

## County Planning Board of Adjustment Minutes

April 15, 2024

The Codington County Board of Adjustment met for their monthly meeting on April 15, 2024, at the Codington County Extension Complex. Members of the Board of Adjustment present were Brenda Hanten, Rodney Klatt, Mark O'Neill, Calvin Mack, Mel Ries, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Absent: Myron Johnson and Alex Kahnke. Codington County Commissioner Randy Schweer resided on the Board.

Others present: Cody Saathoff, Linda Lindgren, Tim Lindgren, Connie Fannin, Adam Gracia, Jill S., A.J. Howey, Rich Schuelke, Wayne Borgheiinck, Roy Brownlee, Doug Stengel, and Becky Goens.

Chair Hanten brought the meeting to order at 8:03 pm.

Motion by Ries, second by Klatt, to approve the March 12, 2024 meeting minutes. Motion passed unanimously.

Motion by O'Neill, second by Ries, to approve the agenda. Motion passed unanimously.

Motion by O'Neill, second by Ries, to recess the Planning Commission and convene only as the Board of Adjustment. Motion passed unanimously.

Motion by Klatt, second by O'Neill, to approve a Conditional Use Permit request by Matthew Bergren to construct a home less than ½ mile from an existing CAFO. Property is locate din All of government Lot 4 and SW1/4 of NW1/4 less S1170' less W645' of SW1/4 of NW1/4 less S1170' of Section 1-T119N-R52W in the Sisseton-Wahpeton Indian Reservation. Muller reviewed Staff Report (attached). Approval is subject to the applicant signing a Letter of Assurance acknowledging the location of the established CAFO. Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by O'Neill, second by Ries, to approve the Conditional Use Permit, as read, for Crowned Ridge Wind, LLC and Crowned Ridge Energy Storage, LLC to construct a substation with accessory uses including battery storage facility. Property is owned by Crowned Ridge Wind LLC and Dewey Zemlicka and located in N1/2, Section 11-T118N-R51W, less 1 acre in NE corner of NW1/4. Muller reviewed Staff Report (attached). If approved, applicant will be required to sign a Letter of Assurance agreeing to conditions:

1. Apply existing haul road agreements used for the wind energy system to this facility unless determined unnecessary by the road authority.
2. Comply with all conditions and/or restrictions as applied by the Public Utilities Commission (PUC) to keep this Permit valid.
3. The Permit for substation and accessory uses applies and is limited to the following legal

descriptions:

- a. Zemlicka Addition in the North Half of Section 11, Township 118 North, Range 51 West of the 5<sup>th</sup> Prime Meridian, Codington County, South Dakota; &
- b. Zemlicka Second Addition in the North Half of Section 11, Township 118 North, Range 51 West of the 5<sup>th</sup> Prime Meridian, Codington County, South Dakota.

Adam Gracia, Senior Project Manager of Crowned Ridge Wind Energy Systems, explained their application.

Those speaking in opposition were: AJ Howey, Tim Lindgren, Linda Lindgren, and Wayne Borgheinck. No one else was present to speak. Public hearing closed. Muller addressed the opponent's questions and concerns with the applicant. Mack questioned the applicant, staff, and Board members why the applicant chose this site. Applicant noted increased distance from the substation would lead to electrical loss. Muller noted that there are no unique setback requirements in any district for substations. Hanten noted the battery facility could be considered accessory to the already permitted Wind Energy System. Muller read the Findings of Fact. There were no questions or objections. Motion passed 5-1.

Motion by Ries, second by O'Neill, to approve the variance request by Brownlee Construction to mine gravel less than 1,000' from a residence. Property is located in SW1/4 of Section 3-T119N-R52W. Muller reviewed the variance and Conditional Use request per Staff Report (attached). No one was present to speak on either request. Public hearing closed. Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Ries, second by O'Neill, to approve the Conditional Use required by Brownlee Construction to mine gravel, with rock crusher, on property located in SW1/4, Section 3-T119N-R52W. Muller read Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion to adjourn made by Ries, second by O'Neill. Motion passed unanimously. Meeting adjourned at 9:49 pm.

