
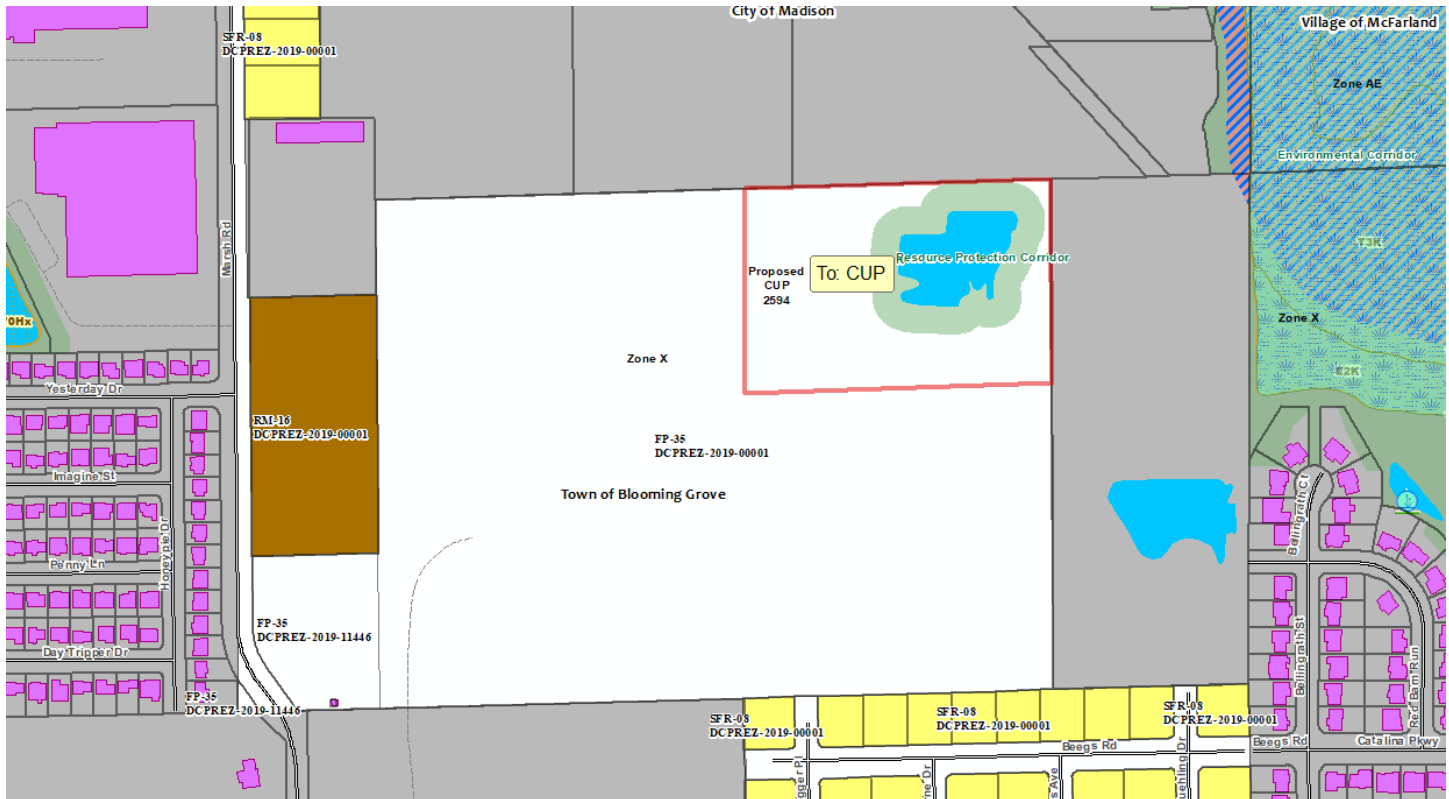


<p>Staff Report</p>  <p>Zoning and Land Regulation Committee</p>	<p>Public Hearing: May 23, 2023</p>	<p>CUP 2594</p>
	<p><u>Zoning Amendment Requested:</u></p>	<p><u>Town/Section:</u> BLOOMING GROVE Section 26</p>
	<p><u>Size:</u> 14.5 Acres</p>	<p><u>Survey Required:</u> No</p>
	<p><u>Reason for the request:</u> A conditional use permit is required to allow a temporary concrete batch plant to operate in the Wingra Stone Quarry</p>	



