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March 28, 2017

**Supervisor Mary Kolar, Committee Chair**  
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**Supervisor Patrick Miles**  
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RE: Zoning & Land Regulation Committee Meeting Agenda, 3/28/2017  
Petition: CUP 2373; Applicant: Eastman Hunting Club, Inc.; Location: Town of Albion

Dear Zoning and Land Regulation Committee Chair and Members:

Please accept this letter on behalf of my client, Mallwood Estates Improvement Association ("Mallwood"), with respect to the above-referenced conditional use permit application for a mineral extraction operation, concrete batch plant and asphalt plant in the Town of Albion.

First, with respect to the hearing date for this matter, I appreciate the email response I received from Dane County Zoning Administrator, Roger Lane, and I plan to attend the public hearing as it is currently scheduled. However, I would like to renew my request as per my March 24, 2017 correspondence, that the public hearing be postponed for this CUP application. Or, at a minimum, that a second public hearing be held at later date if the Town of Albion approves the application. We strongly believe that the public interest in this matter will not be adequately represented if the public hearing is solely held this evening.

The transcript and audio clip I provided with my prior correspondence was offered to give context to this *request*. Whether the audio clip is concrete "evidence" that the public hearing was cancelled was not the point. What was intended by Ms. Andros at the Town of

Albion meeting and what was understood by the public are separate matters.<sup>1</sup> Considering the high level of public concern regarding this application, I hope that this Committee will take the time, and additional measures if needed, to ensure that the public has adequate opportunity to express their concerns before this Committee.

With respect to the CUP application, Mallwood strongly opposes granting the permit for numerous reasons. As described in the attached correspondence to the Town of Albion Board and Planning Commission, Hoffman Construction (the agent for Eastman Hunting Club) has not demonstrated that the proposed use would meet the criteria required by the Dane County Zoning Ordinance. Rather, the proposed mineral extraction operation, concrete batch plant and asphalt plant would significantly interfere with the uses, values, and enjoyment of nearby property and would be detrimental to the public health safety, comfort and welfare – particularly, considering the close proximity of the site to wetlands, Lake Koshkonong and numerous residential developments.

In addition, the documents provided by Hoffman Construction to the Town of Albion and to the County, in many respects, do not meet the application standards set forth in the Dane County Zoning Ordinance. Exhibit A to my attached correspondence describes those deficiencies.

Finally, if any permit were to be granted, we submit that additional review and conditions are necessary. Proposed conditions submitted to the Town of Albion are also provided with the attachment.

Respectfully submitted,

WHEELER, VAN SICKLE & ANDERSON, S.C.



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<sup>1</sup> I was not able to attend the last Town of Albion meeting. However, my colleague Attorney Justin Chasco and numerous members of the public did attend – and my request is based on *their* understanding.

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cc: Roger Lane, Dane County Zoning Administrator  
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March 20, 2017

**TO: Town of Albion, Town Board  
Town of Albion, Planning Commission**

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Re: Hoffman Construction  
Conditional Use Permit Application, #DCPCUP-2017-02373

Dear Members of the Town of Albion Town Board and Planning Commission:

We represent the Mallwood Estates Improvement Association (“Mallwood”) and submit this letter to provide additional comments relating to the Conditional Use Permit application of Hoffman Construction (agent for Eastman Hunting Club, Inc.). Considering comments and questions at the March 7, 2017 meeting and other comments from members of the Town of Albion community, we believe the comments and concerns set forth in this letter reflect concerns shared by the majority of the community and Town of Albion residents.

At the Planning Commission meeting on March 7, 2017, multiple areas of concern were noted and discussed, multiple questions were posed regarding Hoffman’s planned operation and different views regarding the impact of the proposed operation were debated. Hoffman’s agent and attorney offered various responses and attempted to quell the palpable opposition in the room.

In some respects, their responses proved helpful and provided information on aspects of the operation that were not apparent from the application materials. In other respects, they failed to directly respond to valid questions and concerns and/or gave cause for the participants to have even greater concern. However those responses were received, it was apparent that the Town of Albion and the public simply did not have (and still do not have) enough information regarding the proposed mining operation to grant the permit application.

