

# HUSCH BLACKWELL

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May 2, 2019

RECEIVED

MAY 2 2019

DANE COUNTY PLANNING & DEVELOPMENT

Steven Shulz, Chair  
Dane County Board of Adjustment  
210 Martin Luther King Jr. Blvd.  
Room 116  
Madison, WI 53703

Re: BOA Appeal 3699 Hoepker Quarry

Dear Mr. Shulz:

Enclosed for filing, on behalf of Appellants Yarara Materials, Inc., Hoepker, LLC, and Highway 51, LLC, please find 7 copies of their Brief in Support of Appeal. Please file stamp the additional copy and return it to the waiting messenger.

Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,



Eric M. McLeod  
Partner

EMM/ljg  
Enclosure

**BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT**

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In the Matter of the Appeal of:

YAHARA MATERIALS, INC.  
6117 County Highway K  
P.O. Box 277  
Waunakee, WI 53597

HOEPKER, LLC  
6117 County Highway K  
P.O. Box 277  
Waunakee, WI 53597

and

HIGHWAY 51, LLC  
6117 County Highway K  
P.O. Box 277  
Waunakee, WI 53597

Appellants.

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**BRIEF OF APPELLANTS IN SUPPORT OF APPEAL**

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**INTRODUCTION**

Appellants Yahara Materials, Inc. ("Yahara"), Hoepker, LLC ("Hoepker") and Highway 51, LLC ("Highway 51") (collectively "Appellants"), by their attorneys Husch Blackwell LLP, submit this brief in further support of its Appeal of Decision of the Dane County Zoning Administrator, previously filed on March 15, 2019 ("Appeal"). The information in this brief is not an exhaustive recitation of all facts and arguments relevant to the Appeal. The Appeal itself includes additional facts and documents that may not be expressly referenced in this brief but which are also part of the record and should be considered by the Board of Adjustment ("Board"). Appellants have endeavored to provide the Board with all relevant documents that are in their possession and about which they are aware, but reserve the right to supplement with any additional information discovered prior to the May 23, 2019 hearing and to respond to any arguments or information submitted to the Board by the Zoning Administrator or others on behalf of the County.<sup>1</sup>

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<sup>1</sup> In addition to the materials related to Yahara's CUP application, which are attached as Exhibit A to this brief, Appellants have attached as Exhibit B additional documents that may be relevant to the Board's consideration of this matter.

## ARGUMENT

The issues in the case are quite simple and straightforward. In 2009, Yahara applied for a conditional use permit to conduct a mineral extraction operation and related uses including onsite asphalt and concrete batch plants on property adjacent to an existing nonconforming quarry site in the Town of Burke. The subject property ("Property") was and is zoned in the A-1 Agriculture District. Conditionally permitted uses in the A-1 district expressly include mineral extraction operations, asphalt plants, ready mix concrete plants. Dane Co. Ord. § 10.12(3)(a). Conditional use permits for mineral extraction and related activities are governed by Dane Co. Ordinance §§ 10.255(2) and 10.191.

Section 10.255(2) addresses the general standards and procedures applicable to all conditional use permits. Section 10.191(2)(c)11. specifically applies to quarries and requires an applicant to provide "[a] written statement containing the following information: ... *Whether and how frequently* blasting, drilling, mining, crushing, screening, washing, refueling, fuel storage, *asphalt batching or concrete mixing* would be performed on the site." (Emphasis added.)

Consistent with § 10.191(2)(c)11., Yahara's application included a description of the activities to be conducted on the Property pursuant to the requested conditional use permit. (See Exhibit A attached to this brief, which includes Yahara's application materials.) Specifically, Yahara stated as follows:

This quarry is currently used to produce limestone products for various municipalities, WisDOT, Dane County Airport and private contracts. Quarrying operations vary as market demands dictate. Typically drilling, blasting and crushing operations occur three to five times per year. Loading and hauling occur throughout the year as necessary to meet demand. Due to the high quality of material in the deposit, *concrete batch plants and asphalt plants need to be set up when construction projects are located in the area.* These plants are portable and are removed upon completion of the projects.

(Exh. A, emphasis added.)

Prior to the ZLR hearing at which Yahara's application was to be considered, Dane County Zoning Staff submitted its report. The Staff report confirmed that as part of the proposed use, "concrete batch plants and asphalt plants need to be set up when construction projects are located in the area." (See Exh. A.) Nowhere in the Staff report did Staff indicate that the operation of concrete batch plants and asphalt plants on the Property would need to be the subject of any further permitting or approvals. Staff did, however, expressly note that the "applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations."<sup>2</sup> (*Id.*)

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<sup>2</sup> Under the doctrine of *inclusio unius, exclusio alterius*, by including specific reference to the requirement that a separate erosion control permit was required, it is presumed that other types of land use related permits are not required. *Costigan v. Hall*, 249 Wis. 94, 23 N.W.2d 495 (1946).



On October 27, 2009, ZLR voted to unanimously approve the Application. On October 30, 2009, Yahara received a letter from the Zoning Administrator that confirmed the Application was approved and included a copy of CUP #2120. The Zoning Administrator's October 30, 2009 letter stated, "your Conditional Use Permit Application (CUP) **#2120**, in the Town of **Burke**, has been approved by the [ZLR] ... No further action on your part is required on your part to complete this process." (See Exh. A, emphasis in original.)

At the time, Yahara understood that because its application included concrete batch plants and asphalt plants as part of the proposed use, and because ZLR had approved the application as submitted, concrete batch plants and asphalt plants were necessarily part of the ZLR's approval. Importantly, CUP #2120 did not include a condition that in order to operate concrete batch plants and asphalt plants on the property further permitting would be necessary. However, the CUP did not expressly reference concrete batch plants and asphalt plants. Thus, because of the importance of being able to operate its asphalt and concrete batch plants on the Property, Yahara contacted the Zoning Administrator to confirm that the general use description in CUP #2120 included the operation of asphalt and concrete batch plants as requested in the Application and approved by ZLR.