Respectfully Submitted,

Becky Goens

**APRIL 2024  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

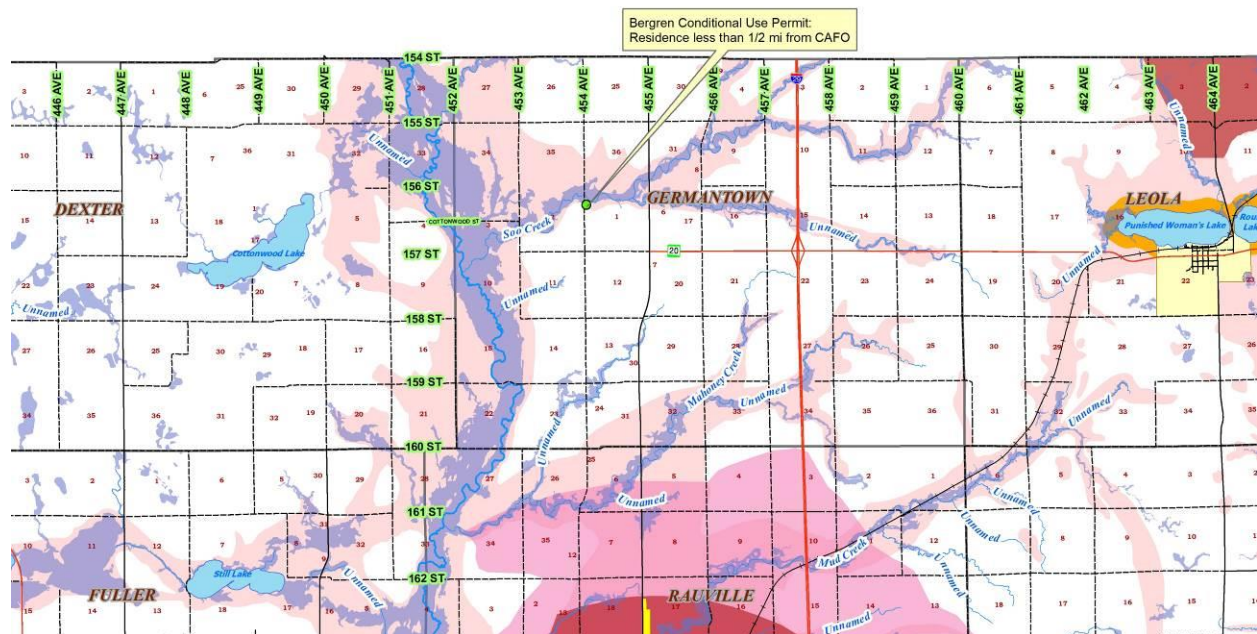
**ITEM #1 CONDITIONAL USE**

**Owners/Applicants: Matt Bergeren**

**Property Description:** All of Government Lot 4 and SW1/4 of NW1/4 less S1170' & less W645' in Section 1-T119N-R52W in the Sisseton-Wahpeton Indian Reservation and W645' of SW1/4 of NW1/4 less S1170' of Section 1-T119N-R52W in the Sisseton-Wahpeton Indian Reservation, Codington County, South Dakota. (Germantown Township)

**Action Items –**

**Conditional Use Permit – Residence less than ½ mile from existing CAFO  
(3.04.02.41)**



**Zoning Designation:** Agricultural

**Request:** The applicant seeks to construct new residence less than half mile from existing feedlot.

**History/Issue(s):**

**Specifics of Request:**

1. The Bergren's recently purchased this property with the intent to build a house in the southeast corner.
2. The home will be on a lot with 47 acres and meet minimum lot area.
3. Scott and Donna Pederson feed approximately 50 head of cattle across the road.
4. The CAFO is within ½ mile of nearly the entire parcel.

