

**Staff Report**



**Zoning and Land Regulation Committee**

Public Hearing: **March 28, 2023**

**CUP 02587**

Zoning Amendment Requested:

**TO CUP: Non-metallic mineral extraction operation**

Town/Section:

**VIENNA, Section 20**

Size: **40.3 Acres**

Survey Required: *n/a*

Applicant

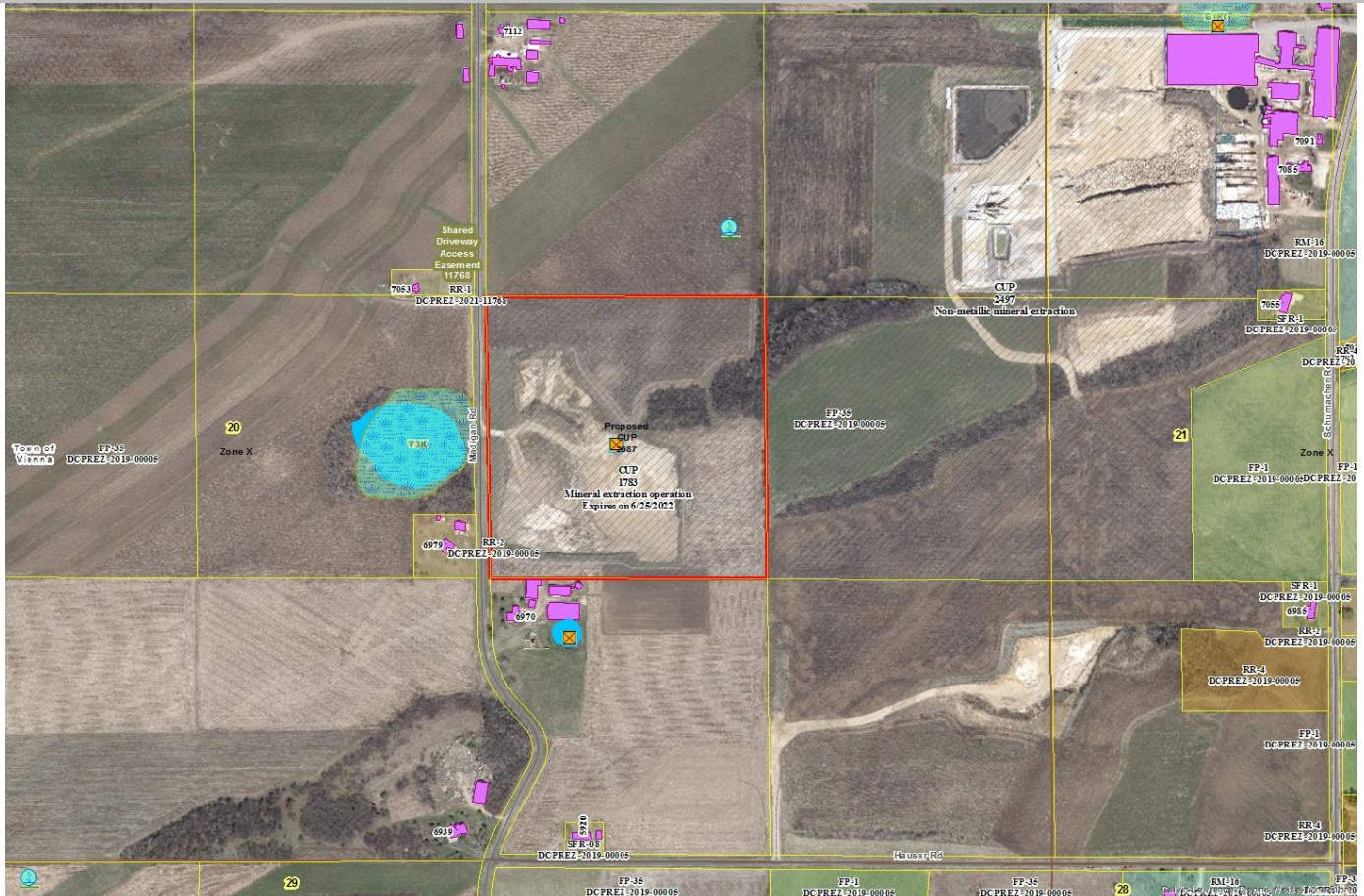
**TRI COUNTY PAVING, INC.**

Reason for the request:

