

Memorandum

To: Dane County Zoning & Land Regulation (ZLR) Committee

From: Pamela Andros, AICP

CC: Scott Anderson, Agent; Roger Lane, Dane County Zoning Administrator; Kathleen Clark,
Vienna Town Clerk

Date: February 3, 2021

Re: Staff update of application for conditional use permit (CUP) #2511

As was summarized in my memo dated 1/5/2021, the following are concerns raised by two neighboring property owners, and how the applicant has responded since that time.

Impact on private wells: A number of concerns were raised about wells, specifically 5 wells that are located within 500' of the proposed CUP area, and questions about what the applicant is willing to do to remedy potential negative impacts caused by the mineral extraction operation. The town of Vienna addressed this in their own conditions of approval made in September of 2020 and was shared with the county via the Town Action Report. The applicant has agreed to test all 5 wells prior to operations and then on an annual basis. The test results are then shared with the town prior to the town's annual review of mineral extraction operations. If well failure is found to be the result of the operation, the operator has offered pay for replacement of wells.

Storm water: Citing existing storm water issues in the area, concerns were raised about potential storm water impacts resulting from the proposed operation. The applicant restated and expanded on information provided in the original application. In order to operate the applicant must obtain a storm water permit from both Dane County Land & Water and the Wisconsin DNR. Related to existing storm water issues, Madison Sand & Gravel is working with the town to improve the water flow under Norway School Road to eliminate the flooding of the right of way experienced in the past.

Property Values: Concerns about property value impacts were raised, however no specifics were provided. The applicant's follow-up simply stated that there have not been any other complaints regarding property values.

Number of acres already disturbed: Madison Sand & Gravel is in the process of reclaiming portions of the existing mineral extraction site. The town of Vienna has a mineral extraction ordinance that controls for the amount of extraction taking place at any one time by limiting the number of active acreage allowed townwide. With a net increase of approximately 8 acres, this proposal falls within

limits set forth in the town ordinance. Please see the additional reclamation map included in the memo from the applicant provided below.

Sand blowing onto adjacent lands: Concerns were raised about blowing sand from the current operation and a continuation or increase of this problem resulting from this proposal. The applicant reiterated that berms and watering trucks will be used to control dust. Madison Sand & Gravel recently reclaimed 16 acres located near the CTH V right-of-way and this should help alleviate blowing sand. A recent email message (2/2/2021) from Mr. Fox describes potential changes to the berms and plantings that the committee may wish to ask the applicant to consider.

Berms are aesthetically displeasing: One person shared his opinion that existing berms, including the tree plantings, are unattractive and he is concerned that those shown for the proposed operation will also be disappointing. Poor maintenance of the plantings was also noted. The current berm size meets town ordinance requirements and no changes to the landscaping plan have been made. As noted under the previous issue, a recent email message (2/2/2021) from Mr. Fox describes potential changes to the berms and planting that the committee may wish to ask the applicant to consider.

Current Noise: There is concern that this proposed operation will add more noise to what some already consider a problem. The applicant agrees to the staff proposed condition related to noise, stating “The operator shall use multi-frequency back-up alarms to minimize disturbance to surrounding properties, and trucks will be routed to avoid unnecessary back-ups, and there shall be an absolute, peak noise level of no more than 75 decibels (DbA) as measured from the property line”.

Concerns about future expansion: Concerns were raised about future expansion of mineral extraction, and/or commercial uses being developed adjacent to the proposed CUP area. As stated in the prior staff memo, expansion cannot take place without applying for a new conditional use permit from the county as well as meeting the ordinance requirements of the town of Vienna, and a change to a commercial use is not consistent with the town and county comprehensive plans.

Please see the attached response to the concerns raised provided by the applicant found at the end of this memo.

It appears that reasonable responses to the concerns have been provided. Recommended conditions address concerns as well. If the Committee decides that the standards have been met, staff recommends approval with all of the conditions, one through four described below, including the change made to the town’s condition related to replacement of wells (town condition #3).

CONDITIONS: If the permit is approved, staff recommends that all of the following conditions be applied to CUP 2511. The conditions below are divided into four sections. The first section are those required of *all* conditional use permits. The second set of conditions below are *standard* for all conditional use permits for *mineral extraction*. The third set of recommended conditions are based on the *specifics of this site and proposed operation*, and the fourth set of conditions are from the *town of Vienna's Town Action Report*. If approved by ZLR, staff recommends that all four sets of conditions below be applied to CUP 2511.

ONE: Standard CUP Conditions. The town board and zoning committee 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.

TWO: 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.

THREE: Conditions Unique to CUP 2511. Staff recommended potential conditions of approval specific to CUP 2511:

- 1) Operations shall cease no later than 20 years from the date of CUP approval.