The Zoning Administrator expressly confirmed by letter dated December 21, 2009 ("2009 Letter") that operation of asphalt and concrete batch plants is permitted under CUP #2120. The Zoning Administrator's 2009 Letter states in relevant part:

Dane County Zoning Division has reviewed the information that has been presented to the Committee during the approval process. It is understood that ***the operation of the asphalt plants and concrete batch plants were part of the approval of Conditional Use Permit #2120.*** Further, Dane County would allow the operation of asphalt plants and concrete batch plants for highway projects and municipal projects ***without the need for any additional approvals.***

(See Yahara's Appeal, Exh. C.)<sup>3</sup> On the basis of this confirmation by the Zoning Administrator, Yahara has been and continues to operate portable asphalt and concrete batch plants on the Property.

Finally, as discussed in the Appeal, nearly a decade later the same Zoning Administrator has taken a diametrically opposite position from the one he expressed in his 2009 Letter. Of equal importance, the position he now takes in his February 15, 2019 Decision directly conflicts with the contents of Yahara's application, the Staff report and the ZLR approval.

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<sup>3</sup> Pursuant to Dane Co. Ordinance § 10.25(1)(b) the Zoning Administrator has the authority "to take such action as may be necessary for the enforcement of the regulations provided" in the zoning code. Consistent with his authority to determine whether a permit holder is acting in conformity with a CUP, the Zoning Administrator must necessarily have the authority to construe the terms of that CUP. As it relates to CUP #2120, the Zoning Administrator did just that back in 2009.



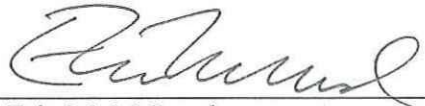
### CONCLUSION

The Zoning Administrator's February 15, 2019 Decision is arbitrary and capricious. The record shows that Yahara's Application included portable asphalt and concrete batch plants as part of the use for which it sought the conditional use permit. The Zoning Administrator confirmed that fact in his 2009 Letter.

This Board should reverse the Zoning Administrator's February 15, 2019 Decision and enter an Order confirming that CUP #2120 authorizes the operation of portable asphalt and concrete batch plants on the Property without the need for any additional permits or approvals.

Dated May 2, 2019.

HUSCH BLACKWELL LLP  
Attorneys for Appellants

By:   
Eric M. McLeod  
State Bar No. 1021730  
Samantha R. Schacht  
State Bar No. 1093827

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samantha.schacht@huschblackwell.com

# EXHIBIT A



Application Date	Preliminary Application Number	
8/6/09	RECU25598	
Public Hearing Date	Petition Number	C.U.P. Number
10/27/2009		2120

ADDRESS/LOCATION 1		ADDRESS/LOCATION 2		ADDRESS/LOCATION 3	
ADDRESS OR LOCATION OF REZONE/CUP:		ADDRESS OR LOCATION OF REZONE/CUP:		ADDRESS OR LOCATION OF REZONE/CUP:	
NORTH OF 4370 MESSERSCHMIDT RD. AND EAST OF HWY CV					
TOWNSHIP	SECTION	TOWNSHIP	SECTION	TOWNSHIP	SECTION
BURKE	17				
PARCEL NUMBERS INVOLVED		PARCEL NUMBERS INVOLVED		PARCEL NUMBERS INVOLVED	
081017380009					
081017395002					
081017490711					
081017486904					
081017490211					

545-113 (4/06)



## Dane County Planning and Development Department

Room 116, City-County Building, Madison, Wisconsin 53703  
Fax (608) 267-1540

*Community Development*  
(608)261-9781, Rm. 421

*Planning*  
(608)266-4251, Rm. 116

*Records & Support*  
(608)266-4251, Rm. 116

*Zoning*  
(608)266-4266, Rm. 116

10/30/2009

YAHARA MATERIALS INC  
PO BOX 277  
WAUNAKEE WI 53597

RE: Effective Date of Conditional Use Permit #2120

Congratulations! This letter is to confirm that your Conditional Use Permit Application (CUP) #2120, in the Town of Burke, has been approved by the Zoning Land and Regulation Committee and is effective as of October 27, 2009.

Attached is a copy of the text of the CUP with the effective date. No further action on your part is required to complete this process. Any conditions of approval are listed on the CUP. In the future, if there are any changes to the scope of this CUP, you are required to notify the Zoning Division to amend this CUP.

Please note that other Dane County permits may be required to complete your project. Information about other permits can be found on the Zoning Division website at [www.countyofdane.com/zoning/](http://www.countyofdane.com/zoning/), or by contacting the Zoning Division at (608) 266-4266.

Please keep a copy of this letter for your records. If you have any questions, please contact the Dane County Zoning Division at 266-4266.

Sincerely,

Roger W. Lane III  
Zoning Administrator  
Email: [Lane.rogier@co.dane.wi.us](mailto:Lane.rogier@co.dane.wi.us)  
Phone: (608) 266-9078

Cc: Brenda Ayres, Clerk, Town of Burke





**Dane County Zoning Division**

City-County Building  
210 Martin Luther King, Jr., Blvd., Room 116  
Madison Wisconsin 53703  
(608) 266-4266/266-9083 Fax (608) 267-1540

**DANE COUNTY**  
**CONDITIONAL USE PERMIT # 2120**

THE ZONING AND LAND REGULATION COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT Conditional Use Permit # 2120 for a Non-Metallic Mineral Extraction Operation pursuant to Dane County Code of Ordinance Section 10.191 and subject to any conditions contained herein:

**EFFECTIVE DATE OF PERMIT: OCTOBER 27, 2009**

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS:

**Boundary Description:** A parcel of land located in part of the Southwest ¼ and Northwest ¼ of the Southeast ¼, and in part of the Southeast ¼ and Northeast ¼ of the Southwest ¼, and in part of the Southeast ¼ of the Northwest ¼, all in Section 17, T8N, R10E, in the Town of Burke, Dane County, Wisconsin being more particularly described as follows: Beginning at the South ¼ corner of said Section 17; thence N 00°34'14" E along the east line of the Southwest ¼, 991.28 feet; thence N 87°57'03" W, 660.09 feet; thence N 87°58'00" W, 167.54 feet; thence N 09°58'40" E, 782.69 feet; thence N 09°15'23" E, 352.95 feet; thence S 87°05'26" E, 304.56 feet; thence N 02°02'40" E, 329.67 feet; thence N 87°57'20" W, 236.87 feet; thence N 02°02'40" E, 199.92 feet; thence N 87°57'20" W, 239.76 feet to the centerline of County Highway CV; thence N 29°33'37" E along said centerline, 514.32 feet; thence N 30°23'07" E along said centerline, 993.17 feet to the north line of said Northwest ¼; thence S 88°05'22" E along said north line, 72.10 feet to the west line of said Northwest ¼; thence S 01°01'19" W along said west line, 1330.65 feet to the Center of Section 17; thence S 88°02'37" E along the north line of said Southeast ¼, 1320.44 feet; thence S 00°43'52" W along the west line of said Northwest and Southwest ¼ of the Southeast ¼, 1071.90 feet; thence S 28°31'37" W, 1754.66 feet to the south line of said Southeast ¼; thence N 88°05'36" W along said south line, 494.60 feet to the point of beginning. This description contains 102.68 acres and is subject to a road right of way of 33 feet over the most southerly and northwesterly part thereof.

