

Staff Report

Zoning & Land
Regulation
Committee

Public Hearing: July 28, 2026

Report updated for the August 25th ZLR meeting

Zoning Amendment Requested:

TO CUP: Clay materials removal

Size: 31.98 Acres

Survey Required:

Reason for the request:

Mineral Extraction, Clay materials removal

**Conditional Use
02712**

Town, Section:

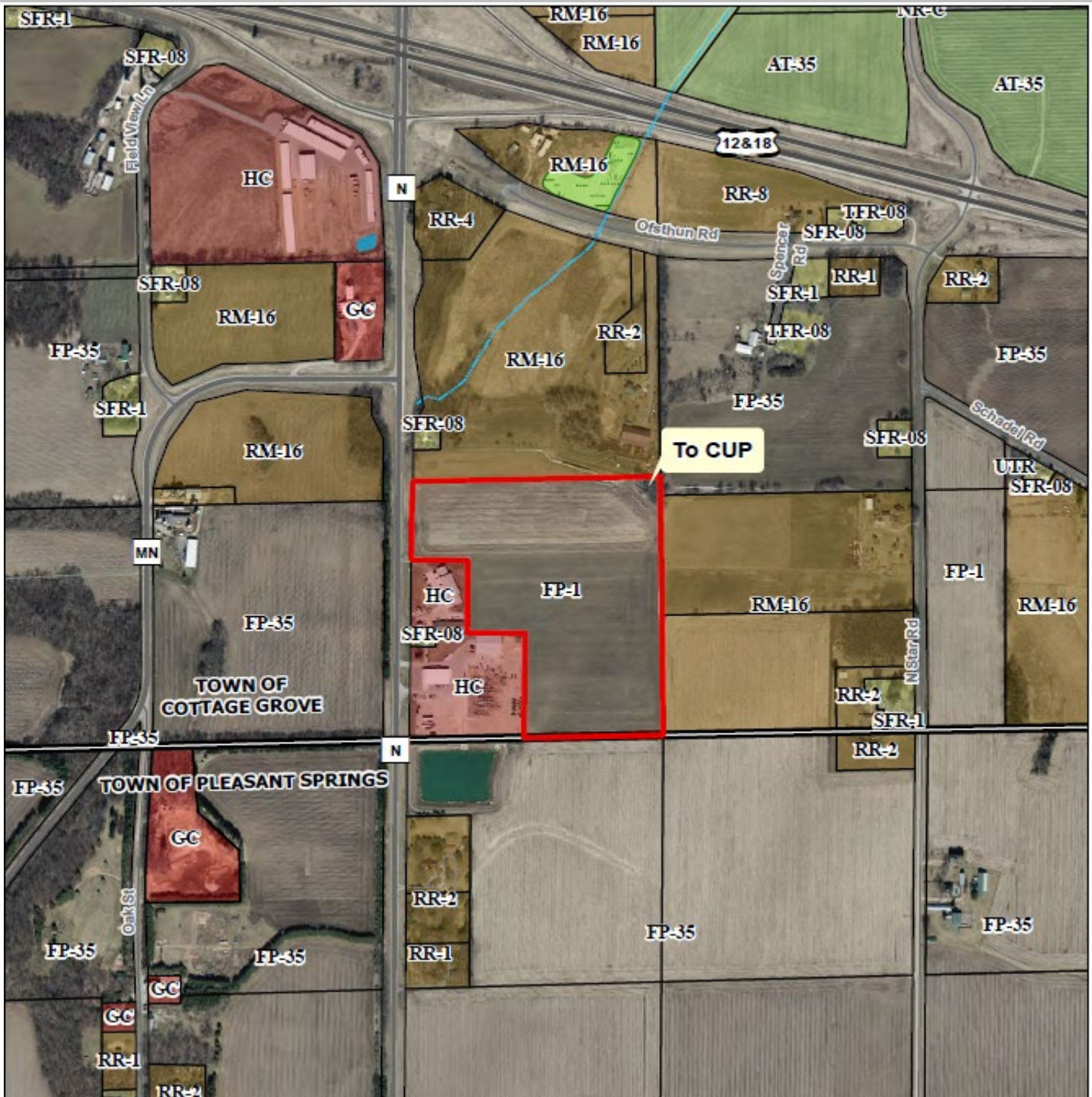
**COTTAGE GROVE,
Section 33**

Applicant:

DANE, COUNTY OF

Address:

**NORTH OF 3236
COUNTY HIGHWAY N**



DESCRIPTION: Dane County Department of Highway & Transportation is requesting a Conditional Use Permit for mineral extraction operations to remove landfill quality clay. This request is associated with Rezone Petition #12300. Waste and Renewables (W+R) received approval from WDNR in December 2023 that allows clay extracted from the Property to be

used for either landfill liner or cap under NR 504. W+R anticipates one construction season (2027) to be able to extract the landfill suitable clay, estimated to be approximately 140,000 CY of material.