- 2) There shall be no blasting, crushing or washing.
- 3) There will be no hauling routes – material must be trucked to the existing operation areas and will not utilize any roads except what is already permissible (crossing Norway Grove School Road) per current operations.
- 4) The operator shall use multi-frequency back-up alarms to minimize disturbance to surrounding properties, and trucks will be routed to avoid unnecessary back-ups, and there shall be an absolute, peak noise level of no more than 75 decibels (DbA) as measured from the property line
- 5) Trees and other plantings shall be maintained, including necessary watering, to ensure intended aesthetic and screening purposes.
- 6) Operator must update reclamation plan (as required by Chapter 74) so that the extraction area shown in the operations plan is consistent with that shown in the reclamation plan.

TOWN ACTION AND CONDITIONS: The town of Vienna contracts with an engineer to review all applications for mineral extraction. They use his review to inform them in determining appropriate conditions. The town Plan Commission approved 3:1 and the Town Board 5:0 with conditions, as follows **(FOUR)**:

1. Madison Sand & Gravel (MSG) will upgrade some of the fencing around the residential property that borders the site to a 4x4 wire mesh;
2. MSG will locate wells for the five homes in close proximity to the site, test the wells prior to the start of operation and test them annually to ensure the safety of the water quality. Homes include: Parcel 0909-221-8002-0; 0909-221-8960-0; 0909-221-8560-4; 0909-154-9270-5; 0909-154-9210-7. MSG will pay full cost to ~~help~~ repair any of the 5 wells located if one fails.
3. There will be seventeen 5-gallon bucket trees planted around the property line.
4. Operation hours will be from 6am to 6pm, Monday-Saturday and no washing, crushing or blasting will take place.
5. Ten 5 gallon bucket trees will be added by the wetland on Highway V, along the berm, as a sound barrier for the house across the road.

The Plans submitted at the Plan Commission and Town Board have been updated to reflect these conditions as of 10/05/20. Please note, both meetings had surrounding neighbors in attendance. Some of these conditions were added as part of MSG and property owner's discussions and agreements.

Memorandum

To: Roger Lane, Zoning Administrator **Date:** 2-1-2021

From: Scott Anderson, P.E.

CC: Pam Andros, Senior Planner
Kathy Clark, Town of Vienna Clerk
Jacob Taff, Madison Sand & Gravel
Todd Violante, Director of Planning and Development

RE: CUP #2511
Madison Sand and Gravel

Per your recent memo dated January 5th, 2021 please see my client's responses to each concern raised.

1. Impact on private wells:

Per the original agreement done at the Town level, Madison Sand and Gravel (MSG) have agreed to test all five wells before the start of the project and on an annually basis. The well testing results will be sent to the Town prior to the required annual review meeting. If indeed well failure is found to be at fault by the actions of sand and gravel extraction, MSG will agree for full well replacement for that affected well. This stipulation was passed as part of the Town Board resolution on 9-21-2020.

2. Storm water:

This non-metallic mining operation is required to obtain a stormwater management permit by the WisDNR as part of the SWPPP application and at the County level through Land and Water Resources as part of the reclamation plan. MSG recently worked with the Town to improve the flow water under Norway Grove School Road to eliminate the past flooding issues that the right of way had previously experienced. A 48" culvert was added under Norway Grove to alleviate any drainage issues that they've had in the past in this area.

All runoff from the pit is self-contained and flows to the south, away from any affected residential properties.

3. Property Values:

MSG has been operating at this pit since 1971. It has been a known operating sand and gravel extraction for over 50 years. MSG has not heard of any complaints with property value assessments in the area.

4. Number of acres already disturbed:

Per the revised reclamation plan, the Holtan Pit (the adjoining pit to the west and to the south) has a total of 182.6 acres. 59.2 acres is reclaimed and 22.1 acres was reclaimed just this past November. With the new Kelley pit starting up at 30.5 acres, this is a net increase of 8.4 acres, which is well within the Town's cap of open active acres of non-metallic mining.

An updated mining area map is attached to this memo for your use.

5. Sand blowing onto adjacent lands:

Berms and watering trucks will be used to control the dust. During dry times in the summer the haul road will be watered down or covered in rock to eliminate the dust. The pit will be much lower in elevation than the nearby residential properties. MSG also just recently reclaimed over 16 acres of area near the CTH V right of way.

MSG have annual review meetings at the Town for the active Holtan Pit. This is the first time that they have heard of this complaint. Residents are more than welcome to attend any of these annual meetings or request a meeting to address any concerns.

