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BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

In the Matter of the Appeal of:

RECEIVED

YAHARA MATERIALS, INC.,
a Wisconsin corporation, and
BUCKEYE QUARRY, LLC,
a Wisconsin limited liability company,

DEC 3 2014

Appellants.

**NOTICE OF APPEAL AND APPEAL OF DECISION AND ORDER OF
DANE COUNTY ASSISTANT ZONING ADMINISTRATOR,
DATED NOVEMBER 10, 2014,
UNDER WIS. STAT. § 59.69 AND DANE CO. ORD. § 10.26**

TO: Dane County Board of Adjustment
c/o Hans Hilbert, Assistant Dane County Zoning Administrator and Agent for Board
City-County Building, Room 116
210 Martin Luther King Jr. Boulevard
Madison, Wisconsin 53703-3342

Dane County Zoning Department
c/o Roger Lane, Dane County Zoning Administrator
City-County Building, Room 116
210 Martin Luther King Jr. Boulevard
Madison, Wisconsin 53703-3342

Daniel Everson, Assistant Dane County Zoning Administrator
City-County Building, Room 116
210 Martin Luther King Jr. Boulevard
Madison, Wisconsin 53703-3342

I. APPEAL

The Appellants and aggrieved parties, (a) Yahara Materials, Inc., a Wisconsin corporation (“Yahara”), being the owner of the real property that is the subject of this appeal and described as tax parcels 0710-142-1701-4, 0710-142-9840-0 and 0710-144-0097-4, and the operator of all of such tax parcels, along with tax parcel 0710-144-0099-0, and (b) Buckeye Quarry, LLC, a Wisconsin limited liability company (“Buckeye”), being the owner of the real property that is the subject of this appeal and described as tax parcel 0710-144-0099-0, for which parcel Yahara is also the operator, hereby give notice of and appeal the Stop Work Order, including, but not limited to, the decision and interpretations therein, of Assistant Dane County Zoning Administrator Daniel Everson (“Zoning Administrator”), dated November 10, 2014, and

received on November 11, 2014, a copy of which is attached hereto and incorporated by reference herein as Exhibit A (“the Order”), in which the Zoning Administrator ruled that all non-metallic mineral extraction work and operations on the real property which is the subject of this appeal, and which is owned and operated by Yahara and Buckeye, had to cease immediately, and that the real property subject to this appeal did not meet the criteria necessary to qualify as a legal non-conforming mineral extraction site under Dane County Ordinances (“Dane Co. Ord.”) §§ 10.191(6), and 10.21(1)(c) and (d), because the site was allegedly not used or intended to be used for mineral extraction purposes prior to 1969, or was not registered in 1969 as a non-conforming mineral extraction site under the Dane County Ordinances.

II. ORDINANCE UNDER WHICH APPEAL TAKEN

This appeal is taken under the provisions of Dane Co. Ordinance § 10.26(3), which reads, in relevant part, as follows:

“10.26 BOARD OF ADJUSTMENT. ...

(3) *Appeals to the board.* Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the zoning administrator or other administrative officer; an appeal may also be taken by the committee. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. . . .”

III. OWNER AND THE SUBJECT PROPERTY

(A) Yahara, whose principal office is located at 6117 CTH “K,” Waunakee, Wisconsin 53597, is the owner of the real property located in the Town of Blooming Grove and City of Madison, Dane County, Wisconsin, which is legally described on Exhibit B attached hereto and incorporated by reference herein, which real property is the subject of this Appeal and the Order, and (B) Buckeye, whose principal office is located at 6117 CTH “K”, Waunakee, Wisconsin 53597, is the owner of the real property located in the City of Madison, Dane County, Wisconsin, which is legally described on Exhibit C attached hereto and incorporated by reference herein, which real property is the subject of this Appeal and Order (collectively, “the Subject Property”). The portion of the Subject Property described as parcel no.0710-142-9840-0 has been owned continuously by Yahara since 1987; the portion of the Subject Property described as parcel no. 0710-142-1701-4 has been owned continuously by Yahara since 2010; and the portion of the Subject Property described as parcel no. 0710-144-0097-4 has been owned continuously by Yahara since 1987. The portion of the Subject Property described as parcel no. 0710-144-0099-0 has been owned continuously by Buckeye since 1990. Attached hereto as Exhibit D is a drawing of the Subject Property, with the boundaries of the tax parcels within the Subject Property thereon, and with the name of the owner of each parcel, the tax parcel number and its size in acres designated thereon. The tax parcels within the Subject Property in the City of Madison were annexed to the City of Madison, and the zoning status of such parcels is

dependent on their status under Dane County zoning at the time of such annexation. Yahara and Buckeye are affiliates of each other, and such entities are under common ownership, control and management. Yahara uses the Subject Property for non-metallic mineral extraction operations, including mining, crushing, screening and stockpiling.

