

**PLANNING COMMISSION
MINUTES**

December 16, 2019
6:30 p.m., DSB Auditorium

Commissioners present: Brian Pasko, Mary Phillips, Gerald Murphy, Thomas Peterson, Tammy Stevens, Michael Wilson, Louise Lopes.

Commissioners absent: Christine Drazan, Steven Schroedl

Staff present: Jennifer Hughes, Martha Fritzie, Darcy Renhard.

Commission Chair Pasko called the meeting to order at 6:30 pm.

General public testimony not related to agenda items: none.

The public hearing tonight is to review file numbers Z0406-19-CP, Z0407-19-MAR, and Z0408-19-ZAP. This is an application for aggregate mining by Cadman Materials, Inc. which consists of all three land use files: Z0406-19--a Post-Acknowledgement Plan Amendment (PAPA) to designate approximately 99 acres of extraction area as a Goal 5 significant mineral and aggregate resource site in Chapter 3, Table 3-02 of the Comprehensive Plan;; Z0407-19-ZAP—a zoning map amendment to apply a Mineral & Aggregate Overlay (MAO) to the property; and Z0407-19-MAO—approval of a Mineral & Aggregate Overlay District Site Plan for the proposed mining operations if the PAPA and MAO zone change are approved. The applicant has also asked for a modification to the original conditions of approval to Z0348-93-CP, Z0349-93-Z, and Z1826-97-MAR that would allow processing of aggregate materials on Saturdays at the neighboring mining site. Martha Fritzie added Exhibit 6 to the record, which are comments from the applicant regarding proposed changes to the conditions of approval in the staff report.

The property is SW of the City of Canby in the Barlow area. The Cadman sites are referred to as Phases 1-4 in the application. This proposal is for Phase 4, which is an expansion of Phase 3. The area is proposed to be mined out in a series of 'cells', and most of the property will become a large lake as part of the reclamation plan. The reclamation plan is overseen by the Department of Geology and Mineral Industries (DOGAMI).

The relevant policies and criteria are Statewide Planning Goals 2 (Land Use), 3 (Agriculture), 5 (Natural Resources), 6 (Air, Water and Land Resources Quality), and 12 (Transportation). In addition, OAR 660-023-0180 and the Clackamas County Zoning and Development Ordinance (ZDO) Sections 1202, 708, 1006, and 1010 apply.

Statewide Planning Goal 5 natural resources include riparian corridors, wildlife habitats, scenic rivers, groundwater resources, and mineral & aggregate resources. The criteria and decision making process is specifically outlined in the Oregon Administrative Rules:

Step 1--the application must be complete and must include: the quality, quantity, and location of the resource; a conceptual site reclamation plan; traffic impact assessment; proposals to minimize impacts; and a site plan, operational characteristics, and proposed post-mining uses. The OARs also require that a final decision be issued within 180 days of complete application submittal. Staff has determined that this application is complete. That would make the deadline for a decision March 30, 2020.

Step 2—is to determine if the site is 'significant'. The site can be deemed as significant if it meets the quantity standard (more than 2,000,000 tons of aggregate material), the quality standard (ODOT specifications for base rock), meets location requirements (site characteristics, thickness of aggregate

layer, and soils characteristics), and if the site contains more than 35% Class I or Class II agricultural soils with an average thickness of 25 feet or more. Staff has found that this site is significant as there is approximately 6,900,000 tons of available aggregate on the site, and it also meets the quality and location standards. The site contains approximately 89% Class IV soils.

Step 3A—determine the impact area. Staff has determined that the applicant’s proposed impact area of 1,500 feet is sufficient. There is no factual information to indicate that it should be larger.

Step 3B—identify conflicting uses. Existing and approved uses within the impact area must be identified. Martha provided an aerial map showing surrounding uses (Figure 2 & Appendix H, Application). The surrounding uses include existing mining operations to the east, north, and northeast. There are 20 dwellings , most of which are in a rural residential (FF-10) area along S. Hwy 99E, some are on farmland to the east and south of the site. There is a rural industrial/limited use area to the southwest, and various agricultural activities nearby.