6. Berms are aesthetically unpleasing:

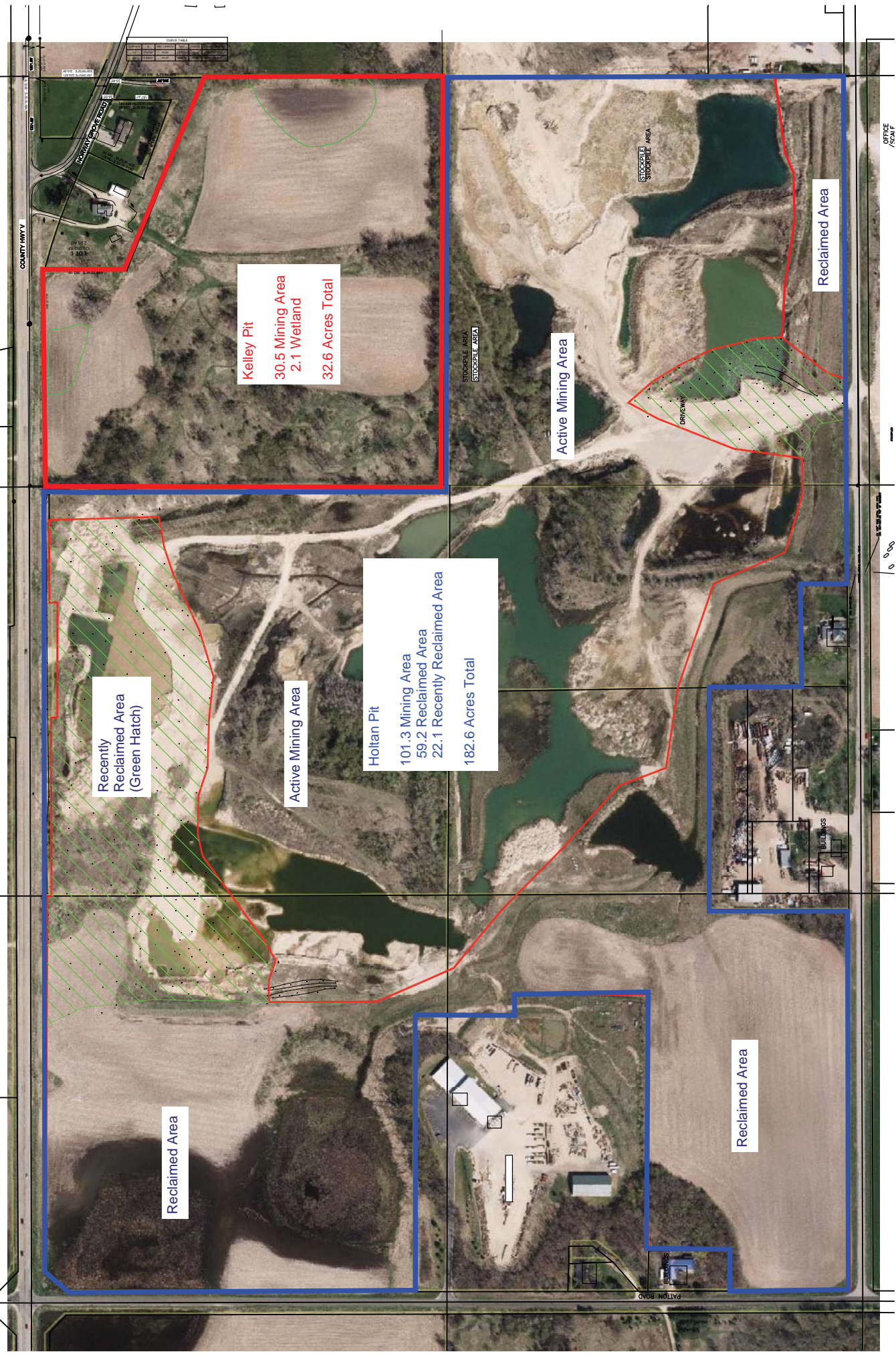
The berms proposed are 8' in height with a 3:1 slope. This berm size is the Town of Vienna standard for all quarries within the Town limits. The berms are seeded for grass vegetation growth.

7. Current Noise:

MSG agrees to the suggested language to be amended to include the language "The operator shall use multi-frequency back-up alarms to minimize disturbance to surrounding properties, and trucks will be routed to avoid unnecessary back-ups" and to set an absolute, peak noise level of no more than 75 decibels (DbA) as measured from the property line.

8. Concerns about future expansion:

MSG agrees that the area would need to go through a rezoning process to be used for a commercial use. This use is not consistent with the Town's comprehensive plan and would have no chance of happening.



Kelley Pit
 30.5 Mining Area
 2.1 Wetland
 32.6 Acres Total

Active Mining Area

Reclaimed Area

Recently Reclaimed Area
 (Green Hatch)

Active Mining Area

Holtan Pit
 101.3 Mining Area
 59.2 Reclaimed Area
 22.1 Recently Reclaimed Area
 182.6 Acres Total

Reclaimed Area

Reclaimed Area

DATE	BY	REVISION

OFFICE /SCALE

0 0 00

COUNTY HWY V

DRY CREEK ROAD

DRY CREEK ROAD

PATTON ROAD

BUILDINGS

BUILDINGS

DRY CREEK

STOCKPILE AREA
 STOCKPILE AREA

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