**Continue operation of an existing non-metallic mineral extraction site. Previous CUP 1783 has expired.**

Address:

**NORTH OF 6970 MADIGAN ROAD**



**DESCRIPTION**

Tri County Paving Inc. would like to continue an existing non-metallic mineral extraction operation on lands owned by Ripp Living Trust. The quarry is located on Madigan Road and has been in operation since 2002. The previous conditional use permit, CUP #1783, expired on June 25, 2022. The site consists of 40 acres.

The applicant states that the site has approximately 20 years of reserves remaining and has an estimated 250,000 tons of material. Aggregate material will be used for various construction projects in and around the Dane County area in addition to supplying the asphalt plant located off site. The proposal is to extract approximately 10,000 tons of sand and gravel per year depending upon industry activity.

Hours of operation will be Monday through Friday 7:00 am to 6:00 pm and Saturdays 7:00 am to 4:00 pm. All material will be hauled from the pit north on Madigan Road to County Hwy V and head east or west. Geological composition and depth consists of approximately 12" of topsoil, 6-8 feet of clay and sand, and the gravel deposits are 10-20 feet deep. The maximum depth of the quarry will be 985'. The groundwater elevation is approximately at 940'. Excavation will occur at least 40 feet above the water table. No blasting is needed to extract the material.

## **OBSERVATIONS/FACTUAL INFORMATION**

The quarry has been in operation since 2002. The Town of Vienna has an agreement with the operator detailing hours of operation, prohibiting blasting or crushing, and bonding of the Madigan Road.

The site is located just north of 6970 Madigan Road, the Ripp farmstead. The area around the quarry is predominately used for agricultural production. There are two residences located within 500 feet of the quarry, not including the Ripp farmstead.

The proposed sand and gravel pit will be used to produce sand, gravel, and fill for various purposes, including, but not limited to, construction of buildings and roads. The operation will consist of continued removal of topsoil and overburden to be stock piled and used later in the reclamation process. Equipment to be used in the operations include earthmovers, bulldozers, loaders, scrapers, and trucks. There will be no blasting or crushing taking place on this site. Refueling will take place as needed and there is no permanent bulk fuel stored on site.

Reclamation is ongoing and the current reclamation plan on file shows the site being returned back to crop production. However, staff feels that the reclamation plan is outdated and should be amended to accurately reflect the current operator (Tri County Paving), the style of reclamation, and boundaries. The current plan on file is for an area approximately 75 acres in size, which includes CUP 1783 and a grandfathered registered non-conforming area to the south. The grandfathered area has since been reclaimed and returned to agricultural uses.

## **TOWN COMPREHENSIVE PLAN**

The site is located in the Agricultural Preservation Area as shown on the Land Use Map of the Town of Vienna Comprehensive Plan. The Plan identifies non-metallic mineral extraction operations as an appropriate land use within a designated Agricultural Preservation Area. Any proposed sites need to be evaluated for compatibility with neighboring land uses. The plan states that a maximum of 975 acres shall be devoted to mineral extraction activities. This existing site is included in the cap limits.

### ***Excerpts from Town Plan***

#### *Objective 4.0:*

*Establish a set of local policy guidelines to evaluate new and expanded mineral extraction operations in relation to their impact on the Town, both as an individual site and in conjunction with the total number of approved and open sites within the Town of Vienna.*