IV. NATURE OF YAHARA'S BUSINESS, AND PAST AND INTENDED USE OF THE SUBJECT PROPERTY AND ABUTTING LANDS

Yahara is in the business of operating non-metallic mineral extraction sites and selling rock, stone, sand and other non-metallic materials to state and local governments, farmers, and other private individuals and businesses in Dane County, Wisconsin, and in other parts of Wisconsin, and desires to have sites located strategically around Dane County, such as the Subject Property, in order to provide such non-metallic extracted material without the need to incur excessive transportation costs which must be passed on to governments, agencies, farmers, businesses and consumers. Yahara both owns real property and leases real property to conduct such mineral extraction activities thereon. With respect to the Subject Property, Yahara owns all of the Subject Property, other than parcel no. 0710-144-0099-0, which is owned by Buckeye and operated by Yahara by agreement with Buckeye.

Yahara has used the Subject Property for mineral extraction operations, including mining, crushing, screening and stockpiling of extracted material continuously, without objection from Dane County or the Town of Blooming Grove, since 1987, a period of approximately twenty-seven (27) years, and Yahara desires to continue to do so until the deposit of material on the Subject Property is exhausted, at which time the Subject Property will be reclaimed by Yahara as required by the approved reclamation plan for the Subject Property on file with the Dane County Zoning Department.

Yahara has also owned and used the abutting and larger mineral extraction site to the east of the Subject Property, in the Town of Blooming Grove, on parcel no. 0710-141-9000-7, continuously for mineral extraction activities since 1982. Prior to Yahara's ownership and use of the lands to the east for mineral extraction activities, the lands to the east were owned and used by Madison Stone Company and its affiliates for mineral extraction activities on a continuous basis since at least the 1950's. The lands to the east are shown on the parcel map attached hereto as Exhibit D. The operations of Yahara on the abutting lands to the east and on the Subject Property are a seamless integrated mineral extraction operation under common ownership and management.

V. APPELLANTS AGGRIEVED

Yahara and Buckeye have been and will be aggrieved by the Order which is the subject of this Appeal, in that the Order has and will have the effect of depriving the Appellants of the value of the Subject Property and the non-metallic minerals and the income therefrom, thus entitling them to pursue this Appeal. Yahara estimates that the Order will deprive it of approximately one-half of the anticipated life of the integrated mineral extraction operation on the Subject Property and the adjoining lands in the Town of Blooming Grove and the City of Madison.

Yahara and Buckeye have stopped mineral extraction activities on the Property as a result of the Order which is being appealed herein, and Yahara and Buckeye desire and intend to resume

continuous mineral extraction activities on the Subject Property as soon as they are legally permitted to do, which mineral extraction operations at the Subject Property will generate substantial income for Yahara and Buckeye.

VI. ORDINANCES RELEVANT TO APPEAL

The following are the provisions of § 10.191(6), and §§ 10.21(1) (c) and (d), Dane Co. Ord., which are relevant to the Appeal:

“10.191 PROCEDURE AND STANDARDS OF OPERATION FOR MINERAL EXTRACTION OPERATIONS . . .

(6) Mineral extraction operations which existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator shall be considered nonconforming uses in accordance with s. 10.21.”

“10.21 NONCONFORMING USES. (1) . . .

(c) Mineral extraction operations which existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator shall be considered nonconforming uses.

(d) Mineral extraction sites that were registered as nonconforming sites as provided by this ordinance shall not be considered abandoned or discontinued if the site is inactive for more than one year. . . .”

