

MEMO

To: Zoning & Land Regulation (ZLR) Committee

From: Alexandra Andros, AICP, Senior Planner (andros@countyofdane.com)

Date: July 6, 2022

Subject: Application for mineral extraction CUP#2563, Town of Rutland

As described in the staff report prepared for the public hearing, a list of potential conditions of approval for CUP#2563 has been developed. The list combines conditions that are contained in the Dane County Zoning Ordinance plus those reflecting the specifics of this proposal. These suggested conditions are subject to deliberation and modification by the Zoning and Land Regulation (ZLR) Committee


RECOMMENDED CONDITIONS:

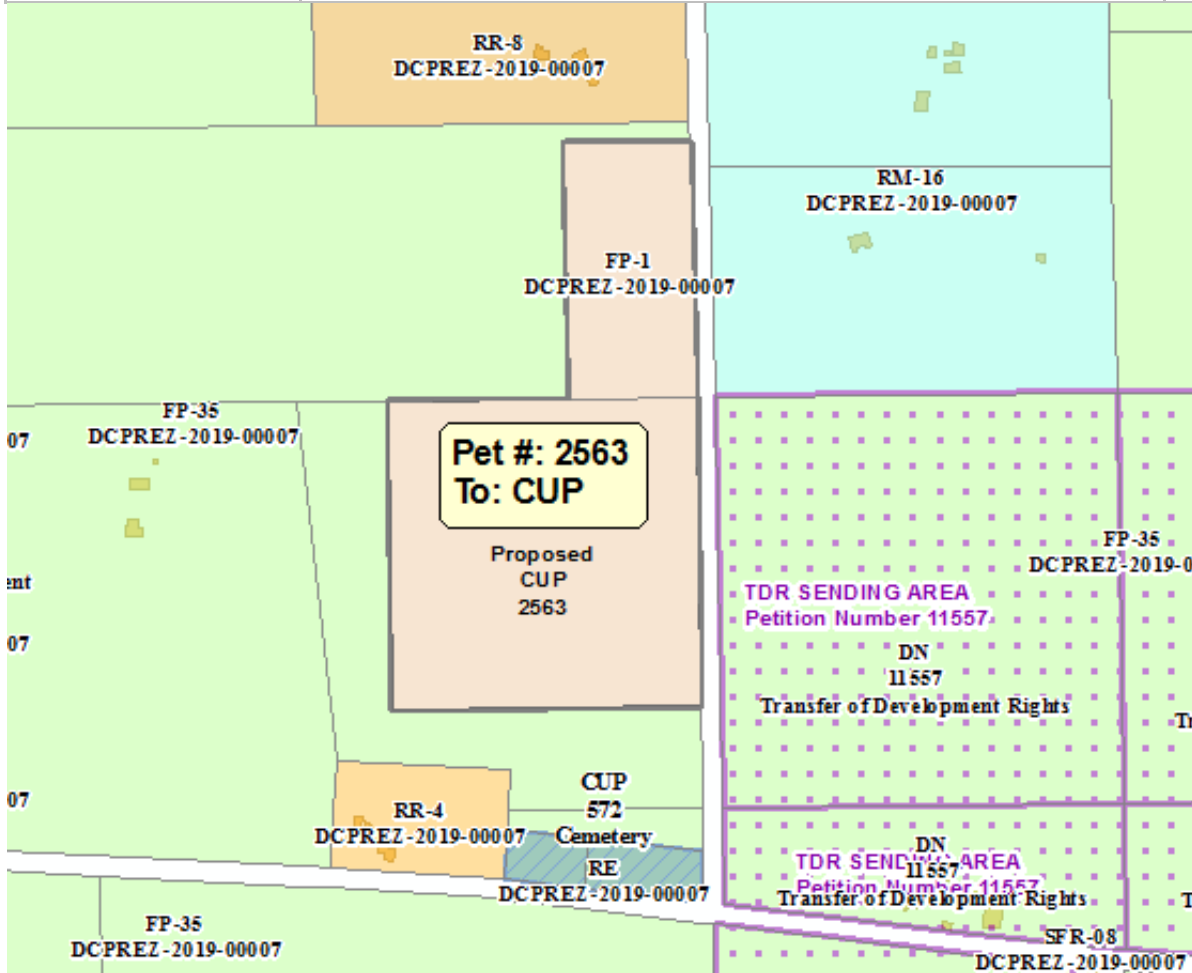
- 1) Any conditions required for specific uses listed under s. 10.103 (see list below).
- 2) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
- 3) New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
- 4) The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
- 5) Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
- 6) Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
- 7) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 8) Off-street parking must be provided, consistent with s. 10.102(8).
- 9) If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be born by the landowner. Costs born by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
- 10) The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
- 11) The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
- 12) The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.

