

January 30, 2017

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE  
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Permitting and Environmental Review file no. **LUT4150001**  
Proposed ordinance no.: **2016-0560**

**CADMAN**  
Rezone Application

Location: Northeast of the intersection of SR-0169 and SE Green Valley Road

Applicant: Cadman, Inc.  
*represented by* **Sam Turner**  
7554 185th Avenue NE  
Redmond, WA 98052  
Email: [sturner@cadman.com](mailto:sturner@cadman.com)

King County: Department of Permitting and Environmental Review  
*represented by* **Fereshteh Dehkordi**  
35030 SE Douglas Street Suite 210  
Snoqualmie, WA 98065  
Telephone: (206) 477-0375  
Email: [fereshteh.dehkordi@kingcounty.gov](mailto:fereshteh.dehkordi@kingcounty.gov)

**SUMMARY OF RECOMMENDATIONS:**

Department's Recommendation: Approve, subject to conditions  
Examiner's Recommendation: Approve, subject to conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened: January 19, 2017  
Hearing Record Left Open: January 19, 2017  
Hearing Record Closed: January 24, 2017

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available from the Hearing Examiner's Office.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS AND CONCLUSIONS:**

1. Weyerhaeuser Company is the record owner of Parcel 242106-9001 (the "Parcel"), located northeast of the intersection of SR-169 and SE Green Valley Road in unincorporated King County to the southeast of the City of Black Diamond. Weyerhaeuser leases the parcel to Cadman Inc., which operates a sand and gravel mine known as the East Sector on 143 acres of the Parcel pursuant to a 1996 reclassification of that portion of the Parcel to the Mineral zone (file L93RZ009) and King County Grading Permit L93G0121. Exhibit 2 section C and Exhibit 15.
2. The 20 acres which are the subject of this reclassification application (the "Reclassification Property") were merged with Parcel 242106-9001 in 2012. Exhibit 2, section B. With the merger of the northeast 20 acres, Parcel 242106-9001 is approximately 163 acres in size.
3. The Department of Permitting and Environmental Review ("DPER") offered conflicting testimony at the hearing in this matter regarding the King County Comprehensive Plan designation of the Reclassification Property. King County iMap indicates that the comprehensive plan designations of the overall Parcel are Mineral and Rural and that the zoning designations are Mineral (M) and Rural Area-5 (RA-5). The rural comprehensive plan and zoning designations apply to Reclassification Property.
4. In 2015, Cadman applied for a reclassification to change the zoning designation of the Reclassification Property from RA-5 to M to allow the expansion of the East Sector mine into this area of the Parcel.
5. With the following corrections, sections A-K of the Staff Report, Exhibit 2, are correct and incorporated herein.
  - A. Section I references King County Comprehensive Plan Policy R-680. The correct reference should be R-681.
  - B. Section J indicates references KCC 20.24.150. The correct reference is KCC 20.22.150.
  - C. Section J indicates that the existing operation is subject to periodic review every five years and that periodic review allows for a comprehensive evaluation of the mining operation by the department to assure that mining extraction is being done in a manner consistent with the applicable codes and establish conditions. While a five-year periodic review is required by KCC 21A.22.050 (not referenced in the Staff Report), the record before the Examiner demonstrates that the five-year reviews have not occurred. The most recent and, apparently the only, reported periodic review took place in October 2004, more than 12.5 years ago. Exhibit 13, Attachment A. That periodic review indicates that Cadman has not satisfied a

condition of the 1996 reclassification and the 2005 revision to Grading Permit L93G0121 requiring Cadman to enter into a haul road agreement with King County for the portion of Green River Gorge Road between the access point and SR 169. Exhibit 2, section I; Exhibit 13, Attachment A, Conclusion 38; Exhibit 15.

6. The Applicant presented evidence that, although it has not entered into a formal haul road agreement with the County, it has maintained the pertinent section of SE Green Valley Road. Exhibit 16.
7. KCC 20.22.150 specifies the findings the examiner must make when issuing a recommendation on a zone reclassification. The recommendation must include findings on whether the application meets both of the following:
  - A. The proposed rezone is consistent with the King County Comprehensive Plan; and
  - B. The property is potentially zoned for the reclassification being requested;
    1. An adopted subarea plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application; or
    2. The requested reclassification is based on changed conditions.
8. The Staff Report provides some analysis of consistency with the Comprehensive Plan. Exhibit 2, section I. However, despite the fact that it cites in full the findings the examiner must make, it neither identifies which standard applies nor provides any analysis whatsoever of the factors enumerated in KCC 20.22.150.B. Consequently, the examiner had to elicit this information from DPER and the Applicant at the hearing in this matter. The examiner expects more thorough analysis in the future. The fact that the reclassification application was not controversial does not excuse incomplete or poor analysis.