DESCRIPTION: Applicant Nick Petit of Trierweiler Construction & Supply, on behalf of owner Wingra Stone, requests approval of a conditional use permit to operate a temporary concrete batch plant on a 14.5-acre portion of the larger property that is an active sand and gravel quarry site. They propose a portable ready-mix concrete (RMC) plant, to produce material for the WisDOT CTH AB construction project that is currently underway. Specifics of the proposal include:

- There would be no buildings or structures other than the mechanical equipment (see untitled map on p.22 and equipment diagrams on p.34-35 of the application packet).
- There would be between 3 and 15 employees on the batch plant operations team
- Temporary time frame: now until December 31, 2024
- Hours of operation: generally daytime (6:00am – 8:00pm) on weekdays, plus “intermittent” operation during weekends “only as project demands necessitate”. (WisDOT sometimes requires nighttime work so the applicants request 24-hour operation to accommodate the WisDOT CTH AB construction schedule, when DOT mandates it.)
- Outdoor storage of aggregate and sand piles on site, with cement materials to be stored in portable enclosed bins and handled so as to minimize any dust exposure from fine particles.
- Outdoor activities to include the staging, handling, and mixing of materials, loading of delivery trucks, and washout of trucks into internally stored wastewater bins (with waste generated from washing activities to be removed offsite to a disposal facility).

OBSERVATIONS/ FACTUAL INFORMATION: The site is located with a Town of Blooming Grove town island, surrounded by properties in the City of Madison on all four sides, as well as the Town of Blooming Grove to the south. The lands to the north are large industrial-zoned sites within the City; lands to the east include open space/quarry land and the Secret Places neighborhood (both within the City); to the south is the April Hill neighborhood (in the Town) and additional quarry lands owned by Wingra Stone (in the City); to the west across Marsh Road are other industrial sites and the Lost Creek neighborhood subdivision.

The site is currently zoned FP-35 (A1 noted in the application narrative references the previous A-1(EX) zoning that was converted to FP-35 with the zoning code rewrite in 2018.)

RESOURCE PROTECTION: Resource protection corridor area is mapped on the property in the vicinity of the existing pond within the proposed CUP boundary area. However, this map data is erroneous as there are no water resources present on site. Staff confirmed the ponds are man-made, based on a lack of pre-development hydrology on site. The applicant holds a current plant-specific DNR general permit for stormwater runoff, and the site has an erosion control permit through their reclamation permit.

Native burial mounds are present on the Wingra property, to the south of the proposed CUP boundary. The proposed conditional use would be located outside of the mound area, so as to not impact the historical site and resources.

COMPREHENSIVE PLAN: The Town of Blooming Grove is under an intergovernmental boundary agreement with the City of Madison. The entire town falls under the provisions of the *Town of Blooming Grove / City of Madison Cooperative Plan* dated April 20, 2006. Under the cooperative plan, the entire town will be attached to the City of Madison by 2027. In the interim, zoning and other development approvals are subject to the approval by the City of Madison, in accordance with City development requirements. Please see April 25, 2023 letter from City of Madison Planning Planner Ben Zellers (in packet) for the city's approval and conditions of CUP 2594. (For questions about the town plan, contact Senior Planner Brian Standing at (608) 267-4115 or standing@countyofdane.com)

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 issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a conditional use permit. 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.*

The CUP application describes the proposed operations plan. The proposal is for (6:00am – 8:00pm) on weekdays, plus intermittent operations on weekends or at night as needed or mandated by WisDOT.

The application ("Written Brief" section) states that the concrete plant will not be a nuisance to neighbors due to noise, dust, or any aspect of public safety. They state that dust will be minimized by the location being away from populated areas and the use of contained storage tanks and water (using water extensively around the site during operations to control the dust from moving trucks). Also that water and sweeping on adjacent roads will control dust and debris tracked onto public roads. They have also provided a Pollution Prevention and Spill Response Plan as part of the application.