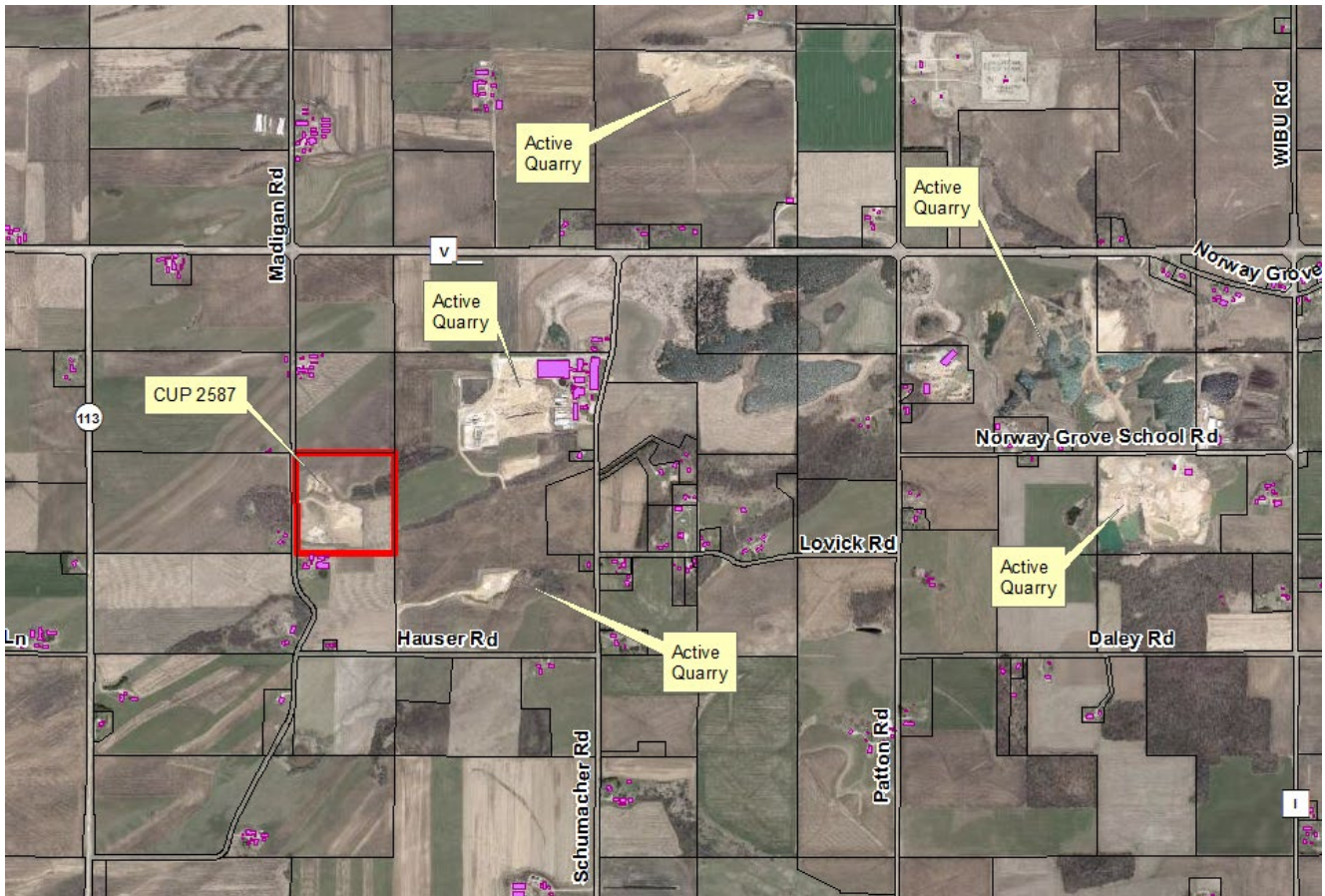
*4.1 Evaluation of Proposed Quarry Sites – The Town of Vienna will evaluate any proposed quarry use to see if it is consistent with the Town Comprehensive Plan and neighboring uses.*

*4.1.1 Compatibility with Agricultural Uses – That it is not an activity that will limit the use of surrounding land for agricultural purposes.*

*4.1.2 Compliance with Farmland Preservation Agreement and Regulations – That it is not an activity which will conflict with agricultural operations subject to a farmland preservation agreement (or zoning certificate) on the subject property.*

*4.1.3 Compatibility with Existing or Planned Uses – That it is not an activity that will conflict with 1) existing agricultural operations on other properties, 2) existing or planned residential uses, or 3) existing or planned commercial uses.*