**CONDITIONS:**

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. Reclamation shall meet requirements of Chapter 74 of the Dane County Code of Ordinances, Reclamation Permit # NMARP 33.
3. The applicant shall apply for and receive all other required local, state and federal permits.

Continued on page 2

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4. The operator shall develop and operate the site according to the site/operations and phasing plan.
5. CUP #2210 shall expire on October 27<sup>th</sup> 2036 to coincide with the dissolution of the Town of Burke. Reclamation and reseeding must be completed by this date.
6. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.
7. The operator 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. The operator shall spray the site with water if and when needed to control dust.
8. The operator and all haulers shall access the CUP site only through those points designated as entrances on the Site/Operations Plan.
9. The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
10. Hours of operation shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturdays. No operations of any kind shall take place on Sundays or legal holidays. In special circumstances, Yahara Materials may request permission from the Zoning Administrator to operate outside of the hours listed above. Such circumstances would be related to a construction project conducted outside of normal business hours and outside a normal workweek. Any permission granted would be only allowed for work related to the specified project.
11. During operations, the edge(s) of the extraction area shall be maintained at a slope of no greater than 1:1.
12. No water shall be pumped or otherwise removed from the site.
13. There shall be no bulk fuel stored on site.
14. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
15. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
16. Dane County and Town of Burke shall be listed as additional named insureds on the Yahara Materials liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
17. The Zoning Administrator or designee 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. Unless the operation is in reasonable compliance with these terms of this approval, such approval is subject to amendment or revocation.

Continued on page 3



THE ZONING AND LAND REGULATION COMMITTEE AFTER PUBLIC HEARING  
AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE  
FOLLOWING FINDINGS OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance, and operation of the proposed conditional use.
3. That the establishment of the proposed 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 will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

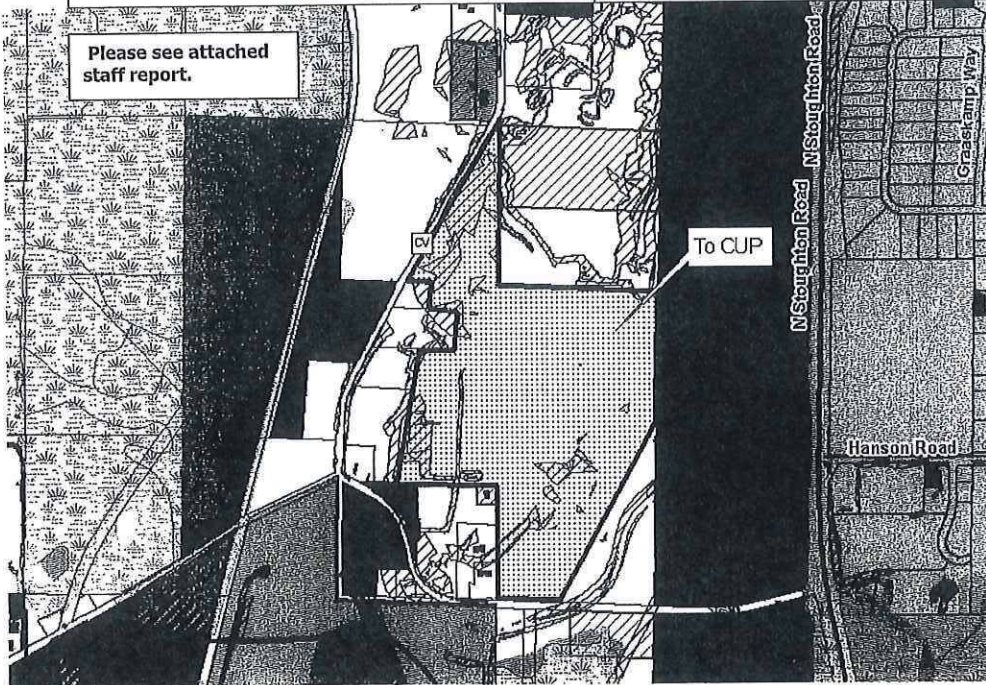
EXPIRATION OF PERMIT

In addition to any time limit established as a condition in granting this CUP, Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance.

# STAFF REPORT

## DANE COUNTY ZONING & LAND REGULATION COMMITTEE

Dane County Application for Change in Zoning or CUP	Hearing Date: 10/27/2009 Item #: 18
Zoning Petition #: None C.U.P. #: 2120	Town/Section: Town of Burke/17
Internal Tracking Number: RECU25598	
Applicant: YAHARA MATERIALS INC	Location: NORTH OF 4370 MESSERSCHMIDT RD. AND EAST OF HWY CV
Area: 104.40 acres Delayed Effective Date: NO	Proposed Use: NON-METALLIC MINERAL EXTRACTION SITE



<b>TOWN ACTION</b> <b>RECOMMENDATION</b> <input checked="" type="checkbox"/> Approved <u>9-16-09</u> <input type="checkbox"/> Denied  Subject To: <input type="checkbox"/> Conditions <input type="checkbox"/> Amendments  IF CUP: <input checked="" type="checkbox"/> Conditions <input type="checkbox"/> None	<b>ZLR COMMITTEE ACTION - REZONING</b> <input type="checkbox"/> Postponed <input checked="" type="checkbox"/> Approve <input checked="" type="checkbox"/> Cond/Amnd Town <input type="checkbox"/> Cond/Amnd Comm <input type="checkbox"/> As Conditioned  <input type="checkbox"/> Amended <input type="checkbox"/> Changed Zone Dist. <input type="checkbox"/> Changed Boundary Description <input type="checkbox"/> DENY Action Date _____ Vote _____	<b>ZLR CUP APPROVAL</b> <input checked="" type="checkbox"/> Approved <input checked="" type="checkbox"/> As Specified by Town <input checked="" type="checkbox"/> Con by ZLR <input type="checkbox"/> DENY Date <u>10-27-09</u> <u>4-0</u>  <b>COUNTY BOARD ACTION</b> <b>REZONING</b> <input type="checkbox"/> Referred <input type="checkbox"/> Approved <input type="checkbox"/> DENY Date _____ <input type="checkbox"/> Amended on Floor County Board Agenda Item _____
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TOWN BOARD ACTION REPORT – CONDITIONAL USE PERMIT