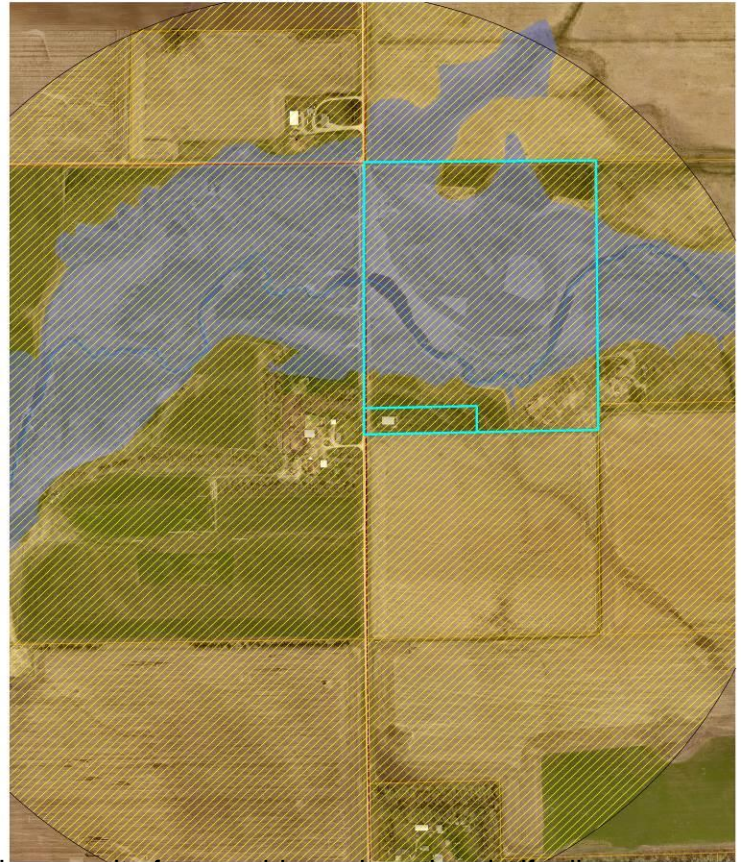


**Bergren Conditional Use Permit:  
House less than 1/2 mile from CAFO**



Ordinance and Land Use Plan in reference to the Conditional Use:

1. Houses proposed less than one-half mile from an established concentrated animal feeding operation require a conditional use permit to establish that since the CAFO was in existence before the house:
  - a. The CAFO will not be considered nonconforming.
  - b. If the neighboring CAFO applies for an expansion, the new home will not be a residence which requires a setback be measured from it. (Does not meet the definition of Established Residence.)
2. The applicant agrees to sign and record the required acknowledgement in the zoning ordinance in reference to the established CAFO (operated by the applicant's cousin.)
3. Access for the proposed residence is proposed to be off of 454<sup>th</sup> Ave



Staff Summary:

The Board has a history of granting Conditional Use permits for a residence less than half mile from a CAFO as long as the applicant agrees to sign the required acknowledgement.

Staff recommendation

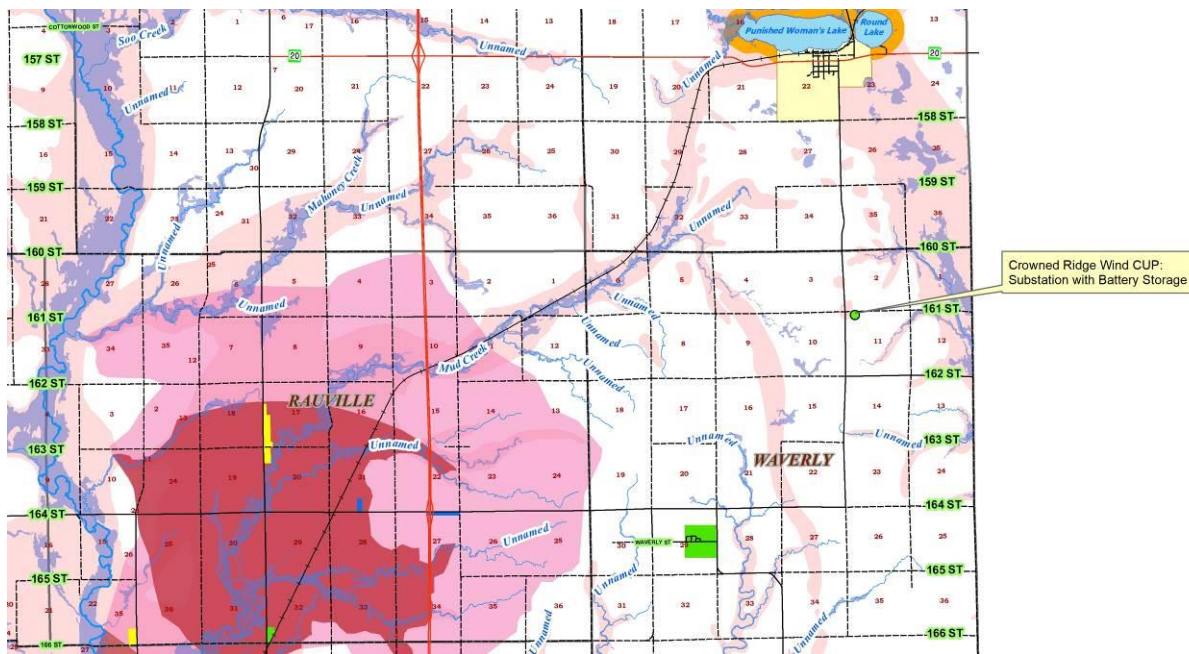
**(Conditional Use Permit) –Residence less than one-half mile from an existing CAFO** - The Board may postpone the request, deny the request or approve the request. If approved the applicant would be required to sign and record the “Acknowledgment of Existing Concentrated Animal Feeding Operation” prior to issuance of a building permit for the house.