- 13) Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.
- 14) In the event that the property changes ownership from the current owner/operator or his heirs, the CUP shall be null and void.
- 15) Topsoil, or appropriate topsoil substitute as approved in a reclamation plan under Chapter 74, Dane County Code, from the area of operation shall be saved and stored on site for reclamation of the area. Topsoil or approved topsoil substitute must be returned to the top layer of fill resulting from reclamation.
- 16) The applicant shall submit an erosion control plan under Chapter 14, Dane County Code covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
- 17) The permit period shall be twenty (20) years from effective date. Extensions shall be allowed at the end of this 20-year period.
 - a) Extensions. Due to uncertainty in estimating duration for mineral extraction, conditional use permit holders who have operated without violations, may have the duration of their permit extended for a period not to exceed five years, based on an administrative review by the zoning administrator, in consultation with the town board. No more than one such extension shall be granted over the lifespan of the conditional use permit, and all conditions shall remain the same as the original permit. Further extensions or any modifications of conditions shall require re-application and approval of a new conditional use permit.
- 18) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all reclamation plans must meet the following standards:
 - a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.
 - d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 19) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.
- 20) The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
- 21) Portable signs shall be used to alert pedestrians, bikers and drivers of potential roadway activity (i.e. trucks entering, workers present) due to the intermittent, seasonal nature of work.
- 22) All surface and subsurface operations shall be setback a minimum of 20' from any property line that does not abut a public right of way.
- 23) Excavations below the grade of an abutting public street or highway shall be set back from the street or highway a distance at least equal to the distance that is required for buildings or structures under s. 10.102(9). The committee and town board may require greater setbacks where necessary to avoid subsidence, or for consistency with Chapters 11, 14, 17 or 74, Dane County Code.
- 24) Hours of operation shall be 7:00 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. Hours for warm-up are 6:30 a.m. to 7:00 a.m. Monday through Friday, and 7:00 a.m. to 8:00 a.m. on Saturdays. Only maintenance of equipment (no blasting, crushing, trucking, etc.) is allowed

on Sundays. No operations of any kind shall take place on holidays. Blasting is restricted to 10:00 a.m. to 4:00 p.m. Monday through Friday.

- 25) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.
- 26) Except for incidental removal associated with dust spraying or other routine operations under this permit, water shall not be pumped or otherwise removed from the site.
- 27) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
- 28) Whenever possible, the operator shall utilize alternatives to standard back-up beeps, for instance, those making a sweeping sound.
- 29) The on-site traffic flow shall be designated to establish minimal backing up of vehicular traffic during normal work operations.
- 30) Engine breaking is prohibited for all vehicles either entering, leaving or driving on-site.
- 31) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
- 32) Dane County and the Town shall be listed as additional named insureds on the operator's liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
- 33) Blasting:
 - a) Blasting Schedule. Blasting shall limited to 10:00 a.m. to 4:00 p.m. Monday through Friday.
 - b) Notice of Blasting Events. Prior to any blasting event, notice shall be provided to nearby residents as described in SPS 307, Wisconsin Administrative Code. In addition, operators will honor the requests of residents within 500' of the mineral extraction site to either receive or stop receiving such notices at any time. Residents need to communicate with operator regarding such requests.
 - c) Other standards. All blasting on the site must conform with all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
 - d) Fly rock shall be contained within the permitted mineral extraction area.
- 34) Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
- 35) In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