VII. NATURE AND GROUNDS OF APPEAL

The Order that is the subject of this Appeal is erroneous as a matter of both law and fact, is incorrect, unlawful, arbitrary, capricious and unreasonable, is without basis in law or in fact and is contrary to law, and must be reversed in its entirety by the Dane County Board of Adjustment, for, among others, the following reasons:

A. Subject Property Is a Legal Non-Conforming Use under Dane County Zoning Ordinance.

Sections 10.191(6), and 10.21(1)(c) and (d), Dane Co. Ord., provides that mineral extraction operations which existed prior to 1969, and were registered with and approved by the Dane County Zoning Administrator, shall be considered non-conforming uses that may continue thereafter without limitation as to time.

The Subject Property was registered with the Dane County Zoning Department by Madison Stone Company, Incorporated, on or about March 14, 1969, and was approved by the Dane County Zoning Administrator as a legal non-conforming mineral extraction site under Section 10.191(6) and 10.21 (1)(c) and (d), Dane Co. Ord. The registration from Madison Stone

Company included section 14 in the Town of Blooming Grove, which included the Subject Property. Thereafter, the Dane County Zoning Department listed all or part of the Subject Property as a legal, non-conforming mineral extraction site on a continuous basis from 1969 until now on their non-conforming (NC) mineral extraction maps in such office. At all times such Department treated the Subject Property as a legal non-conforming mineral extraction site under sections 10.191(6) and 10.21(1)(c) and (d), Dane Co. Ord. From 2001 forward, the Dane County Zoning Department annually inspected the Subject Property and confirmed the zoning status of the Subject Property on their inspection forms as a legal non-conforming mineral extraction site. The Subject Property was properly treated as a non-conforming mineral extraction site by the Dane County Zoning Department at all times from 2001 forward, and in any event, Yahara and Buckeye were at all relevant times entitled to have the Subject Property treated as a non-conforming mineral extraction site under the Dane County Zoning Ordinance provisions quoted above.

The Subject Property abutted the non-conforming mineral extraction operation of Madison Stone Company located to the east, and was a natural and logical extension of the mineral extraction operations on such abutting lands. The Madison Stone Company mineral extraction operation to the east of the Subject Property commenced in the 1950's, and continued until such land to the east was purchased by Yahara on August 9, 1982, at which point Yahara continued the Madison Stone Company operations continuously from 1982 to date on the abutting land to the east of the Subject Property.

Yahara and Buckeye purchased, and commenced operations within, the Subject Property as an extension of Yahara's operations on the adjoining land to the east purchased from Madison Stone Company, pursuant to and in reliance on (a) the aforesaid registration by Madison Stone Company of land in section 14 and (b) the Dane County Zoning Department treatment of the Subject Property as a non-conforming mineral extraction site, including its classification in whole or in part on NC classification maps as a legal non-conforming mineral extraction site, and Yahara has continuously operated a mineral extraction site on the Subject Property from such times of acquisition to the time of the Order, for a period of approximately 27 years, without objection from the Town of Blooming Grove or from Dane County.

In view of the foregoing, the Subject Property is a legal non-conforming mineral extraction site under the Dane County Ordinance, Yahara is entitled to continue to use the Subject Property as a legal non-conforming mineral extraction site indefinitely until the deposit is exhausted, and the Order must be reversed.

B. Dane County Is Barred by Estoppel from Asserting That the Subject Property is Not a Valid Legal Non-Conforming Mineral Extraction Site.

The Order of the Zoning Administrator is legally incorrect and must be reversed in that Dane County and the Zoning Administrator are estopped from issuing the Order or taking other action against the operation of a mineral extraction site on the Subject Property in that the Subject Property was classified by Dane County as a legal non-conforming zoning site for mineral extraction from 1969 forward until the issuance of the Order, and Dane County so classified the property at the time it was purchased by Yahara and Buckeye in 1987, and 1990, as described above. Among other things, Dane County has classified the Subject Property on its maps of

legal non-conforming mineral extraction sites in whole or in part as a legal non-conforming mineral extraction site from 1969 forward. Yahara and Buckeye acted in reliance on Dane County's treatment of the Subject Property as a legal non-conforming mineral extraction site when they purchased the Subject Property and with respect to Yahara's continuing operation of the Subject Property. Subsequently, Yahara operated a mineral extraction operation on the Subject Property in full reliance on the classification of the Subject Property by Dane County as an NC site, investing substantial money and resources into the development of the Subject Property, which will be lost if the Order is not reversed. There has never been any objection from the Town of Blooming Grove or Dane County to the operation of the Subject Property as a mineral extraction site until the issuance of the Order.