**ITEM #2 CONDITIONAL USE**

**Applicant: Crowned Ridge LLC**

**Owner: Dewey Zemlicka**

**Property Description:** N1/2, Section 11-T118N-R51 West of the 5th P.M., Codington County, South Dakota, less 1 acre in NE corner of NW1/4 (Waverly Township).



**Action Item – Conditional Use Permit – Public utility and public service structure  
(including Substations)... (3.04.02.11)**

**Zoning Designation:** Agricultural District

**Request:** Crowned Ridge Wind seeks conditional use permit for the substation associated with the Wind Farm to facilitate construction of (electrical) battery storage on-site.

**History/Issue(s):**

Specifics of Property/Request:

1. On July 16, 2018, Crowned Ridge, LLC was issued a conditional use permit to operate a Wind Energy System, including “accessory uses” in various townships in the eastern portion of the county.
2. The substation on the above legal description was constructed as accessory to the permitted wind energy system.
3. The applicant now requests to add a “battery storage” facility at the same property as the existing substation.
4. The existing substation will also have site plan modifications which meet required setbacks.

5. The storage facility will consist of:
  - a. Lithium ion or similar batteries inside of “cabinet” structures (resembling storage pods) not more than 25’ in height.
  - b. Collector line running from the substation to the battery facility.
  - c. Storm water retention.
  - d. Sound barrier (wall) up to 20’ in height.
6. 464<sup>th</sup> will continue to be used as access for the substation. Additional access is requested from 464<sup>th</sup> in the south end of the proposed battery facility, in addition to the intent to access 161<sup>st</sup> Street at the east end of the battery facility. Internal driveways consisting of gravel will encircle the cabinets.
7. Access will be gated.
8. 7’ chain link fence is used for security fencing at the present facility. A combination of security and sound fence will be used at the battery site.
9. Signs will be placed at the entrance of the battery site but outside the right-of-way for identification purposes.
10. Downward facing lighting will be used.
11. The substation and battery facility are uninhabited so sanitary sewer services and garbage collection is not expected to be necessary on site following construction.
12. The existing substation is setback 268’ from the 464<sup>th</sup> Ave right-of-way. The nearest components of the batter facility are expected to be 170’ from both rights-of-way (464<sup>th</sup> and 161<sup>st</sup>, however fencing and sound wall may be 100’ from the right-of-way.
13. The nearest residence (no required setback) is 2,630 feet from the battery facility.
14. Construction is expected to occur until the fall of 2026.
15. The site is monitored remotely via telecommunications signal (SCADA).
16. Decommissioning of the site would occur in conjunction with Decommissioning of the previously approved Wind Energy System.