Regarding Petition # 2120 Dane County ZLR Committee Public Hearing 10/27/2009

Whereas, the Town Board of the Town of Burke having considered said conditional use permit application, be it therefore resolved that said conditional use permit is hereby (check one): ☒ APPROVED

☐ DENIED (IF DENIED, PLEASE COMPLETE FINDINGS SECTION ON PAGE 2)

PLANNING COMMISSION VOTE: 5 In Favor ☐ Opposed

TOWN BOARD VOTE: 5 In Favor ☐ Opposed

Whereas, in support of its decision, the Town Board has made appropriate findings of fact that the standards listed in section 10.255(2)(h), Dane County Code of Ordinances, and section 10.123(3)(a), if applicable, are found to be (check one):

☒ SATISFIED

☐ NOT SATISFIED (PLEASE COMPLETE FINDINGS SECTION ON PAGE 2)

THE CONDITIONAL USE PERMIT IS SUBJECT TO THE FOLLOWING CONDITION(S):

1) 27 year term to coincide with the dissolution of the town of Burke on October 27, 2036.

2) \$2,000 Annual Road fee payable to the town of Burke with a review every five years

3) The map include the Reclamation permit number NMAP 33.

PLEASE NOTE: The following space, and additional pages as needed, are reserved for comment by the minority voter(s), OR, for the Town to explain its approval if the decision does not comply with the relevant provisions of the Town Plan.

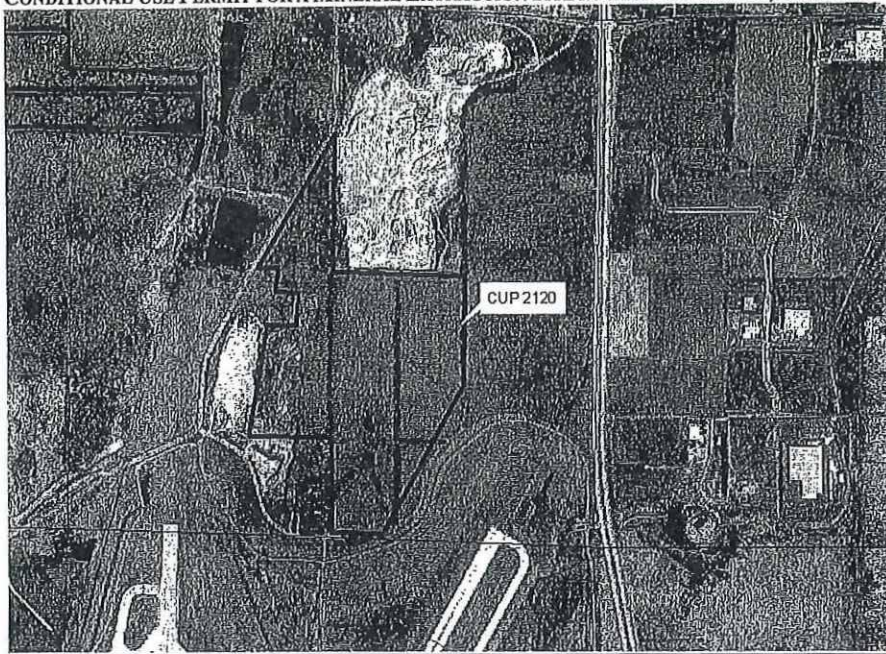
I, Brenda Ayers, as Town Clerk of the Town of Burke, County of Dane, hereby certify that the above resolution was adopted in a lawful meeting of the Town Board on September 16, 2009.

Brenda Ayers  
Town Clerk

10/2/09  
Date

, 20

9/2008

**DANE COUNTY ZONING STAFF COMMENTS / BACKGROUND**

- **Owner/Applicant:** Yahara Materials
- **Size, zoning, use of existing parcel:** 104.4 acres, property located between legal nonconforming (NC) mineral extraction sites. Portions of this property are used in operation of those sites. The operation is located directly north of the Dane County Regional Airport.
- **Rezone/CUP desired:** CUP for mineral extraction.
- **History:** What the applicant call the "highway 51 quarry", located at the intersection of Hwy 51 and Hoepker Road, opened and has been in operation since 1936. Yahara Materials purchased the quarry in 1984. Yahara applied for a CUP for mineral extraction for the same 104.4 acres back in 1997. That petition was ultimately tabled by ZNR Committee. At that time, operational plans were developed and additional information generated at the request of the ZNR. That information is resubmitted for this petition. The quarry is currently used to produce limestone products for various municipalities, the Wisconsin Department of Transportation, the Dane County Regional Airport and private contracts
- **Shoreland/Floodzone/Wetlands:** None
- **Other county permits:** An erosion control (Chapter 14) and nonmetallic mining reclamation permit (Chapter 74) are required.

**OTHER AGENCY COMMENTS**



The following agencies are reviewing the petition and may submit comments prior to or after the Zoning and Land Regulation Committee Public Hearing.

**City of Madison:** We received a letter from the City of Madison Planning Division stating that, based on the information provided and successful review by county staff, the city has no objection to the petition. See attached letter from Michael Waidelich, Principal Planner dated September 21, 2009.

#### TOWN ACTION REPORT

The Burke Town Board acted on the petition on September 16, 2009. They **approved** CUP 2120 with three conditions (please see attached Town Action Report). The first condition is covered in condition #5 of the proposed conditions listed at the end of this report. The second, regarding paying the town a road fee, is one that the county cannot enforce. Such an agreement must be made between the town and the operator. The third condition is covered by condition #2 of the proposed conditions listed at the end of this report.