Since 2001, Yahara has routinely filed annual reclamation plans with the Dane County Zoning Department concerning the Subject Property, which forms include a reference to the zoning on the Subject Property. Further, Yahara has an approved erosion control plan and stormwater management plan on file with Dane County for the mineral extraction operations on the Subject Property, which have been on file continuously since 2001. Annual physical inspections of the Subject Property were conducted by the Dane County Zoning Department starting in 2001, and the Dane County Zoning Department noted on their inspection reports, which were provided to Yahara, that the Subject Property was "NC" or legal non-conforming. Dane County itself was the first customer of the mineral extraction operation on the Subject Property, in that the clay stripped from the Subject Property was used at the Dane County landfill. At no time has any question ever been raised regarding the zoning of the Subject Property for mineral extraction use by anyone at Dane County or the Town of Blooming Grove in response to the filing of the aforementioned documents by Yahara with Dane County.

The actions by Yahara and Buckeye in reliance on the NC status of the Subject Property have been taken in good faith and were reasonable, and Yahara and Buckeye have been in compliance with the law in all other respects regarding the Subject Property. At the time that Dane County treated the Subject Property as a legal non-conforming mineral extraction property, Dane County had full knowledge of the intended use of the Subject Property. Yahara and Buckeye used due diligence prior to purchasing and using the Subject Property for mineral extraction purposes.

In view of the foregoing, the Subject Property is a legal non-conforming mineral extraction site under the Dane County Ordinance, Yahara and Buckeye are entitled to continue to use the Subject Property as a legal non-conforming mineral extraction site indefinitely until the deposit is exhausted, Dane County is barred by the doctrine of estoppel from asserting that the Subject Property is not a legal non-conforming mineral extraction site, and the Order must be reversed.

C. Dane County Is Barred by Laches from Asserting That the Subject Property is Not a Valid Legal Non-Conforming Mineral Extraction Site.

The provisions of paragraph B. above are incorporated by reference herein as set out in full herein.

The Order of the Zoning Administrator is legally incorrect and must be reversed in that Dane County and the Zoning Administrator are barred by the doctrine of laches from issuing the Order or taking other action against the operation of a mineral extraction site on the Subject Property.

Dane County and the Zoning Administrator engaged in unreasonable delay in taking action with respect to the Subject Property, to the injury and prejudice of Yahara and Buckeye, given the complete knowledge of Dane County concerning the existence of the mineral extraction operation for approximately 27 years and the enormous loss of value and income from the Subject Property that will be suffered by Yahara and Buckeye which acted in reliance on Dane County's treatment of the Subject Property as a legal non-conforming mineral extraction site.

In view of the foregoing, the Subject Property is a legal non-conforming mineral extraction site under the Dane County Ordinance, Yahara and Buckeye are entitled to continue to use the Subject Property as a legal non-conforming mineral extraction site indefinitely until the deposit is exhausted, Dane County is barred from issuing the Order by the doctrine of laches, and the Order must be reversed.

VIII. RELIEF REQUESTED

The Appellants have authorized the undersigned as their attorney and agent to sign and file this Notice of Appeal and Appeal on their behalf.

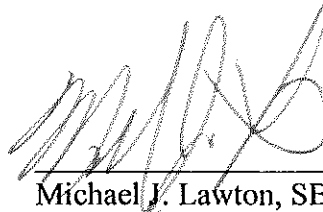
Based upon the foregoing, Appellants request that the Order be reversed in its entirety by the Dane County Board of Adjustment.

Appellants reserve the right to submit additional arguments in the form of a memorandum and other written materials in connection with this matter, as well as testimony and exhibits to be submitted at the hearing in this matter.

Respectfully submitted this 2nd day of December, 2014.

BOARDMAN & CLARK LLP

By:



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*Attorneys and Agents for Appellants Yahara
Materials, Inc. and Buckeye Quarry, LLC*

EXHIBIT A - STOP WORK ORDER



Dane County Planning & Development

Division of Zoning

November 10, 2014

Yahara Materials
PO Box 277
Waunakee, WI 53597

Re: Buckeye Quarry, 4315 East Buckeye Rd.

Attention: Tim Geoghegan

Dane County Planning recognizes that parcel 0710-141-9000-7 has a grandfathered status with regards to mineral extraction, but the parcels to the south and the west are not considered to be grandfathered. A Stop Work Order regarding mineral extraction operations is in effect on the portion of lands that are outside the registered non-conforming boundaries.