First, even the seemingly helpful statements made by Hoffman’s representatives were largely not reflected in Hoffman’s application materials or even tied to the application in many respects. Statements at the Town meeting that nearby residents “won’t be able to hear the operation”, that “berms will fully screen the operation from view” or that Hoffman will be “a good neighbor” are not reflected in the application submitted to the Town Board and are not statements Hoffman would be legally held to. To that end, we appreciate that the Town scheduled a second meeting and invited the public to submit proposed conditions. However, as discussed below, we do not believe conditions can cure the Hoffman’s otherwise defective application or provide adequate reason for the Town to grant the permit application.

Second, many of the statements made by Hoffman’s representatives reinforced numerous legitimate concerns of the public. We are in receipt of the letter submitted to the Town by Attorney Matthew Fleming on March 16, 2017 and concur in his well-stated explanations of concerns regarding this proposed operation, in addition to other concerns discussed at the March 7<sup>th</sup> meeting. Many of these concerns, including traffic and safety concerns, the possibility of environmental damage, eliminating a designated open space,



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and the creation of a condition that will decrease property values and impede the development and use of the surrounding property for nearly a decade (provided a second application is not later submitted to extend the use even longer) cannot be adequately addressed by conditions. The Dane County Zoning Ordinance clearly states that a CUP cannot be granted unless each of 6 enumerated conditions are present:

§ 10.255(2)(h) *Standards*. No application for a conditional use shall be granted by the town board or zoning committee unless such body shall find that all of the following conditions are present:

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;
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;
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;
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
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; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

It is Hoffman's burden to demonstrate that the forgoing requirements have been established. This burden has clearly not been met.

Furthermore, the time period provided for the public to offer additional comments and proposed conditions was simply not long enough. Many of the people whose homes will be affected by the proposed project are still struggling to understand the scope and nature of the proposal.

The Town appears to be rushed to reach a decision on the applications, ostensibly so as not to delay 1-90/39 construction. However, the roadwork timeline is simply not relevant. The Town of Albion is considering a CUP application for a non-metallic mine within the township – not whether or not 1-90/39 should be expanded or whether Hoffman is the appropriate contractor for that job. As was clearly stated at the meeting, the road work will go on and Hoffman will be the contractor, regardless of whether the Town approves or denies the permit application. While Hoffman may be eager to start operations

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on the site, the concerns of the Public, and hopefully the Town on behalf of its constituents, should not be obsequious to the business desires of the applicant.

Finally, the statements made by Hoffman's representatives, illuminate the glaring holes in the CUP application Hoffman submitted to the Town. As discussed at the March 7 meeting, the application submitted to the Town was missing several key documents and it failed to provide information on numerous issues required by the Dane County Zoning Ordinance. The attached exhibit A, details the ordinance requirements for non-metallic mining conditional use permits and deficiencies (shown in red) in Hoffman's application.

For these reasons we respectfully submit that the Town of Albion cannot approve Hoffman's conditional use application within the confines of the law, and the Town should instead deny the application to protect the public health, safety, comfort and welfare, to protect the uses values and enjoyment of other nearby property, and to protect normal and orderly development of surrounding property.

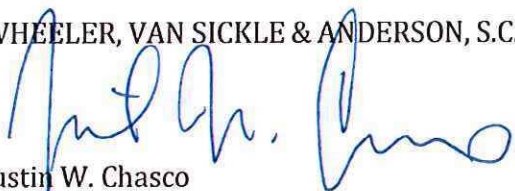
However, if the Town were to grant a CUP to Hoffman, the following activities should not be included in any respect:

1. No storage of asphalt or asphalt batch plant on site.
2. No concrete batch plant on site.
3. No hauling on Hillside Road.
4. No washing operation on site.