Step 4—conflict analysis. It must be determined whether or not identified conflicts can be minimized, which means to reduce it to a level that is no longer significant or to ensure that it conforms to a local, State, or Federal standard. If the conflict can be minimized, then mining can be allowed. If one or more conflicts cannot be minimized, then there must be an ESEE (Environmental, Social, Economic, Energy) analysis. Potential conflicts could be: noise from the equipment, rock crushers, etc.; dust from mining activities, truck traffic, rock crushers; and other discharges such as diesel, stormwater; potential groundwater impacts to domestic wells, aquifers, and water quality; impacts to other Goal 5 resources, local roads, airports, and agricultural operations. The applicant hired a consultant to do a noise study, which in this case is the extraction equipment to be used on the site. With proposed mitigations, the noise can be minimized to sensitive uses. The proposal is to dewater the site to 10 feet below current groundwater levels and then wet-mine the remaining area, which will minimize the potential dust impacts. Diesel can be mitigated through the conditions of approval. The applicant has also hired a hydrogeologist to analyze the groundwater impacts. The findings were that if the site were to be dewatered the entire depth of the mine, then it might have impacts to surrounding wells, which is why the site will not be dewatered past 10 feet below current groundwater levels. The applicant has a permit through the State for stormwater mitigation. The only other Goal 5 resources in the area are mining sites which would not conflict with this mining site. The applicant is not proposing any new entrances to the site—they would use entrances that already exist on Barlow Road. The site is a mile away from the Aurora airport, so there are no impacts to airport operations (bird attractants) and no impacts to agricultural operations. Staff has found that all potential impacts can be mitigated. Because all conflicts are minimized, the applicant is not required to do an ESEE analysis.

Step 6—determine whether or not to allow mining. If all conflicts in Step 4 are minimized (or the results of the ESEE analysis, which is Step 5, warrants mining), then mining can be allowed. If mining is NOT allowed, then no further analysis is needed. It should be noted that the site can still be deemed a significant resource site, even if mining is not approved. Staff recommends that mining be allowed on this site, subject to conditions and mitigation requirements in the staff report.

Step 7 is to determine the post-mining use of the site. A reclamation plan is required, which is overseen by DOGAMI. The reclamation plan must be consistent with the Comp Plan and the ZDO. The proposed reclamation plan for this site is a lake/pond and naturally vegetated areas. The applicant will obtain necessary permits and approvals from DOGAMI.

Step 8—identify future conflicting uses within the impact area, which would allow new uses according to the underlying zoning district (dwelling, agricultural uses, etc.) The staff report proposed that the impact area include the DEQ noise impact boundary. The applicant is requesting that the MAO only include the subject property and has proposed to provide an ESEE analysis.

The next step is to amend the Comprehensive Plan carry out the decision and add the site to the Goal 5 inventory of significant sites. The zoning map must also be amended to apply the MAO overlay. Any

conditions that implement measures must be clear and objective. Staff finds that all relevant criteria has been met to amend the Comp Plan and add the site to the Goal 5 inventory. All relevant criteria has been met under ZDO Section 1202 to apply the MAO district.

Finally, there must be a MAO site plan review. Sections 708 (Mineral & Aggregate Overlay), 1006 (Water Supply, Sanitary Sewer, Surface Water & Utilities Concurrency) and 1010 (Signs) of the ZDO all apply. Staff finds that the proposed uses are allowed under ZDO 708; that development standards are met under the conditions; that the reclamation plan and process meets the criteria; that sewage, surface water, and groundwater usage criteria are all met; and there are no new signs proposed on the site.

The applicant has requested an amendment to the original applications (Z0348-93-CP/Z0349-93-Z & Z1826-97-MAR) to allow processing on Saturdays. Staff finds that all off-site noise conflicts have been mitigated. The DEQ noise standard for Saturday operations is the same as for Monday – Friday. There are no specific circumstances that warrant limiting the processing hours to more than what is allowed in ZDO Section 708. Therefore, staff finds that it is reasonable to amend the original conditions which currently restrict processing to Monday – Friday to allow for processing on Saturday as well. Notice was sent to all surrounding property owners, and there has been no comment received to date. Staff will amend the recommendation to note that there will be stockpiling of product on the site and will also remove the prior condition that requires a berm on the boundary between Phase 3 and Phase 4 of the operation.

Staff is recommending approval of all 3 applications, including the amendments to add of the Saturday processing hours. The only question is the ESEE analysis which the applicant has agreed to provide.

Commissioner Phillips asked if the MAO boundary was addressed in Condition 2. Martha answered that it is. Commissioner Stevens asked how the LUBA decision impacts this. Martha said that it doesn't really change anything in our Comp Plan, it means that we don't need to analyze all of the criteria in our Comp Plan as long as you comply with all requirements in State law. Commissioner Phillips asked what the timing is on a normal DOGAMI review. Staff is not able to provide an answer on that. Commissioner Murphy asked if this is going to increase the amount of loads per day compared to what they are currently doing. Martha explained that it will not, as it is conditioned the same way as Phase 3 was. This limits the number of trips per day and the amount of aggregate that can be extracted per year. It is intended to be a replacement for Phase 3 once Phase 3 is mined out.

Chair Pasko opened the hearing for public comment. There are no government agencies present to provide testimony.

Chair Pasko invited the applicant to provide testimony.

Steven Pfeifer – Mr. Pfeifer is the attorney for the applicant. He is supportive of staff's recommendations and the proposed conditions.

