and Federal regulations regarding the handling of any radioactive materials.

28. Applicant shall maintain a current list and Safety Data Sheet (SDS) for all chemicals used in the drilling and fracturing operation at the property. The Applicant shall also provide SDS sheets to first responders upon request.

29. Applicant agrees to hold the Township harmless from any and all liability arising out of actions or non-actions committed by the Applicant, its representatives, contractors or subcontractors in connection with the construction or operation of wells at the proposed site, excluding any such liability arising out of the negligence or intentional acts of the Township, its employees, officials, contractors or agents.

30. Applicant shall comply with all Township ordinances related to construction activity, and activity for construction of the proposed well pad or access road. Hours of operation for construction shall be limited to sunrise to sunset. However, 24-hour drilling and hydraulic fracturing shall be permitted.

31. Applicant shall notify contractors and subcontractors that they will be responsible for and shall remedy any damages they may cause to public or private properties within the Township. In the event the Township notifies the Applicant of a damage claim, Applicant will cooperate with the Township in identifying the potentially responsible contractor or subcontractor.

32. Applicant acknowledges that if it fails to meet and maintain any condition of this approval, the Township may enforce the same in accordance with applicable provisions of the Pennsylvania Municipalities Planning Code.

33. Prior to the commencement of hydraulic fracturing, the Applicant shall make a traffic impact fee payment to the Township based on the final calculation of peak hour trips, as approved by the Township traffic engineer, times the applicable impact fee rate forth in the Township's traffic impact fee ordinance.

34. If any truck staging is to be utilized with staging areas located within the Township such staging shall be subject to the approval of the Township Manager and any traffic and noise impacts shall be addressed to the satisfaction of the Township.

35. Applicant shall take all necessary and reasonable measures to control dust generated by its operations.

36. Township roads shall not be used for heavy truck traffic.