In addition, and *at a minimum*, the pre-conditions described in Mr. Fleming's correspondence should be complied with in advance of permit issuance and the conditions set forth on the attached Exhibit B should be imposed on any such permit. Please note that we fundamentally agree with the inclusion of listed conditions set forth in Mr. Fleming's correspondence. For reference, Exhibit B includes conditions that were copied verbatim from Mr. Fleming's correspondence, other substantially similar conditions and additional conditions are also included. Substantial conditions would certainly be better than relying entirely on Hoffman's goodwill to lessen the impact on the community of the proposed project. Ultimately, however, this project will have negative impacts on the Town in any form. We urge the Town to deny the application.

Respectfully submitted,

WHEELER, VAN SICKLE & ANDERSON, S.C.

  
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Enclosures

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## Exhibit A Deficiencies in Hoffman's CUP Application

DCO § 10.123(3)(d) provides that “non-metallic mineral extraction operations” may be a conditional use in the A-1 Exclusive Agriculture District, but it requires that “[t]he application shall conform to the requirements of s. 10.191(2).

- As described below, Hoffman's application does not conform with § 10.191(2).

DCO §10.123(3)(e) states that asphalt plants or ready-mix concrete plants may be a conditional use “for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.”

- Based on this requirement, if a permit is granted, the duration of the permit should be strictly limited to the duration of the highway project.

DCO § 10.191 (2) provides: The application for the conditional use permit necessary to conduct a mineral extraction operation shall include the following information:

- (a) A legal description of the land for which the permit is requested.  
...
  - (b) Tax parcel number(s) of the lot(s) or parcel(s) where the conditional use is to be located. If the area proposed for the conditional use is a part of a larger parcel, applicant must provide the tax parcel number of the larger parcel.
  - (c) A written statement containing the following information:
    1. General description of the operation.
    2. Existing use of the land.
    3. Existing natural features including approximate depth to groundwater.
    4. The types and quantities of materials that would be extracted.
    5. Proposed dates to begin extraction, end extraction and complete reclamation.
    6. Proposed hours and days of operation.
    7. Geologic composition and depth to the mineral deposit.
    8. Identify all major proposed haul routes to the nearest Class A highway or truck route. Indicate traffic flow patterns.
- Traffic flow patterns have not been indicated. Nor has information been provided describing the traffic to be produced by this operation.

9. Proposed phasing plan, if any (recommended for larger sites).
  10. Types, quantities, and frequency of use of equipment to extract, process, and haul.
- “Type” of equipment minimally described. Quantities and frequency of use not in application.
11. Whether and how frequently blasting, drilling, mining, crushing, screening, washing, refueling, fuel storage, asphalt batching or concrete mixing would be performed on site.
  12. Whether excavation will occur below the water table and, if so, how ground water quality will be protected.
  13. Any proposed temporary or permanent structures (e.g., scales, offices).
  14. Any special measures that will be used for spill prevention and control, dust control, transportation, or environmental protection.
  15. Proposed use after reclamation as consistent with Chapter 74.
- (d) In addition to the submittal requirements enumerated in sec. 10.255(2)(e), applications for a mineral extraction conditional use permit shall include a Site/Operations Plan prepared by a qualified professional, drawn to a measurable scale large enough to show detail and at least 11" by 17" in size, showing the following information:
- The Site/Operations Plan does not indicate who prepared it or their profession. There is no way to determine if it was prepared by a qualified professional. Note that this is a requirement “in addition to” the requirements of § 10.255(2)(e).
1. Boundaries of the permit area and of the extraction site.
  2. Zoning district boundaries in the immediate area. Label all zoning districts on the subject property and on all neighboring properties.
- No zoning districts are shown on the Site/Operation Plan. A “Vicinity Map” was provided, apparently printed from Dane County GIS, but this does not show the vicinity of specific operations and other requirements of the Site/Operations Plan in context with the zoning districts as required by the ordinance.
3. Existing contour lines (not more than 10 foot intervals).
- Contour lines appear to be shown on the Site/Operations Plan, but not 10-foot intervals as required. Such intervals are only shown on a separate document labeled “Topography”.
4. Existing natural features including lakes, perennial/navigable streams, intermittent streams, floodplains, wetlands, drainage patterns, and archaeological features.
- Known wetlands are in the vicinity of the site and possibly located on a portion of the site. The Site/Operations Plan does not show wetlands, the site’s proximity to Lake Koshkonong, or that the wetlands in the vicinity appear to drain directly into Lake



