

documents in further support of MQI's request for the entry of an order enjoining the Defendants from enacting Ordinance # 2008. I have reviewed the opposition papers filed by Defendants in connection with this application, including the Certifications of Peter Messina and Geoffrey Goll, PE.

2. MQI is the record owner of the Millington Quarry which consists of approximately 190 acres and is identified on the tax map as Block 6001, Lot 6 located at Stonehouse Road in Bernards Township (the "Property").

3. After several hearings where MQI, Tilcon, several experts and all interested parties participated, on February 8, 2005, the Planning Board adopted the 2003 Rehabilitation Plan. Acting on the recommendation of the Planning Board, on July 26, 2005, the Township Committee also ratified the 2003 Rehabilitation Plan subject to the condition that the entire Property be graded at a *maximum* of a 2 to 1 slope. The 2 to 1 slope condition imposed by the Township later became the subject of a lawsuit in the Superior Court of New Jersey, Somerset County.

4. On January 27, 2006, the Court entered a Stipulation of Settlement and Dismissal Without Prejudice ("Stipulation of Settlement") in the matter captioned as, Tilcon New York, Inc. v. Township of Bernards et al. and Millington Quarry, Inc. v. Planning Board of the Township of Bernards et al., bearing Docket

Nos. SOM-L-279-02; SOM-L-218-02; SOM-L-1277-05; and SOM-L-1284-05.

5. The terms of the Stipulation of Settlement were the subject of extensive negotiations between MQI and the Township.

6. The Stipulation of Settlement memorialized the terms insisted upon by the Township regarding the importation of fill to grade the entire Property at a *maximum* of a 2 to 1 slope.

7. Following the Stipulation of Settlement, MQI and Tilcon spent countless hours revising the proposed 2003 Rehabilitation Plan to include the conditions imposed by the Township, including the importation of fill to grade the entire Property at a *maximum* of a 2 to 1 slope, as well as changing the specifications of the proposed lake on the Property.

8. After approximately eighteen (18) hearings with the Township that included the testimony of fact witnesses, experts, and all interested parties, the revised 2003 Rehabilitation Plan was ultimately approved by the Township to include the importation of fill to grade the Property at a *maximum* of a 2 to 1 slope (*i.e.*, the slope can be graded more than 2 to 1, but no less than 2 to 1). This approved plan included the conditions that were the subject of the litigation and, ultimately, the Stipulation of Settlement.

9. MQI has at all times adhered to the Stipulation of Settlement and the approved Rehabilitation Plan.

10. The fill imported to the Property has been tested by Princeton Hydro LLC ("Princeton") in accordance with the Township's mandatory testing protocol.

11. As set forth in Paragraph 30 of my Affidavit submitted on March 27, 2008 in support of this application, in accordance with the Township's testing protocol, MQI was informed through Tilcon that one truck of the thousands that that have transported fill to the Property was tested by Princeton and was determined to contain pieces of asphalt.

12. It is my understanding that the fill transported by that one truck was never deposited and the contents were removed from the Property.

13. Other than the one truck identified, the Township, Princeton and Tilcon have never notified MQI of any test results that have ever revealed any contamination at the Property.

14. In fact, the Princeton test result information provided to MQI from Tilcon have consistently revealed that there is no contamination at the Property.

15. Notwithstanding the fact that no contamination has ever been found at the Property, the Township Committee adopted Ordinance #2001 on February 28, 2008 which amends the quarrying license to require an increased level of environmental sampling and testing of incoming fill transported to the Property. MQI

never objected to Ordinance # 2001 or the increased bond in the amount of an additional \$135,000 to provide for such testing.

16. The Township implemented the increased environmental sampling and MQI has at all times cooperated with the Township's increased environmental sampling efforts.

17. As of March 4, 2008, MQI has never been informed of any test results arising out of the increased environmental sampling that revealed any contamination at the Property.

18. Nevertheless, on March 4, 2008, without actual notice to MQI and contrary to the Rehabilitation Plan and Stipulation of Settlement, the Planning Board, acting on its own motion, proposed a 9-month moratorium on the importation of fill to the Property.

19. Introduced on March 11, 2008 and later enacted on March 25, 2008, the Township Committee passed Ordinance # 2008 effectuating the 9-month moratorium.

20. No factual or expert testimony was ever presented at the March 4, March 11 or March 25, 2008 meetings, and the Township Committee merely heard and acted upon the complaints of a few residents. These complaints were premised on conjecture and the mistaken belief that contaminated fill was being introduced as fill to the Property.

21. At no time did the Township advise MQI that it was in violation of the 2003 Rehabilitation Plan or in breach of the Stipulation of Settlement.

22. The Township always maintained the opportunity and the power to regulate the fill imported to the Property by issuing a notice of violation or cease and desist order.

23. However, the Township never issued MQI a notice of violation or a cease and desist order concerning the importation of any alleged contaminated fill to the Property.

24. Despite a requirement to do so, and in spite of MQI's specific request, MQI was never afforded an opportunity to respond to the Township's allegations in a forum where evidence, facts and testimony could be provided.

25. MQI's efforts to meet, discuss and work toward an amicable resolution of the Township Committee's purported concerns were ignored.

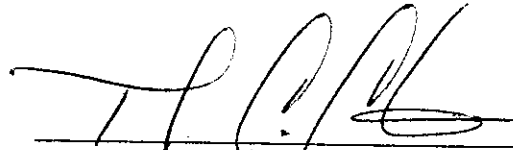
26. Tilcon and MQI have built substantial relationships with various independent excavators and contractors over the last several years. As a part of the contractual arrangement with these contractors and excavators, fill is imported and deposited via truck and quarried rock is then taken by these same trucks from the Property. The moratorium will deny these contractors and excavators with whom Tilcon and MQI have developed long-standing relationships with from depositing suitable fill at the Property.

Once denied access, these contractors will find other locations to deposit their fill material.

27. Without entry of an order enjoining the Defendants' enactment of the moratorium, MQI will immediately and forever lose the suitable fill that these contractors and excavators provide to the Property. Given the scarce availability of fill material in this economy, MQI will no doubt suffer immediate and irreparable harm. Additionally, MQI will also lose the use of the Property if it is not reclaimed in accordance with the Rehabilitation Plan because any prospective redevelopment opportunities will be delayed and may be forever lost.

28. MQI has a very substantial interest in ensuring that the Property is reclaimed and left in a safe condition. Allowing contaminated fill to be deposited at the Property will only diminish MQI's investment and potential ability to resell the Property at a future date.

29. On January 28, 2008, MQI and Tilcon have submitted a revised 2008 Rehabilitation Plan to the Township. MQI and Tilcon have not and will not take action on the proposed 2008 Rehabilitation Plan until reviewed and approved by the Township.



THOMAS E. CARTON

Sworn and subscribed to
before me this 9th day
of March, 2008



NOTARY PUBLIC

RACHEL COHEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 9, 2011