OBSERVATIONS: The proposed site is located east of 3234 CTH N, south of USH 12/18 and north of I-39/90. The property is currently zoned FP-1 and currently leased agricultural land with the surrounding properties zoned commercial, agricultural and rural mixed use. Proposed acreage affected is about 31 acres and the proposed entrance is shown in the northwest portion of the property off of CTH N. Majority of the site drains to the north and/or northeast and a small portion draining to the southwest.

One residential homesite accessed off of CTH N is located to the north and two other homesites located to the northeast accessed off of Ofsthun Rd, a frontage road from USH 12/18. Operational hours are proposed to be Monday through Saturday, 6:00 AM to 6:00 PM with no operations on Sunday's and holidays.

Mineral extraction is listed as an allowable conditional use in the RI (Rural Industrial) Zoning District. S. 10.281(3)(i). Importing of materials from different sites is not allowed to be processed and exported. Importing of clean fill is allowed to further achieve reclamation. Accessory uses such as stockpiling and processing of concrete and asphalt pavements for the purpose of recycling for reuse in asphalt or concrete mixtures or base course products is not being proposed for this site. A reclamation plan will be required to be submitted for review as a condition of approval of the CUP.

COMPREHENSIVE PLAN: This petition is in the town's commercial planning area and is subject to the land use policies related to that designation. The town plan includes the following with regards to mineral extraction proposals:

"When considering applications for conditional use permits or rezonings for non-metallic mining operations, apply the requirements of the Town Non-Metallic Mining Regulations (Chapter 17 of Town Code of Ordinances) and Section 10.103(15) of the Dane County Zoning Ordinance. The petitioner must submit directly to the Town copies of all project descriptions, site plans, and engineering reports required by the County Planning and Development Department. The Town does not intend to take action on the rezoning or conditional use permit until it receives and reviews the results of an independent engineering report and staff report from the Dane County Planning and Development Department."

The town's planning consultant provided a review of the proposal which highlighted a number of concerns which staff from Dane County Waste & Renewables are in the process of addressing. Given that the proposed clay extraction will occur during a short, 3 month timeframe, impacts from the proposed conditional use should be limited in duration and scope. Staff have recommended a number of conditions of approval in accordance with [section 10.103\(15\)](#).

The proposed conditional use permit appears reasonably consistent with comprehensive plan policies.

For questions about the comprehensive plan, please contact Senior Planner Majid Allan at (608) 267-2536 or Allan.Majid@danecounty.gov.

RESOURCE PROTECTION: There are no resource protection corridors on or within 300 feet of the property.

CONDITIONAL USE PERMIT DECISION MAKING: "Conditional uses" are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and determine whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a CUP. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant's testimony with regards to meeting the standards.

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.

To mitigate these potential impacts, the following practices will be used throughout development:

Noise: Noise will be controlled through the use of muffler systems on equipment or vehicles that meet or exceed

industry standards for noise. Additionally, noise will occur only during established periods of time (i.e. hours of operation, discussed in Section 7).

Dust: Dust will be controlled through the application of water via a sprayer truck or similar.

Mud tracking: Mud tracking will be controlled through the use of a stone tracking pad, similar to Wisconsin Department of Natural Resources (WDNR) Technical Standard 1057. Additionally, street sweeping equipment may be used should any mud be tracked onto neighboring roadways.

Runoff: Runoff will be controlled through the use of temporary or permanent sedimentation basins, drainage swales, and/or infiltration. Control of runoff will be designed to meet or exceed County and State stormwater and erosion control requirements (see Section 13 for more information).

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.

The proposed development will not be detrimental to or endanger the public health, safety, comfort or general welfare of neighboring properties. Additionally, the proposed development would not impair neighboring properties existing land uses or their potential for future developments/improvements.

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.

The potential impacts to neighboring properties may include noise, dust, mud tracking, and runoff. To mitigate these potential impacts, the following practices will be used throughout development:

Noise: Noise will be controlled through the use of muffler systems on equipment or vehicles that meet or exceed industry standards for noise. Additionally, noise will occur only during established periods of time (i.e. hours of operation, discussed in Section 7).

Dust: Dust will be controlled through the application of water via a sprayer truck or similar.

Mud tracking: Mud tracking will be controlled through the use of a stone tracking pad, similar to Wisconsin Department of Natural Resources (WDNR) Technical Standard 1057. Additionally, street sweeping equipment may be used should any mud be tracked onto neighboring roadways.

Runoff: Runoff will be controlled through the use of temporary or permanent sedimentation basins, drainage swales, and/or infiltration. Control of runoff will be designed to meet or exceed County and State stormwater and erosion control requirements (see Section 13 for more information).