*4.2 Acreage Cap Guideline – The Town of Vienna establishes a policy guideline that no more than 975 acres be approved for mineral extraction sites within the Town at any one time unless the owner/operator of a site enters into an agreement with the Town of Vienna that address the appearance, access, impacts, potential nuisances, overall safety, and the timely reclamation of proposed sites. This guideline does not automatically limit the maximum number of open acres nor automatically approve a proposed site that falls within the acreage guideline.*



**TOWN ACTION:** Town Board has approved the conditional use permit with the same conditions as previously approved in 2002.

1. The applicant shall submit an erosion control plan for the entire site.
2. The applicant shall apply for and receive all required local, state, and federal permits.
3. The applicant shall operate the site per approved site plan.
4. The CUP is limit to 20 years.
5. The site shall be reclaimed per Chapter 74.
6. The edge of the operation shall be no steeper than 1:1 grade.
7. The operator shall use equipment and trucks with approved muffler systems.
8. The operator shall comply with DNR Emissions standards.
9. The Town of Vienna and Dane County shall be listed as additional names insured.
10. The Zoning Administrator shall be allowed to enter the site.
11. The applicant shall enter an agreement with the Town of Vienna.

#### **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.

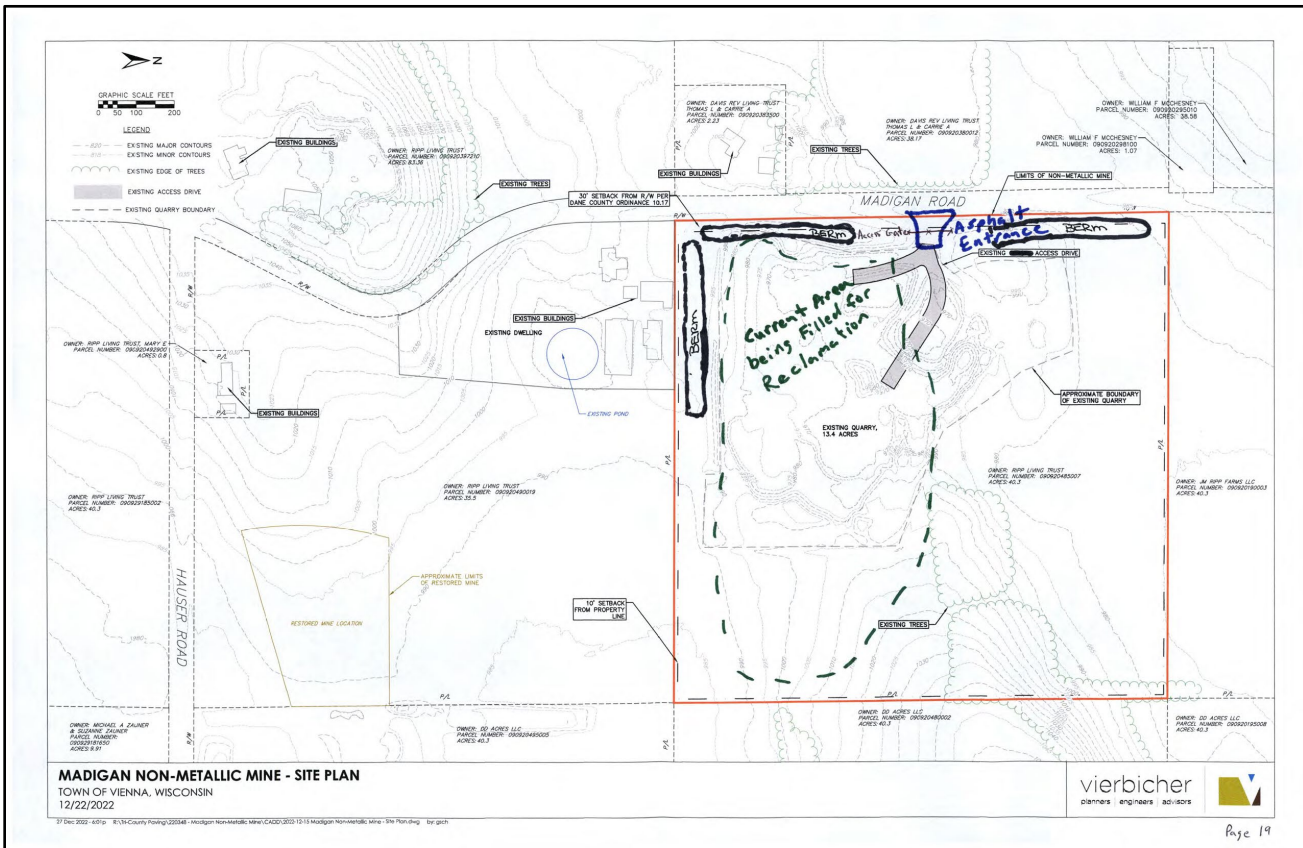
Prior to granting or denying a conditional use, the ZLR Committee shall make findings based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the eight standards to obtain a conditional use permit. Below is the list of the eight standards and the applicant’s response to those sections.