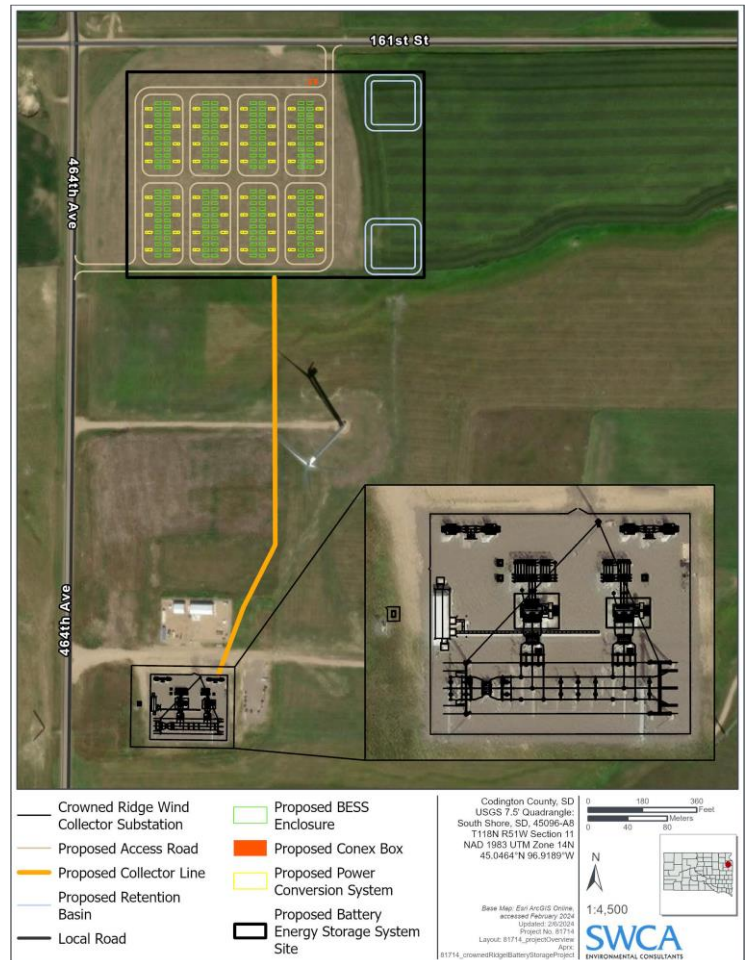


Figure 3b. Example of sound barrier (IAC Acoustics 2023).



Figure 2c. Example self-contained energy storage system cabinet.

Ordinance and Comprehensive Land Use Plan regarding this request:

- *Conditional Use Permit*

1. The substation was issued a building permit on June 26, 2019 as an accessory use to the Wind Energy System since the use of substations was discussed in the wind energy system application for conditional use permit.
2. The Zoning Officer determined that since the battery facility was not contained in the application it needs to be added as an accessory use. The battery facility could be accessory to the Wind Energy System or a substation. Since the battery facility is localized to one property, the applicant chose to obtain an individual conditional use permit for a substation (effectively divorcing it from the Wind Energy System Permit) to allow the battery facility as accessory.
3. Regarding utilities: the comprehensive land use plan encourages clustering of non-ag uses to limit the amount of intrusion/removal of land from agricultural production.
4. The intent of the Ag District, and land use plan is to reserve land in the Ag District for agricultural uses.
5. No specific requirements are listed for public utilities such as this structure. Ordinance requirements regarding all conditional uses were addressed above.
6. Battery facilities do create sound. No sound standards are listed in the zoning ordinance for public utilities. Even if an amendment were made to the wind energy system conditional use permit, the sound standards listed in the ordinance apply only to wind turbines and would not apply to the battery facility.
7. The sound fence is proposed to meet the anticipated requirements of the Public Utilities Commission, who will combine this facility with the permit for the Wind Energy System.

Staff Summary and Recommendation:

**Staff Recommendation:** Conditional Use Permit – **Public Utility and Public Service Structure:** The Board may postpone the request, deny the request, approve the request, or determine no such permit is necessary. **(Highlighted items were added after the staff report was placed on the county's website/mailed to Board of Adjustment.)** If approved, the staff recommends, a letter of assurance be signed and filed with the application at the Zoning Office agreeing to the following conditions:

- The applicant apply existing haul road agreements used for the wind energy system to this facility unless determine unnecessary by the road authority.
- Applicant is required to comply with all conditions and/or restrictions as applied by the SDPUC with applicable permits
- The permit for substation and accessory uses applies and is limited to the following legally described property:
  - Zemlicka Addition in the North Half of Section 11, Township 118 North, Range 51 West of the 5<sup>th</sup> Prime Meridian, Codington County, South Dakota; &
  - Zemlicka Second Addition in the North Half of Section 11, Township 118 North, Range 51 West of the 5<sup>th</sup> Prime Meridian, Codington County, South Dakota.
  - Any expansion of the use of the substation or its accessory uses outside of those two legally described properties will require additional applicable use permits.