This includes parcels:

- 071014298400, YAHARA MATERIALS INC.
- 071014400974, YAHARA MATERIALS
- 071014400990, BUCKEYE QUARRY LLC
- 071014217014, YAHARA MATERIALS INC.

This means no blasting, extraction, processing of any materials and all equipment used in the mineral extraction operations are to be removed from the areas found to be in violation.

The SWO is in effect until a Conditional Use Permit is approved for the portions outside the non-conforming boundaries and within the Town of Blooming Grove. The alternative would be to reclaim the lands back to an approved agricultural use. Attached is an aerial map that outlines the non-permitted boundaries. Portions that are within the City of Madison may be in violation as well and you will need to address this issue with the City of Madison Zoning Department.

In addition, the equipment used in the concrete batch plant operations shall be moved back within the permitted boundaries of CUP #1059.

Your attention to this matter is greatly appreciated and any questions with this letter please call me directly.

Sincerely,

Daniel Everson
Assistant Zoning Administrator
267.1541

EXHIBIT B - LEGAL DESCRIPTION OF YAHARA REAL PROPERTY

1. Parcel No. 0710-144-0099-0.

The real property located in the City of Madison, Dane County, Wisconsin, and more particularly described as follows:

T7N R10E, SEC 14, COM E 1/4 COR SD SEC, TH S 88 DEG 01 MIN 52 SEC W 1800.06 FT TO POB, TH S 43 DEG 36 MIN 53 SEC W 857.13 FT, TH N 57 DEG 55 MIN 18 SEC W 714.30 FT, TH N 00 DEG 48 MIN 06 SEC W TO N LN OF NE 1/4, TH E ALG SD N LN TO POB.

2. Parcel No. 0710-142-1701-4.

The real property located in the City of Madison, Dane County, Wisconsin, and more particularly described as follows:

Commencing at the East 1/4 corner of Sec 14; thence S88°01'38"W, along the South line of the NE 1/4 of said Sec 14, 2,648.06 feet to center said Sec 14; thence S87°32'35"W, along South line of NW 1/4 of said Sec 14 and existing City of Madison corporate limits, 352.25 ft to POB of this description; thence N00°48'15"W, 1103.04 ft; thence N88°01'52"E, 479.89 ft; thence N00°58'41"W, 621.84 ft to the Sly ROW line of Buckeye Road (C.T.H. "AB") & existing City of Madison corporate limits; thence S81°51'02"W, along the Sly ROW line of Buckeye Road (C.T.H. "AB") and existing City of Madison corporate limits, 126.84 ft; thence S67°36'00"W, along said Sly ROW line and said existing corporate limits, 468.44 ft; thence S69°35'18"W, along said Sly ROW line and said existing corporate limits, 423.96 ft to its intersection with the Nely ROW line of Interstate Highway "90"; thence S13°29'42"E, along the Nely ROW line of Interstate Highway "90" and existing City of Madison corporate limits, 1,443.79 ft to its intersection with South line of the NW 1/4 of said Sec 14; thence N87°32'25"E, along the South line of NW 1/4 of said Sec 14 & existing City of Madison corporate limits, 165.71 feet to the point of beginning, EXC THAT PART AS DESC IN DOC 4331997.

3. Parcel No. 0710-144-0097-4.

The real property located in the City of Madison, Dane County, Wisconsin, and more particularly described as follows:

T7N R10E, SEC 14, COM E 1/4 COR SD SEC, TH S 88 DEG 01 MIN 52 SEC W 1800.06 FT TO POB, TH S 43 DEG 36 MIN 53 SEC W 857.13 FT, TH N 57 DEG 55 MIN 18 SEC W 714.30 FT, TH N 00 DEG 48 MIN 06 SEC W TO N LN OF NE 1/4, TH E ALG SD N LN TO POB.