1. **The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.**
  - *Berming is in place and maintained to provide for visual and sound barriers to any adjoining residences. Dust Control; The entire access entrance is paved with asphalt and watering will be done in the sand pit as needed to*

*control dust. Erosion Control and a storm water pollution prevention plan is in place. We will meet all MSHA requirements.*

- 2. 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.**
  - *Adjacent Property owners will feel little to no impact with the proposed mineral extraction. The mechanized equipment used is not louder than typical farm machinery. Berms are in place and maintained to provide for visual and sound barriers to other properties in the neighborhood. The entrance is paved with asphalt and watering will be done in the quarry to control dust as needed. This sand and gravel pit has been in service for over 20 years and just recently expired. The town designates this area as an Agricultural Preservation Planning area which greatly limits additional housing in the surrounding area. Most of the surrounding area is used for agricultural production.*
- 3. 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 existing land is currently being used as a sand and gravel pit. The proposed reclamation plan will show that most of the site will be placed back to row crops with more gradual contours. The orderly development of the area is geared toward agricultural production. Very little residential development is allowed on adjacent properties. Once the sand and gravel is extracted, the area will be returned to agricultural production.*
- 4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;**
  - *The proposed conditional use is located in an area that will be satisfactorily served by and will not impose undue burden on any improvements, facilities, utilities or services provided by the public agencies serving the subject property. We will be using an existing entrance for access to the proposed quarry. Madigan Road is capable of handling truck traffic. We will guarantee maintenance of the road with the Township as per requirements. Storm water will be contained in the proposed quarry, we have included the Storm Water Pollution Prevention Plan.*
- 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;**
  - *The town road has been very suitable for truck traffic and vehicle traffic. There is an existing wide entrance for trucks to enter the site safely. The entrance is paved with asphalt. There is a security gate installed.*
- 6. The conditional use shall conform to all applicable regulations of the district in which it is located.**
  - *Tri County Paving Inc. will follow all regulations/ordinances laid out by the State of Wisconsin, County of Dane, and Town of Vienna. The existing sand and gravel pit is located in an FP-35 Zoning District. FP-35 Zoning Districts allow for quarry operations under a conditional use permit. Tri County Paving Inc. also acknowledges the special requirements for mineral extraction found under DCCO 10.103(15).*
- 7. The conditional use is consistent with the adopted town and county comprehensive plans.**
  - *The Town of Vienna and County of Dane will find that the proposed use is consistent with agricultural use and pursuant to Sect. 91.75(5) of the Wisconsin Statutes: (a) that the sand and gravel pit is an activity that will not convert land that has been used for primarily for agricultural purposes; (b) is not an activity which will conflict with agricultural operations subject to farmland preservation agreement of the subject property; and (d) is not an activity which will conflict with agricultural operations on other properties. The Town of Vienna allows non-metallic mines in Farmland Preservation zones.*
- 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).**
  - a. The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.**
    - *All measures will be made for as much land to be row cropped as possible, the reclamation of the quarry will create more gradual elevation contours that are more conducive for row cropping.*