Regarding traffic, they state that the location near the CTH AB construction project site will serve to limit the amount of time that loaded concrete trucks are on the road and will thus minimize potential conflicts with the travelling public. They also provide truck routing information (see maps contained in the application). See also the DOT "Project Overview" map also included in packets.

Regarding noise, the applicant states that noise generated by the plant would be less than or equal to the current noise generated by traffic on Interstate 39 to the east. Also that the plant will only operate for approximately 15-20 total days out of the road project duration.

Regarding lighting, the applicant states that if operations occur at night, outdoor lighting will be provided by portable units to provide for employee visibility and safety. The lights would only be on during night-time operations as needed, and would be directed away from property lines, neighboring properties, and roads.

The proposed CUP site is roughly 550' away from the nearest homes to the southeast, and roughly 1,300' away from Interstate to the east. As noted above, the applicant holds current stormwater and erosion control permits.

- 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 applicant states that this standard will be met since the plant would be set up in an existing gravel pit. The application's "Written Brief" states that the plant will not affect property values of neighboring lands because it is temporary and the property will go back to its current use once construction is completed.

See comments above under standard #1. Also as noted above, the plant would only operate until December 31, 2024 and will only operate for approximately 15-20 total days during the road construction project's duration.

- 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 applicant states that this standard is addressed in the application's supporting documents. The "Written Brief" narrative indicates the plant would be located in a rural area directly near the interstate where the DOT project is occurring. The maps they provided show that this property and most of the surrounding properties are already either developed for residential and industrial use, or are open space. One map shows DNR Surface Water Data which indicates environmental constraints (wetlands and floodplain) on the lands to the east.

City of Madison staff provided a letter in support of the CUP (see letter dated April 25, 2023). The letter indicates the City staff supports the CUP, subject to the December 31, 2024 project end date specified in the application materials being made a condition of approval. The City would look to provide further comment upon any requested CUP extension.

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

The applicant states that no accommodations or access roads will be needed as the temporary plant will use existing gravel pit roads. In addition, on-site bathrooms and dumpsters will be rented for use by employees. The utilities, access roads, drainage, and other improvements needed for the proposed use are already in place.

- 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.***

The applicant states that the plant will use the existing access for the gravel pit. The existing access drive for the gravel pit is off of Marsh Road further to the south; Marsh Road is in City of Madison jurisdiction. Applicant estimates the traffic to be 2 to 5 trucks entering and exiting the site on the days when paving is occurring. They note the trucks will not weigh over the legal weight. They also provide truck route information in relation to the CTH AB project (p.40-45).

The parking requirement for temporary asphalt and concrete production operations is 1 per 1.3 employees at peak shift, plus 1 for every truck, or vehicle on site at peak. There appears to be adequate space on site for parking associated with the conditional use.

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

The proposed use conforms to the applicable regulations of the FP-35 zoning district. In the FP-35 district, the allowable conditional uses include "Asphalt plants or ready-mix concrete plants that comply with s. 91.46(5),

Wis. Stats., for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.”

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

As noted above, the proposal appears consistent with the 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 findings described in s. 10.220(1).

- a. The land is better suited for a use not allowed in the farmland preservation zoning district.**
- b. The rezoning is consistent with the current adopted version of the Dane County Comprehensive Plan.**
- c. The rezoning is substantially consistent with the current state- certified Dane County Farmland Preservation Plan.**
- d. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.**

Technically these standards apply since the land is zoned FP-35. However, the land is surrounded by the City of Madison and is planned for future development, not agricultural preservation. This land (and the rest of the “town island” in this vicinity) is not currently within the urban service area for municipal water and sewer service, which is one likely reason for the FP-35 zoning designation.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: The potential nuisances that pertain to temporary batch plant operations most often involve dust, noise, and traffic. The applicant’s CUP application addresses how these potential nuisances are handled, as noted above.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Dane County Zoning Ordinance section 10.103(20) specifies the following special requirements for Temporary batch concrete and asphalt production:

- (a) The zoning committee and town board shall set daily limits on hours for concrete and asphalt production, as necessary to minimize impact on neighboring properties. Schedules for concrete or asphalt production need not conform to hours of operation for the overall mineral extraction project.**
- (b) Operators of concrete or asphalt plants shall be responsible for any conditions placed on such operations.**
- (c) Asphalt production facilities must comply with all requirements, including spill containment, of Chapter ATCP 93, Wisconsin Administrative Code.**

As noted above, the proposed hours for the batch plant are between 6:00am and 8:00pm on weekdays, with intermittent operations on weekends or at night as needed or mandated by WisDOT. The applicants have provided a spill containment plan, which will need to comply with ATCP 93.