#### DANE COUNTY PLANNING STAFF COMMENTS

**Overview:** This petition is for continuation and expansion of an existing mineral extraction operation. This request is for an area covering 104.4 acres for a period of 27 years.

#### Analysis

**Surrounding Area Characteristics:** The subject property is bordered by one mineral extraction site to the north and another on the southeast edge of the CUP area. Directly to the south is the Dane County Regional Airport. The surrounding area also includes undeveloped land owned by the Dane County, agricultural land, and scattered residential and commercial land uses.

**Operational Plans:** The applicant provided the following description of the operation:

Quarrying operations vary as market demands indicate. Typically drilling, blasting and crushing operations vary as market demands dictate. Typically drilling, blasting and crushing operations occur three to five times per year. Loading and hauling occur throughout the year as necessary to meet demand. Due to the high quality of material in this deposit, concrete batch plants and asphalt plants need to be set up when construction projects are located in the area. These plants are portable and are removed upon completion of the projects. Due to the short time frames to complete WisDOT contracts, extended hours of operation may be necessary to include 24 hours a day for short periods of time. Aside from special circumstances, our normal hours of operation would be: Monday through Friday 6:00 a.m. to 6:00 p.m. and Saturday 6:00 a.m. to 4:00 p.m."

#### Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan:

The cooperative plan serves to direct development in years prior to the phased annexation of land into the Village of DeForest, City of Sun Prairie and City of Madison. The subject property is located in a portion of the town of Burke that will ultimately become part of the City of Madison. As stated in the letter provided by the city of Madison:

"While the proposed expansion of the quarried area does not appear to constitute 'development' as defined in the Cooperative Plan, that Plan also includes a provision that 'the Parties will reasonably cooperate to find mutually acceptable solutions to issues concerning the operation of quarries and non-metallic mines located on Town parcels. The City of Madison's comments on the Yahara Materials application are provided as part of that cooperation."



Compliance with County Ordinances: Mineral extraction operations must meet requirements found in Chapters 10, 14 and 74 of the Dane County Code of Ordinances. The applicant has submitted an erosion control plan/storm water management plan as required by Chapter 14, and a reclamation plan as required by Chapter 74, of the Dane County Code of Ordinances (DCCO). Section 10.12(3)(a) *Conditional uses permitted in the A-1 Agriculture District* lists "Mineral extraction operations, asphalt plants, ready mix concrete plants". Chapter 10 provides six standards for granting a CUP in Section 10.255(2)(h) of the zoning ordinance. They are as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or 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 being 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.

**RECOMMENDED CONDITIONS**

- **Conditions:** Please see the following list of potential conditions for CUP #2120.

**POTENTIAL CONDITIONS OF APPROVAL FOR CUP 2120**

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. Reclamation shall meet requirements of Chapter 74 of the Dane County Code of Ordinances.
3. The applicant shall apply for and receive all other required local, state and federal permits.
4. The operator shall develop and operate the site according to the site/operations and phasing plan.
5. CUP #2210 shall expire on October 27<sup>th</sup> 2036 to coincide with the dissolution of the Town of Burke. Reclamation and reseeding must be completed by this date.
6. The operator shall maintain the driveway in a dust free manner in accordance with local, state, and federal regulations, and shall clean any dust or mud tracked onto public roads.

7. The operator 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. The operator shall spray the site with water if and when needed to control dust.
8. The operator and all haulers shall access the CUP site only through those points designated as entrances on the Site/Operations Plan.
9. The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed "no trespassing."
10. Hours of operation shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturdays. No operations of any kind shall take place on Sundays or legal holidays. In special circumstances, Yahara Materials may request permission from the Zoning Administrator to operate outside of the hours listed above. Such circumstances would be related to a construction project conducted outside of normal business hours and outside a normal workweek. Any permission granted would be only allowed for work related to the specified project.
11. During operations, the edge(s) of the extraction area shall be maintained at a slope of no greater than 1:1.
12. No water shall be pumped or otherwise removed from the site.
13. There shall be no bulk fuel stored on site.
14. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
15. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
16. Dane County and Town of Burke shall be listed as additional named insureds on the Yahara Materials liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
17. The Zoning Administrator or designee 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. Unless the operation is in reasonable compliance with these terms of this approval, such approval is subject to amendment or revocation.

(Questions? Contact Pam Andros – 261-9780)



Department of Planning & Community & Economic Development  
**Planning Division**

Website: [www.cityofmadison.com](http://www.cityofmadison.com)

Madison Municipal Building, Suite LL100  
215 Martin Luther King, Jr. Boulevard  
P.O. Box 2985  
Madison, Wisconsin 53701-2985  
TTY/TEXTNET 866 704 2318  
FAX 608 266-8739  
PH 608 266-4635

September 21, 2009

Brenda Ayers, Clerk/Treasurer  
Town of Burke  
5365 Reiner Road  
Madison, WI 53718

RE: Yahara Materials, Inc. CUP Application for expansion of the USH 51 Quarry

Dear Ms. Ayers:

Thank you for forwarding information to the City of Madison regarding the pending application by Yahara Materials, Inc. for a Conditional Use Permit to expand their quarry located along U.S. Highway 51 in the Town of Burke. I have also been contacted by the applicant, Tim Geoghegan, about this application.

The USH 51 Quarry is within the Boundary Adjustment Area-Madison established by the 2007 *Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan*, and will ultimately be within City of Madison jurisdiction. While the proposed expansion of the quarried area does not appear to constitute "development" as defined in the Cooperative Plan, that Plan also includes a provision that "the Parties will reasonably cooperate to find mutually acceptable solutions to issues concerning the operation of quarries and non-metallic mines located on Town parcels." The City of Madison's comments on the Yahara Materials application are provided as part of that cooperation.

Staff from the City of Madison Planning Division have reviewed the materials provided, including the information letter from the applicant, the Fugitive Emissions Control Plan, the Aggregate Processing Plant Sound Level Assessment, the Yahara Materials Blasting Procedure, the Reclamation Plan, and the Erosion Control and Stormwater Management Plan together with the review and conditions letter from the Dane County Zoning Administrator dated September 8, 2004. Based on review of these materials, City of Madison staff have no objection to the proposed Conditional Use Permit to expand Yahara Materials' USH 51 Quarry, subject to such conditions as the Town of Burke or Dane County may find appropriate.


Thank you for providing the opportunity to comment on this pending application. Please let me know if you have any questions about these comments.