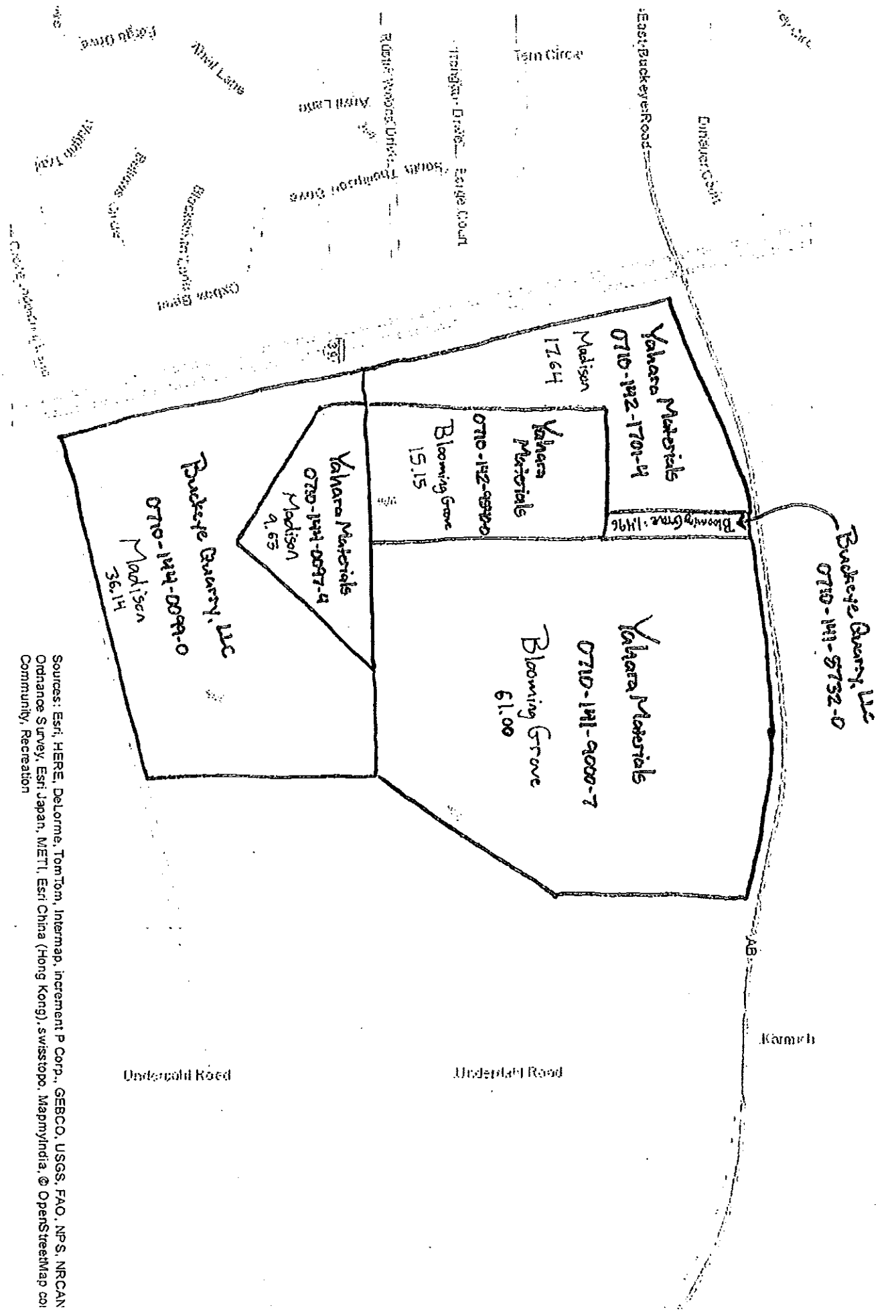
EXHIBIT C – LEGAL DESCRIPTION OF BUCKEYE REAL PROPERTY

1. Parcel No. 0710-142-9840-0.

The real property located in the Town of Blooming Grove, Dane County, Wisconsin, and more particularly described as follows:

SEC 14-7-10 PRT SE1/4NW1/4 PRT NE1/4SW1/4 PRT NW1/4SE1/4 & PRT SW1/4NE1/4 COM SEC E1/4 COR TH S88DEG01'52"W 1800.06 FT TO POB TH S43DEG36'53"W 857.13 FT TH N57DEG55'18"W 714.30 FT TH N0DEG48'06"W 1300.00 FT TH N88DEG01'52"E 600.00 FT TH S0DEG48'06"E 1100.00 FT TH N88DEG01'52"E 600.00 FT TO POB EXC THAT PRT IN CITY OF MADISON SUBJ TO ESMT DOC #4294071

EXHIBIT D – MAP OF REAL ESTATE PARCELS AFFECTED



Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN
 Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap co
 Community, Recreation