**ITEM #3 CONDITIONAL USE**

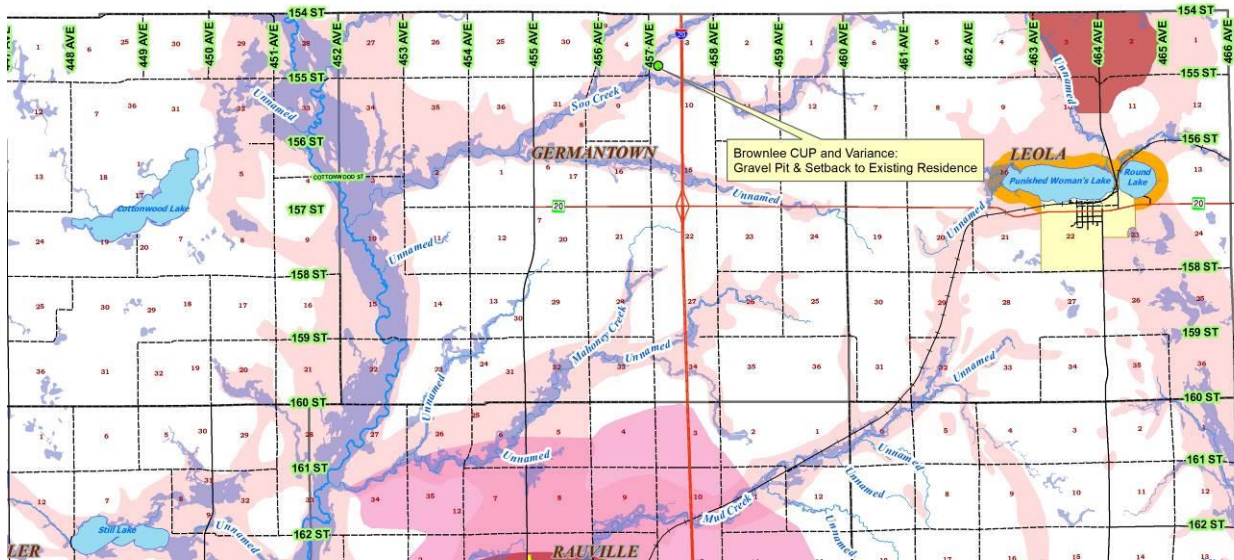
**Applicant/Owner: Brownlee Construction by Roy Brownlee**

**Property Description:** Southwest Quarter of Section 3, Township 119 North, Range 52 West of the 5<sup>th</sup> P.M., Codington County, South Dakota (Germantown Township).

**Action Items – Conditional Use Permit – Gravel Mining (with rock crusher).  
Variance – Gravel Mining less than 1,000 ft from residence**

**Zoning Designation:** Agricultural

**Request:** The Brownlee's seek to mine gravel and periodically crush rock (as needed) on the above described property in areas less than 1,000' from a residences property lines.



**History/Issue(s):**

Specifics of Request:

1. The applicant owns the above described property.
2. Applicant agrees to mine more than 65' from the right of way.
3. One residence has a property line less than 1,000' from the property proposed to be mined. As of the date of this report.
  - a. A permissive use agreement with the affected property owner was filed with the application.
4. Most of the Quarter Section is proposed to be mined except for a building site on the west edge of the property, a tree line on the south side of the property, and any portion of the tributary of Soo Creek located within its banks. (see below)
5. The property accesses a gravel township road (457<sup>th</sup> Avenue). Truck traffic will primarily travel south approximately 2 to 2.5 miles to continue SD HWY 20. If determined necessary by Germantown Township, traffic will travel west on 155<sup>th</sup> Street to avoid the culverts at the intersection of 155<sup>th</sup> Street and 457<sup>th</sup> Ave.
  - a. Germantown Township submitted a "Statement of No Opposition" regarding this request.



- Staff received a call from Nancy Johnson seeking to clarify expectations for maintenance of haul routes where multiple pits (they received a permit for the SE1/4 of Section 9 in 2019) and concern about traveling over the above referenced culverts while fully loaded.