Staff Report – Andros  Zoning and Land Regulation Committee	Public Hearing: May 24, 2022	CUP 02563	
	<u>Zoning Amendment Requested:</u> TO CUP: Non-metallic mineral extraction operation		<u>Town/Section:</u> RUTLAND, Section 28
	<u>Size:</u> 32 Acres	<u>Survey Required.</u>	<u>Applicant</u> KEVIN HAHN
	<u>Reason for the request:</u> Non-metallic mineral extraction operation		<u>Address:</u> 1000 FEET SOUTH OF 439 CENTER ROAD



DESCRIPTION: This application is for expansion of an existing mineral extraction operation. The existing 9 acre operation is a legal non-conforming (NC) site. NC sites do not adhere to the same conditions as conditional use permits for mineral extraction. Because the expansion area goes beyond the boundaries of the NC site, a conditional use permit (CUP) for mineral extraction is required. The expansion area is approximately 23 acres in size. After feedback from at the town level, the applicant offered to extend the boundary of the CUP area as originally proposed, to include the existing NC site. This is significant because if approved, CUP 2563 will effectively negate the NC site status.

OBSERVATIONS: The existing use of the property that is not currently used for mineral extraction, is agricultural crops. Surrounding land uses include agricultural uses, single-family residences and mineral extraction. There are single-family residences along Old Stage Road, and a residential subdivision is located approximately 0.55 miles from the eastern boundary of the proposed CUP area. To the southeast, an existing active mineral extraction site is located approximately 0.27 miles from the southern boundary of the proposed CUP area.



HISTORY

This proposal extends an existing operation located on a legal non-conforming (NC) site, also known as the Homburg Quarry. That site was active as early as 1937, and mining activity increased significantly by 1955. The site has been in operation for over 80 years, by different operators and for various durations. As the population of the county grew, single-family home sites started appearing in the area, and the number of single-family homes has grown over time. The applicant, Mr. Hahn, purchased the existing 9-acre mineral extraction site in 2016, and later purchased additional land to the south intending to expand the quarry. A similar proposal was made in February of 2020, and was denied by the town in October of 2020.

DESCRIPTION OF OPERATION: The proposed quarry will be an expansion of the current operation in which dolomite is extracted and processed. It will produce aggregate mineral products for various uses such as building construction and roads. The quarry operation will consist of removing topsoil and overburden to form berms for the purpose of noise reduction, landscaping and reserving material for reclamation; blasting to loosen rock from the quarry wall; crushing of the rock into appropriately sized material to meet project specifications; stockpiling the crushed rock and other aggregate; and selling and hauling the crushed rock and aggregate from the quarry site. Blasting occurs 5 times per year. There are also sand deposits on the site. Sand removal does not require blasting or any sort of processing. The amount of material extracted will vary year to year based on market demand.

The operation will be conducted in four stripping phases as shown on the operation site plan, with some berms being permanent and others temporary in nature as they will move along with the extraction phases. The current use of the land is agriculture. Land within the CUP boundary not involved in mineral extraction will remain in agriculture. This will serve as a buffer from surrounding land uses. Once reclaimed, the land will return to agricultural use.

Before extraction begins, berms will be created, fencing will be completed and erosion control measures will be put into place. Reclamation will be conducted in increments following the phasing of the extraction operation. The new entrance will be safer than the current entrance. The proposed hours of operation are 7:00 a.m. to 7:00 p.m. Monday

through Friday and 7:00 a.m. to 5:00 p.m. on Saturday. The number of employees on site will be four including the operator and his son. Although the site will be larger, the operation itself will not change dramatically.