Koshkonong (this should also all be identified and described by an appropriate environmental expert). The “Vicinity Map” appears to show wetlands, but not in context with the other key features of the Site/Operations Plan and there is no indication that wetlands, drainage patterns or other features were actually identified on site. Instead, it appears that the “Vicinity Map” was simply printed from Dane County GIS.

5. Existing roads, driveways, and utilities. Show width of all driveway entrances onto public and private roadways.
  6. All residences within 1,000 feet of the property.
- Not identified. The background aerial image used for the Site/Operations Plan does appear to include some residences (the image is difficult to see), but the image does not identify anything as a residence and does not show a distance of 1,000 feet from the site. Our best guess from other sources is that 8 or 9 residences are located within 1,000 feet of the site. Notably a large number of residences and Lake Koshkonong are located within 3,000 feet of the site.
7. Specific location of proposed extraction area, staging area, equipment storage.
  8. Proposed location and surfacing of driveways.
- Surfacing detail is not provided.
9. Proposed phasing plan, if any (recommended for larger sites).
  10. Proposed fencing of property, if any, and gating of driveways.
  11. Proposed location of stockpiles.
- Only the sites of “washed aggregate stockpiles” and “pit run stockpiles” are shown. The narrative indicates that the gravel will be stockpiled prior to washing, and that topsoil and subsoils will be stockpiled for reclamation. These stockpiles are not shown.
12. Proposed location and type of screening berms and landscaping.
- A green line on the Site/Operations Plan is marked as “screening berm”. We presume this will be an earthen berm, but that is not specified and no details are provided, including berm height and landscaping.
13. Proposed temporary and permanent structures, including scales and offices.
  14. Proposed signage, if any.
- The application narrative states that there will be “signage”, but the location and other specifics are not described nor are they shown on the Site/Operations Plan.



(e) An erosion control plan, drawn to scale by a professional engineer, meeting all applicable state and county requirements.

- To our knowledge this was not provided to the Town as part of Hoffman's CUP application and neither the Town nor the public have had adequate time to comment on the document recently provided by Hoffman.

(f) A reclamation plan prepared in accordance with the Wisconsin Administrative Code and the Dane County Non-metallic Mining Reclamation Ordinance.

- To our knowledge this was not provided to the Town as part of Hoffman's CUP application and neither the Town nor the public have had adequate time to comment on the document recently provided by Hoffman.

DCO § 10.255 (2)(e) provides: An application for a conditional use shall be filed with the zoning administrator on a form prescribed by the zoning administrator. The application shall be accompanied by such plans and other information as required by this section or as may be prescribed by the zoning administrator or the zoning committee, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in par. (h) hereinafter.

1. *Site plan.* All applications for a conditional use permit must be accompanied by a site plan, drawn to a scale large enough to show detail, that includes, at a minimum the following information:

- a. All buildings and all outdoor use and/or storage areas, existing and proposed, including provisions for water and sewer. Existing and proposed uses must be clearly labeled.
- We understand Hoffman will apply for a high capacity well. The location of any such well is not shown.
- b. All dimensions and required setbacks, side yards and rear yards.
- If there are any setback requirements, none are shown.
- c. Location and width of all driveway entrances onto public and private roadways, and of all interior roads or driveways. Traffic flow patterns must be indicated.
- Interior roads/driveways do not appear to be adequately shown. For example, the Site/Operations Plan has an arrow point to "Access to NB I-39 Construction", but there is no interior road shown. As stated above, traffic flow patterns are not shown anywhere.
- d. Parking lot layout in compliance with Section 10.18 of the Dane County Zoning Ordinance.