Andy Hyland (Cadman Materials)- The applicant is proposing to expand operations of their existing mining site (Phase 3 onto the adjacent 104-acre parcel (Phase 4). The scale of operations will remain consistent with the current operations, and the access point and truck route will remain the same. The northwest area of the site will be filled in for reclamation. The applicant has performed extensive technical analysis. They also held a public meeting on November 19th and invited the surrounding neighbors. Approximately 13 neighbors attended this meeting. They discussed the impacts and proposed uses with these community members.

Dorian Kuper (Kuper Consulting)- Ms. Kuper is an Engineering Geologist who analyzed two different aspects of the PAPA. There is confirmed presence of sand and gravel deposits, 30-60 feet thick across the site. The site meets the criteria for location. ODOT has confirmed that the samples from a variety of borings on the property meet their quality standards. Goal 5 requires that there be at least 2 million tons of aggregate on a site. This site has approximately 8.1 million tons, 6.9 million of which are extractable. The potential offsite impacts within 1500 feet of operations are minimal for most of the surrounding area, with the exception of a handful of residential and farm uses. Use of noise barriers will mitigate noise impacts and wet mining will take care of dust potential. They will also be watering the roads as necessary during dry weather. The berms will be seeded (planted) and the conveyors will be covered. Traffic impacts will be as they currently are for existing operations. An inadvertent discovery plan is in place should any archaeological resources be discovered, which would require involvement from SHPO (State Historical Preservation Office). Storm water will infiltrate and/or be conveyed over to storm water ponds for eventual outfall to the Molalla River, which is permitted by DEQ. Groundwater will be monitored using onsite monitoring wells, and dewatering will only happen to 20 feet below ground surface. Commissioner Lopes asked if Phase 3 and Phase 4 would be happening at the same time. Ms. Kuper replied that it will not. Phase 3 will be completed before mining begins on Phase 4.

Kerrie Standlee (ABD Engineering & Design) – Mr. Standlee is a registered acoustical engineer who conducted a noise study for Phase 4 of the Cadman mining operations. His job is to determine what steps should be taken to maintain current sound levels at proposed mining operations. Each sub cell of excavation will move down to a depth of 35-60 feet before operations are moved to the next sub-cell. The loudest hourly noise levels that could ever radiate from the mining operations in the expansion area were predicted at residences in the vicinity of the site. The residences chosen were considered to be representative of the residences within the greatest impact of the noise area. Overburden is approximately 10 feet deep on the site, so the top of the resource is approximately 10 feet below the existing grade. Noise considerations were done using the highest levels possible. Berms will be built to a height appropriate to mitigate noise conditions at different areas of the mining site.

Douglas Gless (H.G. Schlicker & Associates) – Mr. Gless is a licensed hydrogeologist and certified engineering geologist. He did a technical study and drilled 18 borings. There are also 5 monitoring wells. He performed an analysis of the pump tests. The proposed area is generally flat, other than some elevation changes at the south. The Molalla River is approximately 0.7 miles to the east, and the Pudding River is also nearby. Exploratory borings found that sand and gravel with silty matrix goes to a depth of about 70 feet in most areas of the operating site. Dewatering will be limited to approximately 20 feet below the ground surface in Phase 4, and the wells will provide for continual monitoring of groundwater levels. The mining plan will be modified to mitigate potential effects if adverse trends are observed. Five monitoring wells are currently installed, and four additional wells are proposed. Strategies to mitigate significant impacts to nearby wells could include establishment of a recharge area so that the recharge activity is directly between mining and nearby domestic and irrigation wells, altering the mining cell order and/or the size of the mining cells, and reducing the dewatering depths. Commissioner Pasko asked how far away the nearest well is. Mr. Gless answered that the Yoder well is actually on the subject property, so there would need to be considerations when working in that area.

Mr. Pfeifer explained that an IDP requires that there be protocols in place, including training of the lead operators, to identify possible artifacts if they are discovered. DOGAMI is required to coordinate with tribal nations and other agencies, who have 35 days to respond regarding potential discovery of historic artifacts. Commissioner Phillips wants to know why the applicant is asking for a mining boundary instead of the MAO as staff is recommending. Mr. Pfeifer responded that the rules state that if mining is allowed, the last step

that a county has to make is whether to allow, prohibit, or limit new conflicting uses to the Goal 5 mining activity.

Commissioner Pasko moved to public testimony. No CPOs, hamlets, or villages to testify. One person neutral to testify.