TOWN PLAN: Similar to the vast majority of towns in Dane County, the general land use goal for the town of Rutland is as follows:

Goal 7 Land Use

Create a pattern of development that fosters the rural character and agricultural land preservation and that minimizes potential conflicts between incompatible land uses.

Objectives:

1. Maintain the agricultural land base to the greatest extent possible.
2. Minimize the negative effects of incompatible land uses.

A few related policies associated with these goals and objectives are: 1) require buffers between incompatible land uses to minimize potential negative effects, and 2) to the extent possible, ensure that new development is not located on or near known sites containing substantial non-metallic deposits suitable for extraction.

The subject property is in the *Agricultural Preservation* land use district. Goals, objectives and policies of the Agricultural Preservation land use district include:

Goal 6 Agricultural Preservation District

Preserve agricultural land in the town.

Objectives:

1. Preserve existing farm operations.
2. Permit development that enhances the growth of agriculture in the Town.
3. Preserve the rural character of the Town.

A related goal in the town's *Agricultural Preservation* district is "continue to review non-metallic mining proposals on a case-by-case basis".

COUNTY ZONING ORDINANCE

Compliance with Standards Required for Granting Conditional Uses: Chapter 10 provides eight standards for granting a CUP in Section **10.107(7)(d)(1)**, as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
7. That the conditional use is consistent with the adopted town and county comprehensive plans.
8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the finding described in Section 10.220(1)

Section 10.220(1), contains the following standards:

1. The use and its location in the Farmland Preservation Zoning district are consistent with the purposes of the district.
2. The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
3. The use is reasonably designed to minimize conversion of land, at and around the site of the use, from agricultural use or open space use.
4. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

CONDITIONS:

Standard CUP Conditions. The zoning committee (ZLR) shall impose, at a minimum, the following conditions on any approved conditional use permit, which are common across all CUPs:

- 1) Any conditions required for specific uses listed under s. 10.103 (see list below).
- 2) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
- 3) New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
- 4) The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
- 5) Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
- 6) Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
- 7) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
- 8) Off-street parking must be provided, consistent with s. 10.102(8).
- 9) If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be born by the landowner. Costs born by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
- 10) The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
- 11) The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
- 12) The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
- 13) Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Standard Mineral Extraction CUP Conditions. The following are conditions for all mineral extraction conditional use permits. The town board and zoning committee shall impose, at a minimum, the following conditions on any approved conditional use permit for mineral extraction:

- 1) Topsoil, or appropriate topsoil substitute as approved in a reclamation plan under Chapter 74, Dane County Code, from the area of operation shall be saved and stored on site for reclamation of the area. Topsoil or approved topsoil substitute must be returned to the top layer of fill resulting from reclamation.
- 2) The applicant shall submit an erosion control plan under Chapter 14, Dane County Code covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
- 3) The Town and Committee will set an expiration date for the conditional use permit based on the quantity of material to be removed and the expected duration of mineral extraction activities.
 - a) Extensions. Due to uncertainty in estimating duration for mineral extraction, conditional use permit holders who have operated without violations, may have the duration of their permit extended for a period not to exceed five years, based on an administrative review by the zoning administrator, in consultation with the town board. No more than one such extension shall be granted over the lifespan of the conditional use permit, and all conditions shall remain the same as the original permit. Further extensions or any modifications of conditions shall require re-application and approval of a new conditional use permit.
- 4) Reclamation shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances. In addition, all reclamation plans must meet the following standards:
 - a) Final land uses after reclamation must be consistent with any applicable town comprehensive plan, the Dane County Comprehensive Plan and the Dane County Farmland Preservation Plan.
 - b) Final slopes shall not be graded more than 3:1 except in a quarry operation.
 - c) The area shall be covered with topsoil and seeded to prevent erosion.
 - d) The area shall be cleared of all debris and left in a workmanlike condition subject to the approval of Dane County
 - e) Highwalls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 5) The driveway accessing the subject site shall either be paved or covered with crushed asphalt for a minimum distance of 100 feet from the public right-of-way. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.
- 6) The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
- 7) All surface and subsurface operations shall be setback a minimum of 20' from any property line that does not abut a public right of way.
- 8) Excavations below the grade of an abutting public street or highway shall be set back from the street or highway a distance at least equal to the distance that is required for buildings or structures under s. 10.102(9). The committee and town board may require greater setbacks where necessary to avoid subsidence, or for consistency with Chapters 11, 14, 17 or 74, Dane County Code.
- 9) The Town and Committee will assign hours of operation appropriate to the particular application. No operations of any kind shall take place on Sundays or legal holidays. The committee and town board may approve limited exceptions to normal hours of operations for projects associated with Wisconsin Department of Transportation or municipal road projects requiring night work. [Note: Typical hours of operation are from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 8 a.m. to early afternoon on Saturday. If there are residences nearby, hours may be more limited (e.g., start at 7:00 a.m. with no Saturday hours).] See specifics for this operation below.
- 10) There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 4 feet in height.
- 11) Except for incidental removal associated with dust spraying or other routine operations under this permit, water shall not be pumped or otherwise removed from the site.
- 12) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
- 13) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
- 14) Dane County and the Town shall be listed as additional named insureds on the operator's liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
- 15) At their own initiative or at the applicant's request, the town board and zoning committee may set further reasonable restrictions on a mineral extraction operation, or prohibit any mineral extraction accessory use.