#### Consistency with the Comprehensive Plan

9. In response to questions from the examiner, DPER testified that the merger of the northeast 20 acres into Parcel 242106-9001 made it legally “part of the mineral zone.” DPER is incorrect. A lot merger or combination does not change the Comprehensive Plan or zoning classification of property.

The record before the examiner demonstrates that the requested reclassification is consistent with 2012 King County Comprehensive Plan Policy R-681 which provides:

King County may designate additional sites on the Comprehensive Plan Land Use Map as Mining only following a site-specific rezone to Mineral zoning. Upon approval of a rezone to Mineral zoning, the Comprehensive Plan Land Use Map shall be amended to designate the site as mining during the next comprehensive plan amendment cycle. King County should approve applications for site-specific rezones to Mineral zoning and applications for permits that would authorize mineral extraction and

processing only following site-specific environmental study, early and continuous public notice and comment opportunities, when:

- A. The proposed site contains rock, sand, gravel, coal, oil, gas or other mineral resources;
- B. The proposed site is large enough to confine or mitigate all operational impacts;
- C. The proposal will allow operation with limited conflicts with adjacent land uses when mitigating measures are applied;
- D. The proposal has been evaluated under the State Environmental Policy Act so that the county may approve, condition or deny applications consistent with the county's substantive SEPA authority, and in order to mitigate significant adverse environmental impacts;
- E. Roads or rail facilities serving or proposed to serve the site can safely and adequately handle transport of products and are in close proximity to the site.

#### Potential Zoning

- 10. The Property is not potentially zoned Mineral (M). The requested reclassification does not satisfy KCC 20.22.150.B.1.

#### Community Plan

- 11. There is no evidence in the record before the examiner that a community plan specified that the Property should be subsequently considered through an individual reclassification application. The requested reclassification does not satisfy KCC 20.22.150.B.2.

#### Changed Conditions

- 12. In applying the changed circumstances test, courts have looked at a variety of factors, including: changed public opinion, changes in land use patterns in the area of the rezone, and changes on the property itself. *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846-847 (1995).
- 13. As explained in Finding/Conclusion 1 above, the King County Council rezoned 143 acres of Parcel 242106-9001 to Mineral in 1996. The following conditions have changed since the 1996 reclassification:
  - A. The 20 acres which are the subject of this reclassification application were merged with Parcel 242106-9001 in 2012. Exhibit 2, section B.
  - B. Subsurface exploration of the Property by the Applicant's consultant, Golder Associates, in 2016 confirmed the presence of sand and gravel similar in nature to the material being mined on the remainder of the Parcel with a depth of

approximately 72 feet. It is estimated that the total resource is 1.5-3 million tons. Exhibit 2, sections E.2 and I; Exhibit 12.

- C. The aggregate in the East Sector will be exhausted in four years. Reclassification of the Property will extend the life of the East Sector by three to four years. Testimony of Sam Turner.
- D. The Applicant held a community meeting on December 14, 2015, in the Black Diamond Bakery Banquet Room. Six people attended, including the applicant's representative. Others attending raised no concerns. DPER did not receive any comments from citizens or effected agencies.

#### RECOMMENDATION:

The examiner recommends that the application Cadman be **APPROVED**, subject to the following conditions:

#### PRE-EFFECTIVE CONDITIONS

1. Cadman shall enter into a road maintenance agreement with KCDOT parties to assure repair of any damage to and maintenance of the public road from site's entrance to the start of the on-ramp into SR-169.

#### POST-EFFECTIVE CONDITIONS

2. The mining and processing activities shall conform to the provisions of KCC 21A.22 with regard to mining. All material processing shall be done on the West Sector site as is done by the existing operation. A 50-foot vegetated setback shall be provide along the perimeter of the rezone area.
3. Prior to any work, a King County Grading Permit shall be obtained. The grading permit application shall comply with applicable provisions of the King County Surface Water Design Manual, the King County Road Design and Construction Standards, the King County Critical Areas Standards (KCC 21A.24), King County Mineral Extraction Development Standards (KCC 21A.22) and the King County Clearing and Grading Standards (KCC 16.82) at the time of the grading permit submittal.
4. The site contains a Category III Wetland with fewer than 20 habitat points, and a Type O Aquatic Area. The wetland shall be protected from future development by an 80-foot buffer of undisturbed or restored native vegetation. The wetland and its required buffer shall be shown on the future grading plans.
5. A Type N aquatic area flows onto the site from the north and into the wetland. This aquatic area shall be protected from any disturbance and future development by a 25-foot buffer of undisturbed restored vegetation on each side of the stream. The aquatic area and its required buffer shall be shown on the future grading plans.
6. A wildlife habitat report shall be required for review with the future grading permit application. The Washington State Department of Fish and Wildlife shall be consulted for listing of designated endangered, threatened and sensitive species.