- e. Proposed loading/unloading area.
  - f. Zoning district boundaries in the immediate area. All districts on the CUP property and on all neighboring properties must be clearly labeled.
  - Zoning district boundaries are not shown. Districts on the CUP property and neighboring properties are not shown on a Site Plan. See comments above relating to requirements for the Site/Operations Plan.
  - g. All natural features such as lakes, ponds, streams (including intermittent watercourses), flood zone and wetland areas, and slopes over 12% grade.
  - Not shown. See comments above relating to requirements for the Site/Operations Plan.
  - h. The Zoning Administrator may require, at his or her discretion, site plans to show additional detail, including, but not limited to contours, drainage, screening, fences, landscaping, lighting, signs, refuse dumpsters, and possible future expansion areas.
2. *Operational plan.* All applications for a conditional use permit must be accompanied by an operational plan that describes, at a detail acceptable to the Zoning Administrator, the following characteristics of the operation:
- Not provided with the application. Unknown if any such plan exists.
    - a. Hours of operation.
    - b. Number of employees.
  - Not described in the application.
    - c. Anticipated noise, odors, dust, soot, runoff or pollution and measures taken to mitigate impacts to neighboring properties.
    - Not described in the application and this is an area of primary concern for the community. Noise, odors, dust, runoff and pollution and likely to occur with this operation and must be adequately described and addressed.
    - d. Descriptions of any materials stored outside and any activities, processing or other operations taking place outside an enclosed building.
    - e. Compliance with county stormwater and erosion control standards under Chapter 11 or Chapter 14, Dane County Code.
  - Not provided with the application. See comments above relating to application requirements.

- f. Sanitary facilities, including adequate private onsite wastewater treatment systems and any manure storage or management plans approved by the Madison & Dane County Public Health Agency and/or the Dane County Land and Water Resources Department.
- Not described in the application.
- g. Facilities for managing and removal of trash, solid waste and recyclable materials.
- Not described in the application.
- h. Anticipated daily traffic, types and weights of vehicles, and any provisions, intersection or road improvements or other measures proposed to accommodate increased traffic.
- Not described in the application and this is an area of primary concern for the community and relating to protection of town roads.
- i. A listing of hazardous, toxic or explosive materials stored on site, and any spill containment, safety or pollution prevention measures taken.
- Not described in the application.
- j. Outdoor lighting and measures taken to mitigate light-pollution impacts to neighboring properties.
- The application proposes a 24-hour operation, but makes no mention of lighting.
- k. Signage.
- Not described in the application.



**EXHIBIT B**  
**PROPOSED CONDITIONS**

Conditional Use Permit # DCPCUP-2017-02373 – Eastman Hunting Club, Inc. – 278 Lake Dr. Rd., Edgerton, WI 53534 - Agent: Hoffinan Construction Co.

### PERMIT CONDITIONS

1. No mineral extraction or related activities shall occur unless they are directly connected to the I-39/90 road project (State Project 1007-11-75, South Dane County Line to East Church Rd., NB) and no materials extracted from the site may be used for any purpose except for the aforementioned I-39/90 road project.
2. There shall be no truck hauling on Hillside Road from Hoffman's operation.
3. There shall be no storage of asphalt on site or asphalt batch plant on the site.
4. There shall be no concrete batch plant on the site.
5. There shall be no washing operation on the site.
6. The permit shall expire upon the earlier of 1) the completion of the I-39/90 road project (State Project 1007-11-75, South Dane County Line to East Church Rd., NB) or 2) December 31, 2020. All site reclamation and town road repair shall be complete prior to the expiration of the permit.
7. Hoffinan Construction Co. (“Hoffinan”) shall submit an erosion control plan covering the entire conditional use permit area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations. Compliance with the erosion control plan and permit are a condition of this permit.
8. Before conducting any activities on the project site, Hoffinan shall apply for and receive all other required local, state and federal permits.
9. Hoffinan shall develop and operate the site according to the site/operations and phasing plan dated [enter date]. Said site/operations and phasing plan must be approved by the Town before operations are commenced on the project site.
10. Reclamation shall meet requirements of Chapter 74 of the Dane County Code of Ordinances and an approved reclamation plan. Prior to commencement of any work on the site, Hoffinan shall provide a detailed Reclamation Plan showing all of the work to be done to reclaim the project site including the depth to which Hoffinan will be excavating the site, a drawing showing the condition and appearance of the site after reclamation is completed and other pertinent details as deemed appropriate by the Town of Albion and Dane County. Said Reclamation Plan shall include a bond or similar security provided by Hoffinan in an adequate amount as approved by the Town Engineer and Town Attorney assuring that all necessary work to properly and timely carry out the Reclamation Plan will be done.