Sincerely,

**RECEIVED**

SEP 24 2009

DANE COUNTY PLANNING & DEVELOPMENT

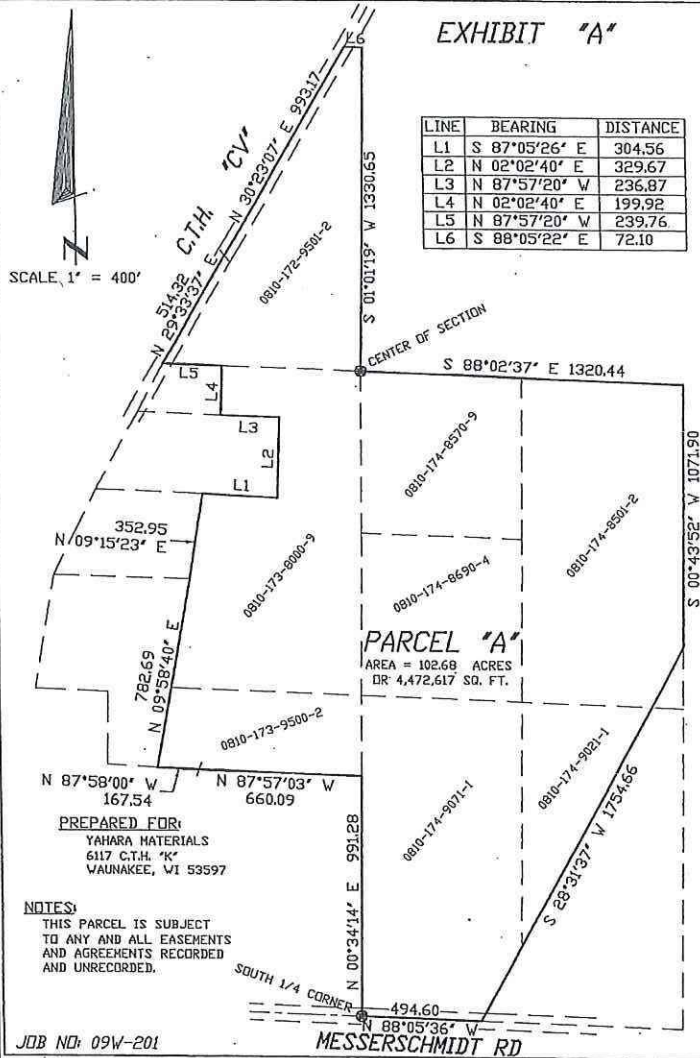
  
Michael Waidelich  
Principal Planner

- c. Timothy Geoghegan, Supervisor, Yahara Materials, Inc.  
Pamela Andros, Dane County Planning and Development Department  
Kevin Viney, Chairman, Town of Burke  
Bradley J. Murphy, Planning Division Director





LINE	BEARING	DISTANCE
L1	S 87°05'26" E	304.56
L2	N 02°02'40" E	329.67
L3	N 87°57'20" W	236.87
L4	N 02°02'40" E	199.92
L5	N 87°57'20" W	239.76
L6	S 88°05'22" E	72.10



Macedonia minutes 10/2/09

TOWN BOARD ACTION REPORT - CONDITIONAL USE PERMIT

Regarding Petition # 2120 Dane County ZLR Committee Public Hearing 10/27/2009

Whereas, the Town Board of the Town of Burke having considered said conditional use permit application, be it therefore resolved that said conditional use permit is hereby (check one): ☒ APPROVED

☐ DENIED (IF DENIED, PLEASE COMPLETE FINDINGS SECTION ON PAGE 2)

PLANNING COMMISSION VOTE: 5 In Favor ☐ Opposed

TOWN BOARD VOTE: 5 In Favor ☐ Opposed

Whereas, in support of its decision, the Town Board has made appropriate findings of fact that the standards listed in section 10.255(2)(h), Dane County Code of Ordinances, and section 10.123(3)(a), if applicable, are found to be (check one):

☒ SATISFIED

☐ NOT SATISFIED (PLEASE COMPLETE FINDINGS SECTION ON PAGE 2)

THE CONDITIONAL USE PERMIT IS SUBJECT TO THE FOLLOWING CONDITION(S):

1) 27 year term to coincide with the dissolution of the town of Burke on October 27, 2036.

2) \$2000 Annual Road Fee payable to the town of Burke with a review every five years

3) The CUP include the Reclamation permit number NMA RP 53.

# 2) not possible as written -  
by town + applicant

# 3) check w/ Dan E. (really covered in our suggested condition # 2)

PLEASE NOTE: The follow minority voter(s), OR, for relevant provisions of the T

I, Brenda Ayers, as Town Clerk of the Town of Burke, County of Dane, hereby certify that the above resolution was adopted in a lawful meeting of the Town Board on September 14, 2009.

Brenda Ayers  
Town Clerk

10/2/09  
Date

**Town of Burke Board Meeting Minutes – September 16, 2009**

**6:00 p.m.**

Board members in attendance: Chairman Viney, Supervisor Berg and Supervisor Hess, Supervisor Munson and Supervisor Searls. Also in attendance: Brenda Ayers, Clerk/Treasurer; Lonnie Konsella, Public Works Director. See attached list for other interested parties in attendance.

**1. ADMINISTRATIVE**

- a) It was determined that a quorum of Supervisors was present and that the meeting was properly posted.
- b) The meeting was called to order at 6:00 p.m.
- c) The Pledge of Allegiance was recited.
- d) Public Hearing on a request submitted by Yahara Materials for CUP #2120 for the purpose of expanding the existing HWY 51 Quarry, property located off Hoepker and Messerschmidt Roads. Tim Geoghegan of Yahara Materials explained that CUP #1407 was previously applied for in 1997. It was approved at the Town level and tabled at Dane County pending further information. Requested information was provided and the erosion control plan and reclamation plan were approved with Dane County. They have been operating the quarry in this site since 1997, with the assumption that CUP #1407 was approved. According to County staff, there is no record of County level approval. Geoghegan noted that they have requested extended hours due to road projects, such as interstate work that require them to work at night. Geoghegan said that Mike Waidelech, Planner for the City of Madison, did not have any objections to the CUP. Neighboring property owners Steve Olp, Jim Rothfuss and Jamie Anderson spoke in favor of the request.
- e) Approval of September 2, 2009 Board meeting minutes. Motion: Hess/Searls to approve the minutes as revised. Motion carried. Revision was to item 2f on page 2, second sentence, replace the word "has" with "have."
- f) Clerk/Treasurer report. Ayers presented a draft of a letter to Josh Ripp of Maple Bluff-Burke- Blooming Grove EMS supporting the upgrade to intermediate tech level. The Board approved sending the letter to Ripp.
- g) Finance Report. Ford distributed the cash on hand report prior to the meeting.
- h) Approval of Bills. The Board members reviewed the bills and signed the Town Board Approval cover sheet for check number 23244-23267 and payroll related disbursements number 968-983.
- i) Public Concerns: Public's opportunity to speak to the Town Board about any subject that is not a specific agenda item. Dan Lothe asked the status of the Town storm water project. Hess explained that the Town is waiting for a report from the engineer.