7. A report providing information about groundwater for the project site shall be prepared and provided with the grading permit application. The report must reference the March 11, 2016, Golder Associates geophysical study and any other available groundwater information for estimating the seasonal high groundwater table throughout the site and immediate surroundings. The report must also discuss uncertainty in the groundwater model and describe in detail how the project will insure that a minimum of three feet of vertical separation will be maintained between the mine floor and the seasonal high water table. The report must identify appropriate mitigation if excavation encounters groundwater.
8. The future grading permit is governed by findings and conclusion of the EIS published October 1996. Additional environmental review may be required for the future grading of the proposed reclassification site. A copy of this decision and the FEIS must be submitted with the future grading permit.
9. The following conditions were required by the Mitigated Determination of Nonsignificance (MDNS) for the proposed rezone. However, the geotechnical report by Golder Associates dated December 6, 2016, evaluated site conditions and determined that all steep slope areas are outside wetland buffers and that the wetland buffers and aquatic area buffer were not inadvertently disturbed for test pits and access trails. Staff reviewed and confirmed these findings. Therefore a grading permit for critical areas buffer restoration is not required. The following MDNS conditions are satisfied:
  - A. The area along the southeast edge of the wetland may contain a slope of 40 percent or greater. A grading permit for restoration of the critical areas buffer must be submitted and approved prior to approval of this rezone application. The future grading permit for excavation must identify the limits of critical areas, including any steep slope and its associated buffer, and shall be field flagged and verified by DPER critical Areas staff.
  - B. Where the wetland and/or aquatic area buffers intercept the steep slope, the wetland buffer shall extend to the top of slope. The extension of these buffers may limit future mining activities.

DATED January 30, 2017.



Alison Moss  
Hearing Examiner pro tem

## NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD), and providing copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's recommendation. Please consult KCC 20.22.230 for exact requirements.

Prior to the close of business (4:30 p.m.) on **February 23, 2017**, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto:Clerk.Council@kingcounty.gov) and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if the Clerk does not actually receive the fee and the appeal statement within the applicable time period.

Unless the appeal requirements of KCC 20.22.230 are met, the Clerk of the Council will place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner's recommended action.

If the appeal requirements of KCC 20.22.230 are met, the Examiner will notify parties and interested persons and will provide information about "next steps."

MINUTES OF THE JANUARY 19, 2017, HEARING ON THE ROAD VACATION PETITION OF CADMAN, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. LUT4150001.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, David Warner, James Johnson, and Sam Turner.

The following exhibits were offered and entered into the hearing record:

- |                |   |
|----------------|---|
| Exhibit no. 1  | Department of Permitting and Environmental Review file no. LUT4150001   |
| Exhibit no. 2  | Preliminary department report to the Hearing Examiner, dated January 19, 2017                                     |
| Exhibit no. 3  | Rezone application, received by DPER on April 7, 2015   |
| Exhibit no. 4  | Revised State Environmental Policy Act (SEPA) checklist, received by DPER on January 28, 2016                     |
| Exhibit no. 5  | Mitigated Declaration of non-significance, dated November 10, 2016  |
| Exhibit no. 6  | Final Environmental Impact Statement prepared by Huckell/Weinman Associates, dated October 1996                   |
| Exhibit no. 7  | Site plan, dated July 11, 2016, received by DPER on August 22, 2016   |
| Exhibit no. 8  | Grading permit site plan for the Cadman's Black Diamond east sector, prepared November 2008                       |
| Exhibit no. 9  | Site plan and vicinity map for Cadman mine and expansion area, dated June 8, 2016, received by DPER June 23, 2016 |
| Exhibit no. 10 | Technical Memorandum prepared by Golder Associates, dated December 4, 2014  |
| Exhibit no. 11 | Critical areas and geologic hazards assessment prepared by Golder Associates, dated January 27, 2016              |
| Exhibit no. 12 | Response to King County comments on rezone application, prepared by Golder Associates, dated March 11, 2016       |
| Exhibit no. 13 | Response to King County comments rezone application, prepared by Golder Associates, dated July 11, 2016           |
| Exhibit no. 14 | Mineral resources property information for the mineral resources map  |

The following exhibits were entered into the hearing record on January 23, 2017:

- |                |   |
|----------------|---|
| Exhibit no. 15 | King County Grading Permit Approval Conditions Document, Grading Permit L93G0121, Revision Tracking Number L04RE036, April 12, 2005 |
| Exhibit no. 16 | Purchase Order 9902-96, dated September 29, 2015 and Invoice 16441, stamped January 21, 2016  |

AM/vsm