11. Hoffman and all haulers shall access the permit site only through those points designated as entrances on the Site/Operations Plan dated [date of most recent plan].
12. The access to each driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
13. Hours of operation shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday. Hours for crushing, screening, and washing, if permitted, shall be limited to 8:00 a.m. to 4:00 p.m., due to noise impacts. No operations of any kind shall take place on Saturdays, Sundays or legal holidays.
14. There shall be no blasting or drilling on the site.
15. A safety fence shall be erected around the entire project site no less than 5 feet in height with a single strand of barbed wire on the top.
16. [If crushing is permitted] Hoffman shall use spray bars (water) in the crushing process to reduce dust. Use of spray bars is not required when the temperature is below freezing. Hoffman shall spray the site with water if and when needed to control dust and/or as ordered by the Town to do so.
17. No water shall be pumped or otherwise removed from the site.
18. There shall be no bulk fuel, waste oil or other petroleum products stored on site.
19. Topsoil from the site shall be saved and stored on site for reclamation of the area.
20. If the extraction operation is at or near groundwater level, all excavation equipment, asphalt plant [if allowed], concrete plant [if allowed], and vehicles shall be fueled, stored, serviced, and repaired on lands above \_\_\_ feet in elevation to prevent against groundwater contamination from leaks or spills.
21. Hoffman shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
22. All Access road/town road intersection improvements necessary for safe operation at the project site (including turn lanes and other improvements) must be completed prior to commencement of operation.
23. Hoffman shall meet DNR standards for particulate emissions as described in NR 415.015 and NR 415.076.
24. Prior to commencement of any work on the site, Hoffman must enter into a Well Agreement with the Town covering the owners of all properties within a specified area That may be affected by Hoffman's operation (as determined by the Town's environmental expert) and the installation and monitoring of monitoring wells (in locations determined by the Town's environmental expert). The Well Agreement shall



require that Hoffman be responsible for all inspections, repairs, replacements and other work necessary to monitor private wells in the designated area and necessary to correct all water problems and damages to the private wells in the designated area arising from Hoffman's operation including, but not limited to, failed wells investigation, inspection costs and well re-drilling or replacement. A list of the parcel numbers of the properties covered by the Well Agreement shall be included in or attached to the Well Agreement. Hoffman shall additionally be responsible to reimburse individual property owners for reasonable well inspection costs, which inspections may be completed annually.

25. Dane County and the Town of Albion shall be listed as primary additional named insureds on the Hoffman Construction liability insurance policy, which shall provide for a minimum of \$5,000,000 of combined single limit coverage per occurrence. Hoffman shall furnish a copy of a Certificate of Insurance and additional insured endorsement as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete and approved by the Town of Albion and Dane County.
26. The Dane County Zoning Administrator or designee or any Town officer or employee 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. If the operation is not in compliance with the terms and conditions of this permit, this permit is subject to amendment or revocation as deemed appropriate by the Town of Albion or Dane County.
27. Prior to commencement of any work on the site, Hoffman shall enter into a Road maintenance agreement for Lake Drive Road (and Hillside Drive, if approved) containing a description of the roadway, town specifications, duties and responsibilities of Hoffman, default penalties, liability insurance, annual inspection protocol, and bond or similar security provided by Hoffman in an adequate amount approved by the Town Engineer and Town Attorney assuring that the necessary repairs and replacements will be completed in a timely manner to the Town's satisfaction.
28. Prior to commencement of any work on the site, Hoffman shall provide a Pollution Incident Prevention Plan for this site to protect the Town in the event of a spill and contamination is released on the project site, outside of borders of the project site or into the groundwater. Said Plan should include a bond or similar security provided by Hoffman in an adequate amount approved by the Town Engineer and Town Attorney assuring that the necessary investigation and clean-up will be completed in a timely manner to the satisfaction of the Town, Wisconsin DNR and the affected property owners.
29. [If the concrete batch plant or asphalt plant is permitted] Prior to commencement of any work on the site, Hoffman shall provide a Malfunction Prevention and Abatement Plan for the Concrete Batch Plant and all Hot Mix Asphalt Emission Sources on the project site. Said Plan should include a bond or similar security provided by Hoffman in an adequate amount approved by the Town Engineer and Town Attorney assuring that all