**2. NEW BUSINESS**

- a) Request submitted by Yahara Materials for CUP #2120 for the purpose of expanding the existing HWY 51 Quarry, property located off Hoepker and Messerschmidt Roads. Hess reported that the Plan Commission recommended approval of the CUP with conditions as follows: 1) CUP term be 27 years to coincide with the dissolution of the Town of Burke by the



Boundary Agreement on October 27, 2036 2) \$2,000 annual road fee payable to the Town of Burke with a review every five years 3) The CUP include Reclamation Permit number NMARP 33. Hess explained that the term limit was put on the CUP to avoid shifting the burden to the City of Madison upon the dissolution of the Town. Motion: Hess/Berg to approve the CUP with the conditions recommended by the Plan Commission. Motion carried.

- b) Operator's licenses. Applications were presented from Ryan Embry and Leah Knuebuhler. Both applicants completed the beverage server training course and no alcohol related violations were noted in their background check. Motion Searls/Munson to approve the Operator's Licenses for both Embry and Knuebuhler. Motion carried.
- c) Amendment to final resolution authorizing public improvement and levying special assessments against benefited property, to lower the interest rate to 2%. Motion Hess/Munson to approve the amendment and to authorize the Town Chair and Clerk to sign the resolution. Motion carried.
- d) Road swale infiltration testing report from AECOM. A copy of the report which was already approved and accepted by the WI DNR was distributed in the Board packets. Per the stormwater permit, the Town was required to reduce suspended solids by 20% in 2008. A 28% reduction was noted by 2008. By 2013 the Town is further required to reduce the suspended solids an additional 12% to reach 40%. Based on a recommendation by Kelly Mattfield of AECOM, the Town Board previously approved rerunning the test using more recent technology which had been successful in other communities. Per the latest report and the DNR's agreement, the Town achieved the 40% reduction (actual reduction of 61%) using this improved technology. This method saved the Town the significant expense of retrofitting stormwater ponds.
- e) Removal of tree in Town Hall Park. Konsella reported that one of the large maples by the parking lot is dead. A copy of a proposal from Competitive Tree Service was included in the Board packets. Konsella recommended option number 2 in the amount of \$400. Motion: Hess/Berg to approve removal of large maple tree option number 2 in the proposal from Competitive Tree Service. Motion carried.

### 3. OLD/UNFINISHED BUSINESS

- a) Trash/recycling RFP's. A spreadsheet comparing the prices/services from Veolia and Waste Management was provided in the Board packets. Motion: Hess/Berg to authorize Ayers to negotiate a contract with Waste Management for spreadsheet "Option A" (manual weekly recycling and trash pickup). Motion carried.
- b) Status of 2009 Road projects. Konsella reported that Pinion will have the final pay request ready on September 17<sup>th</sup>.
- c) Status of Portage Road reconstruction. Konsella reported that the project was completed satisfactorily. Konsella stated that per the contract, the contractor is to water the grass seed twice a week. Konsella will send an email to Pinion regarding the watering of the shoulders and copy the Town Board.
- d) Update Town Storm water issues-Charlotte's Walk, Wynbrook and Raintree subdivisions. Ayers will contact Uriah regarding an update of this item.

- e) Status of speed limit on Portage Road. Konsella reported that the City of Madison advised him not to change the speed limit since the City will be changing their portion to match the Town.
- f) Status of gas line repair at Town Hall. Konsella reported that the project including the checking of the tracer wire was completed on September 15<sup>th</sup>.
- g) Update on Maple Bluff EMS. Ayers reported Blooming Grove has decided to contract with the Town of Madison for EMS services in 2010. The Town will continue to explore its options for EMS services.
- h) Update of ETZ procedures. Ayers emailed a draft of the procedures to the Board prior to the meeting. Since there was not adequate time for the Board to review the procedures, no action was taken.
- i) Commission/Committee appointments. No appointments were made.
- j) Policies and procedures for Order for Removal of encroachments of Town Right of Way and mailbox standards. A revised draft of the policies and procedures prepared by Konsella was included in the packet. Ayers will review the drafts and make sure the language matches Town Ordinances and State Statutes. It was the consensus of the Board that letters are sent to property owners who are currently in violation of the Ordinance giving time to comply and appeal options. Due to winter approaching, it was suggested that the compliance date be late spring/early summer 2010. The spring newsletter will include information regarding encroachments and mailboxes.

4. **COMMITTEE REPORTS (AS APPLICABLE)**

- a) Public Works- Konsella reported that Cleary installed the wider roof cap on Town Hall. Konsella completed the road aid and PASER reports.
- b) Plan Commission/ETZ Committee- Hess reported that the next ETZ meeting is scheduled for October 13<sup>th</sup>.
- c) Parks Commission- no report.
- d) EMS Committee- no report.
- e) Fire Commission- started budget discussions at the meeting on September 10<sup>th</sup>.
- f) NECC- Next meeting is scheduled October 26.
- g) JRTC- Ayers reported that they are meeting September 21<sup>st</sup>.
- 5. Set date for Budget Workshops. Regular meeting on October 7<sup>th</sup> will include budget discussions with a condensed regular agenda.

6. **ADJOURNMENT.**

Motion: Searls/Munson to adjourn. Motion carried. Meeting adjourned at 7:47 p.m.