The proposed development will not be detrimental to or endanger the public health, safety, comfort or general welfare of neighboring properties. Additionally, the proposed development would not impair neighboring properties existing land uses or their potential for future developments/improvements.

4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.

Building footprint: Estimated to be approximately 200,000 - 225,000 sf

Utilities:

Water well: To supply potable water to restrooms and/or potential drinking fountains. Coordinated as part of building design and construction with the appropriate agencies having jurisdiction (e.g. WDNR, etc.).

Septic system: To provide adequate handling and storage of wastewater. Coordinated as part of building design and construction with the appropriate agencies having jurisdiction (e.g. Public Health Madison & Dane County, etc.).

Telecommunication: To provide internet or telephone capabilities.

Electrical: To provide electrical service to the building and exterior lighting.

Natural gas: To provide heating capabilities to the building.

Lighting: Exterior building lighting to provide luminated means for ingress and egress and additional exterior lighting along driveway for security purposes. Note, lighting is not anticipated to cause any significant impacts to neighboring properties.

Access: Anticipated to be off CTH N within the nearly 440 LF of frontage, positioned in a location with the best line of sight for both north or southbound traffic.

Signage consistent with Dane County Zoning Ordinance 10.800.

List of hazardous, toxic, or explosive materials stored on-site (and any spill containment/prevention measures): Not applicable.

Removal of trash, solid waste, or recyclable materials will be done through the use of rented dumpsters or carts with contracted disposal or recycling service contracts, as necessary.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

W+R and H&T anticipates two different traffic patterns regarding each phase of development. Traffic patterns associated with each phase is further discussed below.

Subsection 12.1. Mineral Extraction Operations

Traffic patterns associated with mineral extraction operations are anticipated to be mainly from dump trucks picking up clay material from the Property, bringing it to the proposed landfill (approximately 3.25 miles from the Property), and return to the Property to pick-up the next load. The dump trucks are anticipated to follow the proposed haul route below:

Exit the Property going north on CTH N

Take the exit to westbound USH 12 & 18

Take the exit to southbound CTH AB

Deliver material to the proposed landfill (4402 Brand Road, Madison, WI 53718)

Return the back to the Property

Other potential construction traffic may be related to the earthwork contractor operations (e.g. delivery of equipment or mobilization, equipment fueling operations, and/or employees entering or leaving the Property during operating hours).

Subsection 12.2. Building Construction

During building construction, typical construction traffic is anticipated during the normal hours of operation. After building construction, the proposed indoor and outdoor storage is not anticipated to be staffed and would only require intermittent access for either the delivery or retrieval of stored materials or equipment. Therefore, traffic impacts are anticipated to be minimal.

6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

A conceptual stormwater basin is anticipated to be located on the northeast portion of the Property (Figure #9 in Attachment C). Additionally, there may be temporary sedimentation basins constructed during mineral extraction operations and/or building construction to assist in additional stormwater management.

W+R and H&T understand we will be required to adhere to Dane County's Erosion Control and Stormwater permitting process. Additionally, since more than one acre will be disturbed, W+R and H&T also understand that a Wisconsin Department of Natural Resources (WDNR) Construction Site General Permit is required.

Permit applications for Phase 1 (mineral extraction) are anticipated to be submitted in Q1 2027 to allow for construction in April 2027. Stormwater and erosion control systems will be designed to meet or exceed the requirements of both the County and State.

7. That the conditional use is consistent with the adopted town and county comprehensive plans.

The proposed land uses at the Property include mineral extraction, outdoor storage, and indoor storage building. The materials anticipated to be stored outdoors may include culverts, various pipes, gravel, or other material purchased in bulk. The indoor storage is anticipated to house various pieces of highway equipment (heavy equipment, specialty equipment, traffic control devices, etc.) and potentially have lease space for other County departments who may need additional cold storage space. Additionally, the indoor storage building is anticipated to have a restroom facility (discussed more in Section 9).

The proposed land uses are consistent with the Town of Cottage Grove's Amended Comprehensive Plan that identifies the Property slated for a future land use of "Commercial Development Area" (Map 16, included as Attachment B).

8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).

Not applicable with the anticipated zoning change to Rural Industry.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: Mineral extraction has potential nuisances that pertain to blasting, truck traffic, dust, noise and aesthetics. The applicant has submitted information regarding how those potential nuisances are handled as part of their application.

Potential conditions of approval specific to this CUP 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.