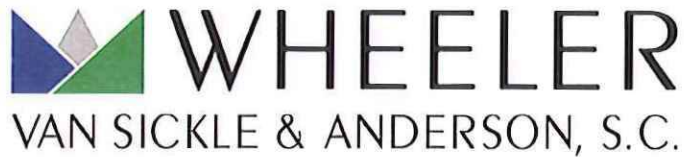
injuries and damages arising from emissions for all of said sources will be covered and paid for by Hoffman in a timely manner to the satisfaction of the Town, Wisconsin DNR and the affected property owners.

30. Prior to commencement of any work on the site, Hoffman shall provide a Comprehensive Fugitive Dust Plan addressing each operation on the project site and its effect on the other operations associated with Hoffman's operation and activities conducted on adjoining or nearby property. Said Plan should include a bond or similar security provided by Hoffman in an adequate amount approved by the Town Engineer and Town Attorney that all injuries and damages arising from dust from all sources on the project site will be covered and paid for by Hoffman in a timely manner to the satisfaction of the Town, Wisconsin DNR and the affected property owners.
31. Prior to commencement of any work on the site, Hoffman shall provide a Storm Water Pollution Plan which lists all potential pollutants and storm water exposure to potential pollutants and specifies best management practices of pollution control, site map, inspection protocol, communication protocol if an exposure should occur, construction of the containment areas of any onsite fuel basins, and annual sampling protocol to ensure no process water is contaminating the ground water. Said Plan should include a bond or similar security provided by Hoffman in an adequate amount approved by the Town Engineer and Town Attorney assuring that all injuries and damages arising from pollutants from all sources on the project site will be covered and paid for by Hoffman in a timely manner to the satisfaction of the Town, Wisconsin DNR and the affected property owners.
32. Prior to commencement of any work on the site, Hoffman shall provide a Spill Prevention, Control and Counter-Measure Plan that addresses regulatory mandates, shows all DNR and EPA permits for Hot Mix Asphalt [if permitted], Concrete Batch Plant, [if permitted] and Storm Water Management, along with facility information identifying contacts, responsibilities of the emergency coordinator, facility description of all operations, hazardous materials and waste storage locations, emergency response agencies with phone numbers, inspection checklist and a map of the facility.
33. Wetland delineation in accordance with State of Wisconsin requirements shall be completed and approved by the Town prior to commencement of any construction or operations on the site.
34. No excavation or operations shall be located within 500 feet of wetlands.
35. No sedimentation control or detention basins shall be located within 500 feet of wetlands.
36. No excavation or operations within 150 feet of residential property.
37. Only specifically approved hauling routes may be used for hauling, and no hauling to or from the site shall occur on town or county roads between 7-9 a.m. and 4-6 p.m., due to traffic congestion.