TOWN ACTION: On May 10th, the Town Board approved the conditional use permit with no conditions.

STAFF RECOMMENDATION: Staff believes that the applicant has provided sufficient evidence to address the CUP standards and mitigate the potential concerns. This includes the hours of operation, limited number of days and a direct tie to a specific WisDOT road project, site maps showing the proposed location at the north end of the quarry site, truck routing maps, as well as the fact that the proposal is within an existing quarry site that holds current permits for the non-metallic mineral extraction operation.

Staff recommends that the ZLR Committee considers whether the proposal meets the CUP standards. If the Committee requires additional information on which to base a decision, they could request specific information of the applicant or staff, either at the public hearing or for a future meeting.

If the Committee finds that the proposal meets the CUP standards, staff recommends approval with the conditions of approval listed below. Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com

CUP 2594 Potential Conditions of Approval:

Standard Conditions that apply to all conditional uses

1. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
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, consistent with s. 10.102(8).
8. 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.
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.

Conditions Specific to CUP 2594

13. The batch plant shall only be used for the WisDOT US 12/18 and County AB Interchange construction project.
14. The conditional use permit shall expire on December 31, 2024.
15. Water truck shall be present on-site to water down drive path in order to reduce dust for vehicular movement.
16. The operator shall comply with the requirements of DNR General Permit WI-0046507-6.

MAY 23rd ZLR COMMITTEE MEETING: The Committee postponed action due to public opposition. The public expressed concerns regarding noise, dust, contamination, hazardous materials, and traffic.

Noise: The batch plant will be positioned in the northeast corner of the property which is the furthest from residential housing. The nearest house is 1000 feet away. Interstate I -39 is approximately 1500 feet away. The operation of the plant will not be above ambient noise levels of the area.

Dust: The batch plant will not generate dust due to it being a closed system. The cement powder is piped into the plant. Dust may be generated due to trucking. To remedy this, there will be a water truck on-site to water the drive path when concrete is being hauled.

Contamination: There were concerns were raised regarding the plant producing large amounts of CO₂, VOCs, arsenic, silica, and other hazards as part of the operation. The concrete batch plant does not create cement. The batch plant mixes sand, aggregate, cement, and water to produce concrete. The ready-mix plant may be confused with cement production. In cement production, limestone rocks are burned to a powder. This process generates a tremendous amount of CO₂ and friable matter (dust) which contains hazards. The proposed ready-mix batch plant does not produce hazardous chemicals or particulates.

Hazardous Discharge: The temporary concrete batch plant has obtained a Wisconsin DNR General Permit to operate in this location. See WI DNR General WPDES Permit WI-0046507-6.

Trucking: The proposed temporary concrete plant will only be used for the 12&18/County Hwy AB reconstruction project. Concrete will be trucked from the site intermittently for the construction of curb/gutter, roundabout edging, and sidewalks. It is anticipated there will be 40 days over a 6-month period where there will be a demand for concrete. The increase to traffic will be approximately 5 vehicles during those days.

It appears that the proposal addresses the concerns.

FINDINGS OF FACT:

1. The temporary concrete batch plant is limited in duration (2024) and is limited to the WisDOT US 12/18 and County AB Interchange construction project.
2. The plant is being located inside an existing non-metallic mineral extraction quarry where aggregate and a water supply is readily accessible.
3. The operator will have a water truck on-site to water the floor of the quarry around the plant and the drive paths in accordance with best management practices.
4. The operator has obtained a Wisconsin DNR General WPDES Permit for the operation of a temporary plant in this location to manage groundwater discharge and surface water discharge.

STAFF UPDATE: The proposal appears to be reasonable for the location with minimal impacts to the public. Staff is recommending that the Committee approve CUP 2594 based on the findings of fact and determining that the proposal meets the 8 standards of obtaining a CUP with the proposed 16 conditions as noted above.