Under Dane County Zoning Ordinance section 10.103(15), there are special requirements for mineral extraction operations to address many of the potential conflicts with the land use activity. In addition to conditions required for all 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 shall be saved and stored on site for reclamation of the area.
2. The applicant shall 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. (See staff suggested conditions below)
4. Reclamation of the site shall meet all requirements of Chapter 74 of the Dane County Code of Ordinances.
5. The driveway accessing the site shall be paved or covered with crushed asphalt for a minimum distance of 100 feet.
6. The access have gates securely locked when the extraction site is not in operation.
7. All excavation shall be setback a minimum of 20' from any property line.
8. All excavations shall be setback to the building setback requirements from streets.
9. The Town and Committee will assign hours of operation appropriate to the particular application. [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 staff suggested conditions 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. Discharge of water from a site is limited. (See staff suggested conditions below)
12. All trucks and excavation equipment to have muffler systems that meet current industry standards for noise abatement.
13. The operator shall meet DNR standards for particulate emissions.
14. The operator shall carry liability insurance with Dane County and the Town listed as additional named insureds.
15. The town board and zoning committee may set further reasonable restrictions on a mineral extraction operation. (See staff suggested conditions below)
 - a. Blasting shall conform to Wisconsin Administrative Code SPS 307. 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.
 - b. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
 - c. 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.

TOWN ACTION: Town Board recommends approval with the following conditions:

1. Conditional use is subject to the 37 conditions in the County Planning and Development Department's 7/23/26 County Planning staff report, with the following additions and modifications: a. Amend condition 23 to read as follows: "23) Subject to State Statute 66.0441(3)(c), hours of operation shall be 7:00 a.m. to 6:00 p.m. Monday through Friday. There shall be no operations of any kind on Saturdays, Sundays, and holidays. Holidays are to include: New Year's Eve, New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day." b. Add condition 38 to

read as follows: “38) Before commencement of clay extraction operations, applicant shall apply for and obtain Town approval of a non-metallic mineral extraction permit under Town Code Chapter 17.”

STAFF RECOMMENDATION: The contents of this staff report summarize the information provided by the applicant. As part of the conditional use permit process, the public has an opportunity to provide additional information and raise concerns. Concerns raised will need to be addressed by the applicant.

Staff recommends the Committee will **make findings of fact** as to whether the proposed CUP will meet the applicable CUP standards outlined above in the decision making section, and in doing so **approve the conditional use permit subject to the following conditions:**

- 1) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan, phasing plan, and following conditions:
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) All vehicles and equipment must access the site only at the approved location identified in the site plan and operations plan.
- 7) Township roads shall not be used for hauling to or from the site, either empty or full, unless the applicant or customers are serving a resident/business on the township roads. All other use of town roads requires Town Board approval.
- 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 borne by the landowner. Costs borne 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 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.
- 12) 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.

13) 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.

14) 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.

15) The permit period shall be one (1) year from effective date.

16) 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.

17) Solid waste dumping is prohibited.

18) The driveway(s) 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, debris or mud tracked onto public roads.

19) 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."

20) All surface and subsurface operations shall be setback a minimum of 20' from property lines that do not abut a public right of way. Operations shall adhere to the conditional use permit boundary as shown on the operation plan.

21) Excavations below the grade abutting CTH N shall be setback 42 feet from the property line.

22) Subject to State Statute 66.0441(3)(c), hours of operation shall be 7:00 a.m. to 6:00 p.m. Monday through Friday. There shall be no operations of any kind on Saturdays, Sundays, and holidays. Holidays are to include: New Year's Eve, New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day.

23) The operator shall use spray bars (water) in the crushing process to reduce dust. Use of spray bars is not required when the temperature is below freezing. The operator shall spray the site with water if and when needed to control dust.

24) 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.

25) Any water pumped off-site shall be in accordance with Wisconsin DNR Stormwater Discharge requirements. There shall be no dewatering of groundwater from the site for operations below the water table.

26) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.

27) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.

28) 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.

29) Blasting is prohibited for this site.

30) Any fuel storage on-site shall comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment. All excavation equipment 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.

31) 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.

32) This CUP is limited to Dane County only. CUP #2712 is non-transferrable to a different operator.

33) Berms and landscaping shall be established and maintained.

34) Noise Limitation shall not exceed 75 decibels at a point 100 feet away from the property line. The decibel level shall be measured in DbA for average over a 15-minute period.

35) Back-up alarms - The on-site traffic flow shall be designated to establish minimal backing up of vehicular traffic during normal work operations. Whenever possible, the operator shall utilize alternatives to standard backup beeps, for instance, those making a sweeping sound if approved by MSHA.

36) Engine breaking is prohibited for all vehicles either entering, leaving or driving onsite.

37) Before commencement of mineral extraction operations, applicant shall apply for and obtain Town approval of a non-metallic mineral extraction permit under Town Code Chapter 17

Please contact Dan Everson at (608) 267-1541 or Everson.daniel@danecounty.gov if you have questions about this petition or staff report.