Ordinance and Comprehensive Land Use Plan regarding this request:

- The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
- No new structures, monitoring wells, or shelterbelts are proposed.
- In the past Germantown Township has requested to have haul road agreements required as a condition of approval of conditional use permits.
- Reclamation for this project is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use/grassland. (No indication was provided of duration of mining.) The topsoil will at that time be seeded with crops or grass.
- The applicant has a bond with the state for reclamation of the site. Staff has become aware that counties no longer have the authority to require bonds for reclamation of gravel pits (state law).
- Land Use plan states that: "Drainage patterns... require a case by case consideration of stormwater/pollution control measures." AND "Appropriate extraction setbacks will be imposed".

a. Soo Creek/Tributary runs through this property. The applicant is required to follow rules of the USACE (Corps of Engineers) to ensure the water course is not disturbed and SDDANR to ensure that Willow Creek is not polluted.

- With recent permits the Board has specified an amount of acres which may remain unclaimed until completion of the mining. (The Board has consistently required not more than 20 acres mined at a time.)
- The applicant proposes to operate a (portable) rock crusher, presumably for up to 30 days at a time. All crushing would be required to occur greater than 1,000' from the legal description of the adjoining residence (red/black hatched area).
- This application is not to allow a concrete batch plant, asphalt mixing, or storage of rubble, waste products or other construction/demolition materials.
- No mining activities, except possible piling of topsoil, will occur on a legal description less than 1,000 feet from off-site residences.
- Storage of over 1,100 gallons of petroleum products (fuel) at the same time on the property requires secondary containment. This is to include overnight storage of vehicles which may hold a cumulative total of over 1,100 gallons. If over 1,100 gallons of fuel will be on-site overnight staff recommends it be done over a concrete pad or other impermeable surface with the ability to contain any petroleum spill or leak.



**Brownlee Conditional Use Permit and Variance:  
Gravel Mining and Setback to Residence**



- a. It is not anticipated that the applicant will use this site for overnight storage of vehicles or fuel (or other petroleum products) in quantities greater than 1,100 gallons.

Staff Summary and Recommendation:

Variance – **Setback between gravel pits and residences (property boundary)** The Board may postpone the request, deny the request or approve the request. Since the permissive use agreement was filed with the request, staff recommends approval of this variance.

Conditional Use Permit – **Gravel Pits...** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Effective Date:
  - a. Signing of the Letter of Assurance; and
  - b. Submittal of Haul Road Agreement(s) with applicable road authorities.
  
- 2) General Requirements:
  - a. There will be no storage of junk, concrete batch plant, asphalt mixing, or storage of rubble, waste products or other construction/demolition materials on site.
  - b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
  - c. Any expansion of mining operations, not including piling of topsoil (not for sale), shall be confined to the area allowed upon the above legally described property (as constrained by minimum setbacks.)
  - d. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, US Army Corps of Engineers, etc.
  - e. The site is to be reclaimed according to standards established by the South Dakota Department of Agriculture and Natural Resources.
  - f. Not more than 20 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
  - g. No mining shall occur within 100' of the waterway (unnamed tributary of Soo Creek) on this property unless documentation from the corps of engineers indicates such excavation is authorized.
  - h. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.
  
- 3) Haul Road Agreements:
  - a. Grantor is required to complete an agreement for the maintenance of 457<sup>th</sup> Avenue from the entrance to the gravel pit to the intersection of SD HWY 20 and 457<sup>th</sup> Avenue, hereafter referred to as "Haul Route," in addition to any other routes agreed upon by the applicable road authority and Grantor. Upon completion of the agreement, a copy of the "Haul Road Agreement" shall be provided to the zoning officer and kept on file with the application and supporting documents for this conditional use permit.
  - b. In the event a haul road agreement with Germantown Township is not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "3" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the

above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "3".

- c. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of the Haul Route, and
- d. All road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
- e. Germantown Township shall be responsible for all ordinary snow removal on its portion of the Haul Route on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
- f. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. hauling of excavated materials). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
- g. If it is determined that other streets/roads are being used as primary haul routes prior to this same agreement being filed/amended to include such routes, all mining activities will be ordered to Cease and Desist until such agreements are filed.
- h. If necessary actions are not take within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.

4) Violation and Penalties:

- a. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.