- b. **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.**
  - *Non-Metallic Mining is allowable under Farmland Preservation, the sand and gravel pit will be located in a rural area with very few homes adjacent to the property or even in the vicinity.*
- c. **The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.**
  - *Tri County Paving Inc. will operate and maintain the sand and gravel pit in order to allow row cropping to continue as material is extracted.*
- d. **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.**
  - *Tri County Paving Inc. is in the process of reclamation to reestablish row crop farming as soon as possible. Clean fill is being installed to lower the slope and make for better farmland.*
- e. **Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.**
  - *All measures will be made for as much land to be row cropped as possible. The reclamation of the sand and gravel pit will create more gradual contours that are conducive to row cropping and help minimize erosion.*



## STAFF RECOMMENDATION

The contents of this staff report summarizes 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 application.

If there are no concerns raised at the public hearing, staff has prepared the following finding of facts that could be used as part of the decision making process. Staff has also prepared a list of conditions that can be used to comply with ordinance requirements and mitigate potential nuisances:

## **Findings of Fact**

1. The proposal is a continuation of an existing non-metallic mineral extraction site that was previously approved under CUP #1783. The site contains a deposit of high-quality sand and gravel.
2. The property is zoned under the FP-35 Farmland Preservation Zoning District. The zoning district lists non-metallic mineral extraction as a land use permitted through the conditional use process.
3. The Department of Agriculture, Trade, and Consumer Protection has certified the FP-35 Zoning District to be included within the Farmland Preservation Program. Non-metallic mineral extraction is an acceptable land use within the certified zoning district. The land use is considered temporary in nature.
4. The Town of Vienna Comprehensive Plan shows this site within the Agricultural Preservation Planning Area. Residential density is limited to one house per 35 acres. There are 2 existing residences within 1000 feet of the CUP boundaries.
5. The Dane County Zoning Ordinance assigns conditions for all conditional use permits in order to set minimum standards for potential uses. The Zoning Ordinance also assigns specific conditions for non-metallic mineral extraction operations under Dane County Zoning Ordinance Section 10.103 to provide a standard for all operations within Dane County.
6. The Mine Safety and Health Administration (MSHA) regulates safety in mining operation. MSHA mandates specific back-up alarms to be installed on all vehicles operating in a surface of sub-surface mining site.
7. The Wisconsin Department of Natural Resources has set standards for air emissions and storm water discharge for mining operations and is monitored by the State DNR.

## **Suggested Conditions**

### Standard conditions for all conditional use permits

- 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 approved locations identified in the site plan and operations plan.
- 7) Off-street parking must be provided and be consistent with Dane County Zoning Ordinance Section 10.102(8).
- 8) If the Dane County Highway Department, Department of Transportation, 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.
- 9) 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.
- 10) 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.
- 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. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Special conditions as listed under Dane County Zoning Ordinance Section 10.103

- 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 twenty (20) years from effective date.**
- 16) **A new reclamation plan shall be prepared and submitted within six (6) months of approval of the conditional use permit. The plan shall be specific to the 40-acre boundary.** 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) High walls shall be free from falling debris, be benched at the top, and certified by a civil engineer to be stable.
- 17) 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.
- 18) 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."
- 19) All surface and subsurface operations shall be setback a minimum of 20' from property lines that do not abut a public right of way.
- 20) Excavations below the grade abutting Madigan Road shall be setback 30 feet from the property line.
- 21) **Hours of operation shall be Monday through Friday 7:00am to 6:00pm, and Saturday 7:00am to 4:00pm.** There shall be no operations of any kind Sundays and on 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.
- 22) 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.
- 23) 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.
- 24) The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed the current industry standards for noise abatement.
- 25) The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076, Wisconsin Administrative Code.
- 26) 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.
- 27) 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.
- 28) 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.

Special conditions for the site

29) Blasting or crushing of material is prohibited.

Any questions about this petition or staff report, please contact Dan Everson at (608) 267-1541 or email at [everson.daniel@countyofdane.com](mailto:everson.daniel@countyofdane.com)