- 16) Additional conditions for particular circumstances. Where any of the following circumstances apply, the zoning committee and town board shall also impose the following conditions on any approved conditional use permit for mineral extraction:
- a) Blasting:
 - (1) Blasting Schedule. Blasting shall occur between sunrise and sunset, as required by SPS 307. The zoning committee and town board may set further daily limits on hours when blasting may occur, to minimize impact on neighboring properties. Schedules for blasting need not conform to hours of operation for the overall mineral extraction project.
 - (2) Notice of Blasting Events. Prior to any blasting event, notice shall be provided to nearby residents as described in SPS 307, Wisconsin Administrative Code. In addition, operators will honor the requests of residents within 500' of the mineral extraction site to either receive or stop receiving such notices at any time.
 - (3) Other standards. All blasting on the site must conform with all requirements of SPS 307, Wisconsin Administrative Code, as amended from time to time, or its successor administrative code regulations.
 - (4) Fly rock shall be contained within the permitted mineral extraction area.
 - b) Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
 - c) Mineral extraction at or near groundwater. All excavation equipment, plants, and vehicles shall be fueled, stored, serviced, and repaired on lands at least 3 feet above the highest water table elevation to prevent against groundwater contamination from leaks or spills.
 - d) In the event that a mineral extraction operation will destroy an existing Public Land Survey Monument, witness monuments must be established in safe locations and a new Monument Record filed by a Professional Surveyor, prior to excavation and disturbance of the existing monument.

Conditions Unique to CUP 2563. Potential conditions of approval specific to CUP 2563 can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Common topics include but are not limited to, hours of operation, hours for blasting, blasting notification procedures, screening, duration, site access, and identification of haul routes.

PUBLIC: There is a considerable amount of public opposition to this proposal, as well as support.

TOWN: The town of Rutland Plan Commission held a public hearing on April 28, 2022, during which the applicant presented his proposal, and members of the public had the opportunity to speak. Further discussion about the proposal occurred at the following Plan Commission meeting on May 3, 2022. Three out of five Town Board members recused themselves in anticipation of action on CUP 2563. With no quorum possible, rather than make a recommendation of denial or approval, the town Plan Commission decided to take no action. *Please refer to correspondence from the town.*

STAFF: Staff recommends postponement. Prior to the ZLR work meeting, staff will work on a list of potential conditions that will take into account the specifics of this proposal including the public input received. The draft conditions will be subject to deliberation and modification by the Zoning and Land Regulation (ZLR) Committee.

Questions? Call Alexandra Andros 608-261-9780, 608-720-0168 (mobile) or email andros@countyofdane.com