38. Berms must be installed around the entire operation on Eastman Hunting Club Site, except for at access points and along the I-39/90 side. The berms must separate the operation from any wetlands. The berms must be soundly engineered, be constructed in accordance with erosion control and storm water plans that will maintain pre-operation storm water runoff volumes, rates and quality, be of a minimum height of 12 feet, and must fully screen the operation from all neighboring properties.
39. Noise at the property line shall not exceed 5 db above ambient noise levels for extraction operations and shall not exceed ambient noise levels for asphalt plant, concrete plant, crushing or washing operations [if approved].
40. Outdoor lighting, except for required security lighting, shall be operational only during hours of operation. All lighting shall be shielded to prevent glare into the night sky or direct-beam illumination of neighboring residences. All new lighting fixtures shall use full cut-off fixtures which prevent all upward transmission of light.
41. No more than 8 acres of quarry shall be open at a time.
42. All excavation, concrete batch plant [if permitted], asphalt batch plant [if permitted] and other operational work on the site shall be performed solely by Hoffman employees.
43. No offsite material shall be buried on site.
44. This permit shall not be assigned.





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March 24, 2017

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RE: Zoning & Land Regulation Committee Meeting Agenda, 3/28/2017  
Petition: CUP 2373; Applicant: Eastman Hunting Club, Inc.; Location: Town of Albion

Dear Zoning and Land Regulation Committee Chair and Members:

I am writing to request that the Zoning and Land Regulation Committee postpone the public hearing for the above-referenced conditional use permit application for a mineral extraction operation, concrete batch plant and asphalt plant in the Town of Albion.

Last Tuesday, after a lengthy and well-attended public meeting, the Town of Albion Town Board voted to continue its review of the CUP application, delaying further action by the Town on the application until April 11, 2017. A public hearing for that CUP application is currently on your committee agenda for March 28, 2017, prior to any decision by the Town of Albion Town Board.

I understand that Planning and Development Department's position is that the public hearing can proceed prior to Town action so long as the Committee does not reach a decision on the CUP itself. Whether or not such an approach is permissible, I respectfully submit that it is an undue burden to the Town of Albion community and the public in this situation. Approximately 100 people have attended two open meetings in Albion recently, taking time out of their weeks largely to express opposition to the project. The last meeting was less than a week ago, was five

hours long, and ended at 11:30 at night. Many, of these people would undoubtedly want to provide information to the County Zoning Land & Regulation Committee as well if the Town of Albion were to act to approve the CUP.

However, holding the public hearing prior to such decision by the Town of Albion, when such a hearing would be entirely unnecessary under the Dane County Zoning Ordinance if the Town acts to deny the application, puts an unnecessary burden on the public to take another significant period of time out of their daily lives. It also places an unnecessary burden on county resources and this Committee.

Furthermore, a large group of people in attendance at the Town of Albion on March 21<sup>st</sup> heard a public conversation between the Town of Albion attorney and a Dane County representative that led them to believe the Zoning and Land Regulation Committee meeting would be delayed pending final town action. An audio clip of that conversation is being provided by email along with this letter. Near the end of the clip, the following discussion occurs on the record:

Town Attorney: "... just talked to the county representative about the process. So if the town were to not take action on this tonight...

Ms. Andros: [inaudible]

Town Attorney: ...that would be reported to the county. The County Zoning Committee then at its meeting on...

Ms. Andros: The 28<sup>th</sup>, next Tuesday.

Town Attorney: ... the 28<sup>th</sup> of March, would, would, postpone its action for an additional...

Ms. Andros: For two weeks.

Town Attorney: ... for two more weeks, but then if there's no town action...  
[recording ends]

Attached are two affidavits of people in attendance describing what they heard and understood from that meeting. Those members of the public reasonably believe that next week's meeting is not taking place and indicate a significant number of others in attendance have a similar understanding.

Many people have already taken great efforts to inform themselves about the proposal and express their concerns. If a Dane County public hearing is necessary at some point, they deserve to have their voices heard by the County as well. Moreover, there does not appear to be any good reason not to delay the public hearing on this application, as a decision could not be reached next Tuesday anyway.

Considering the demonstrated level of public interest in this application, we request that this Committee postpone the public hearing until after April 11, 2017 to avoid a possible unnecessary burden on the public and, importantly, to ensure that those who wish to attend have sufficient notice of the hearing if it is still necessary. Thank you for your consideration.

Sincerely,

WHEELER, VAN SICKLE & ANDERSON, S.C.



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