Mark Friedwasser (manager for Aurora Weyerhauser nursery) – Mr. Friedwasser’s concern is that in order to grow high quality seedlings, the nursery needs a lot of water. They have already seen an impact from other mining sites in the area. During summer months the nursery doesn’t use a whole lot of water, but in the fall water is critical to protect the seedlings from frost. During periods of long frost, they may be pumping 12-20 hours per day. Their wells don’t accommodate this now. During the Phase 3 mining, one of their wells did cavitate and they had to stop using it during the summer. The Phase 4 expansion will be even closer to the nursery operations, so there could be further impact on their wells. He would like to request that all recommendations for monitoring wells and related countermeasures be implemented. They would also like to have real-time data shared with the neighbors. He would like to know what the triggers are that would cause changes to the mining and would like to be notified when the water levels drop below 10 feet. Mitigation measures should be proactive rather than reactive. Cadman should also be responsible for rebuilding any historic wells back to their original status if there is damage from the mining operations.

Mr. Pfeifer is not going to rebut Mr. Friedwasser’s concerns, as they are reasonable. His recommendations are the same as what the applicant is hoping for, which is to put the mitigation on the front end. They are confident that they can work with Weyerhauser to find solutions.

Commissioner Pasko referred back to the MAO boundary and asked what criteria should be applied in determining whether to draw the boundary at the property line or within the impact zone. Martha said that as an alternative, if the ESEE analysis shows that there is no need to limit uses, then we could keep it at the property line. There is already very limited opportunity for additional uses on the surrounding properties anyway.

Commissioner Phillips asked if the data from the monitoring wells can be made available to neighbors. The applicant does give this information to the County and DOGAMI on a quarterly basis.

Martha has no rebuttal, but does point out a pretty extensive list of conditions already in the staff recommendation (conditions 31-37).

The public hearing is closed, moved to deliberations.

The Planning Commission decided to make recommendations on 6 decision making points:

1. Completeness of the application and significance of the mining area: there is agreement that this is pretty clearly demonstrated. Commissioner Phillips moved to determine that the application is complete and that the resource is significant. Commissioner Stevens seconds. *Ayes=7.*
2. Can conflicts be minimized? Commissioner Peterson said that the applicant is willing to address any conflicts that have been brought forward. Commissioner Stevens agrees. Commissioner Phillips thinks that the conditions would address the issue of wells. The biggest concern on water and wells is new condition of approval #37. The additional language puts too much burden on surrounding property owners. She would like to see some way of determining what a ‘significant impact’ is. Commissioner Peterson said that perhaps there is a way to provide better assurance or collaboration with affected parties, and to be more proactive and avoid any potential conflict. Commissioner

Pasko would like to see the southern monitoring well established early on. The second need is to ensure that there is some sort of disclosure of the well status to neighbors. Thirdly, he would like some sort of qualitative standard that implements remedies and would like to remove the language in condition #37. Commissioner Lopes would like to see firm data on where and how high berms will be. Martha explained that the heights of noise barriers have already been determined, they just haven't decided what they will be constructed with yet. Commissioner Phillips moved that we state that all conflicts can be minimized in the conditions of approval, with removal of condition #37 in Exhibit 6, and that there be some guidance worked out to what 'significant impact' means, some sort of collaboration established with potentially affected well owners nearby, and that south monitoring wells are put in place 1 year prior to beginning mining of Phase 4. Commissioner Stevens seconds. *Ayes=6 (Phillips, Stevens, Pasko, Peterson, Wilson, Murphy); Nays=1 (Lopes).*

3. There is no need because conflicts have been determined as able to be mitigated.
4. Is the reclamation plan acceptable? Commissioner Phillips said that this is determined by DOGAMI, so the condition is satisfied. She moves that a reclamation plan as approved by DOGAMI is acceptable. Commissioner Stevens seconds. *Ayes=7.*
5. There was discussion around where the boundary should be. Martha said that it is very unlikely that any of the affected properties would build a new residence in the near future. Commissioner Pasko feels that the cleanest way to do this is to put the overlay at the property boundary. If you increase the overlay onto neighboring properties, you run the risk of decreasing those property values. Commissioner Phillips moved that we accept the applicant's proposed boundary to be the mining property line, and that it is subject to the applicable ESEE analysis. Commissioner Stevens second. *Ayes=7.*
6. Commissioner Phillips moved that we recommend approval of the PAPA application Z0406-19-CP, Z0408-19-ZAP, and Z0407-19-MAO as well as amendments to the original applications Z0348-93-CP, Z0349-93-Z and Z1826-97-MAR to permit mining operations on Saturdays, subject to the conditions of approval in Exhibit 6 with applicant's changes and changes noted in previous discussion tonight. Commissioner Lopes seconds. *Ayes=7. Motion carries.*

Jennifer Hughes provided a schedule review: January 13th will be a continuation of the study session that Glen started last week. We will have a study session on housing strategies on January 27th.

There being no further business, the meeting was adjourned at 9:56 p.m.