Brenda Ayers  
Clerk/Treasurer  
Town of Burke  
10/1/2009

Town of Burke  
Plan Commission Minutes  
August 26, 2009

Members Present: Mike Vraniak, Chairperson; RJ Hess; Christie Legler; Marv Urban and George Walsh. Excused: Joan Stoflet.

Others Present: Brenda Ayers, Clerk/Treasurer. See attached list for other interested parties in attendance.

1. Call to order.

The meeting was called to order at 5:30 p.m. by Chairperson Vraniak.

2. Discuss /possible action concerning a request from Yahara Materials for CUP #2120 for the purpose of expanding the existing HWY 51 Quarry, property located off Hoepker and Messerschmidt Roads.

Tim Geoghegan of Yahara Materials explained that CUP #1407 was previously applied for in 1997. It was approved at the Town level and tabled at Dane County pending further information. Requested information was provided and the erosion control plan and reclamation plan were approved with Dane County. They have been operating the quarry in this site since 1997, with the assumption that CUP #1407 was approved. According to County staff, there is no record of County level approval. The County has requested that a new application be submitted for this site. Geoghegan explained that quarry has operated since 1986 and that they have a good relationship with neighbors and Dane County.

In 1997 the recommendation to approve CUP #1407 also required a \$2,000 road fee payable to the Town of Burke on an annual basis with a review every five years. Geoghegan explained that the primary access was on Hoepker Road.

Motion: Hess/Walsh: make recommendation to approve CUP 2120 with the following conditions: 1) CUP term be 27 years to coincide with the dissolution of the Town of Burke by the Boundary Agreement on October 27, 2036 2) \$2,000 annual road fee payable to the Town of Burke with a review every five years 3) The CUP include Reclamation Permit number NMARP 33. Motion carried.

3. Update on the DeForest ETZ.

Urban updated the group on a site plan review for a new building in Metro Business Park between NAMI and existing buildings rented out by Welton. Village of DeForest staff recommended approval with eleven conditions.

Ayers distributed the ETZ Ordinances to the Plan Commission members. Ayers is working the procedures with Greg Frahm, Village of DeForest and Bob Pulvermacher, Town of Vienna to establish Town procedures for items that appear before the ETZ.



4. Update on the plans for Token Creek Park. Walsh reported that he has not received any updates.
5. Approval of minutes from June 10, 2009. Motion: Hess/Walsh to approve the minutes as presented. Motion carried.
6. Adjourn.

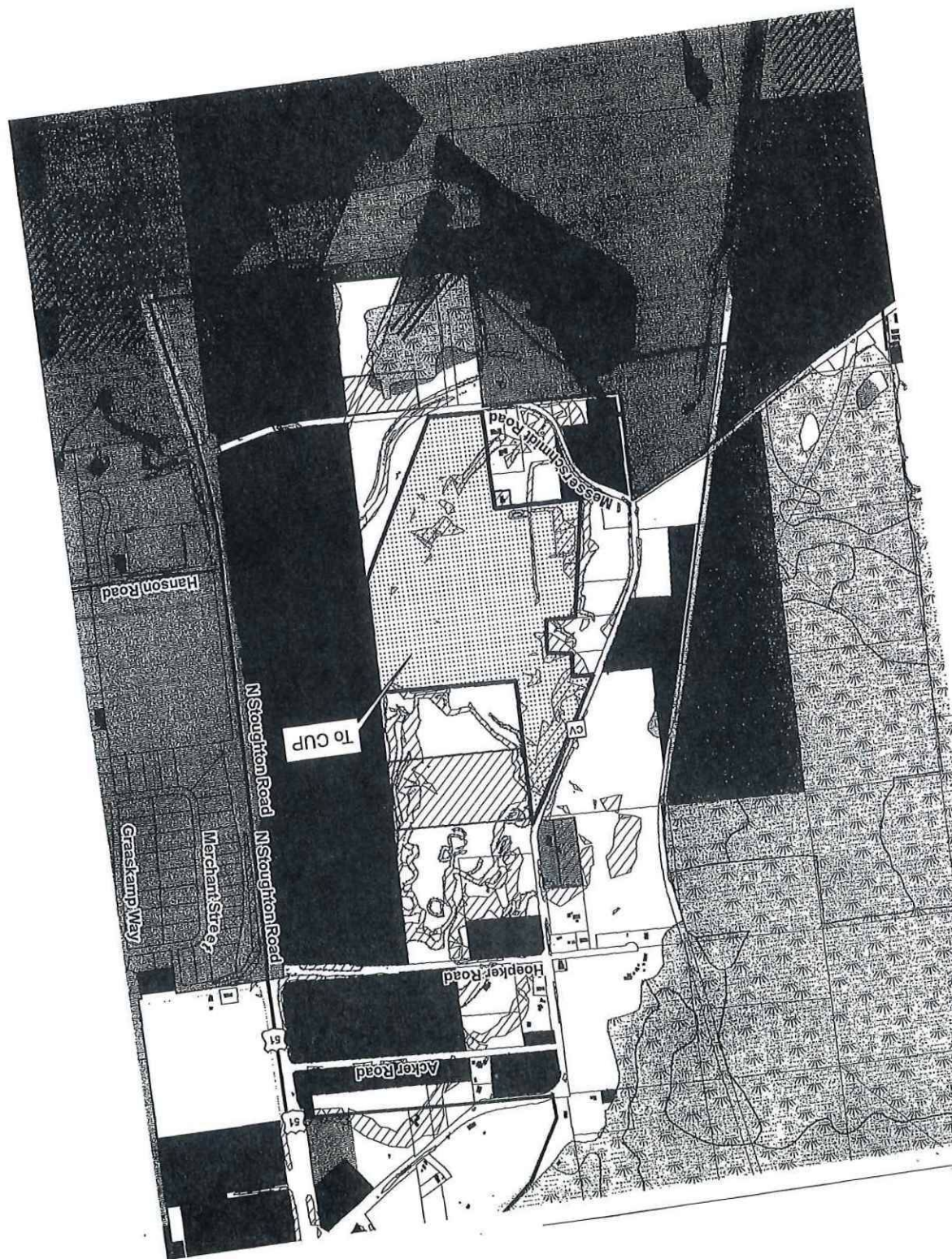
MOTION: Hess/Legler to adjourn. Meeting adjourned at 6:27 p.m. Motion carried.

Brenda Ayers  
Clerk/Treasurer  
Town of Burke  
9/16/2009

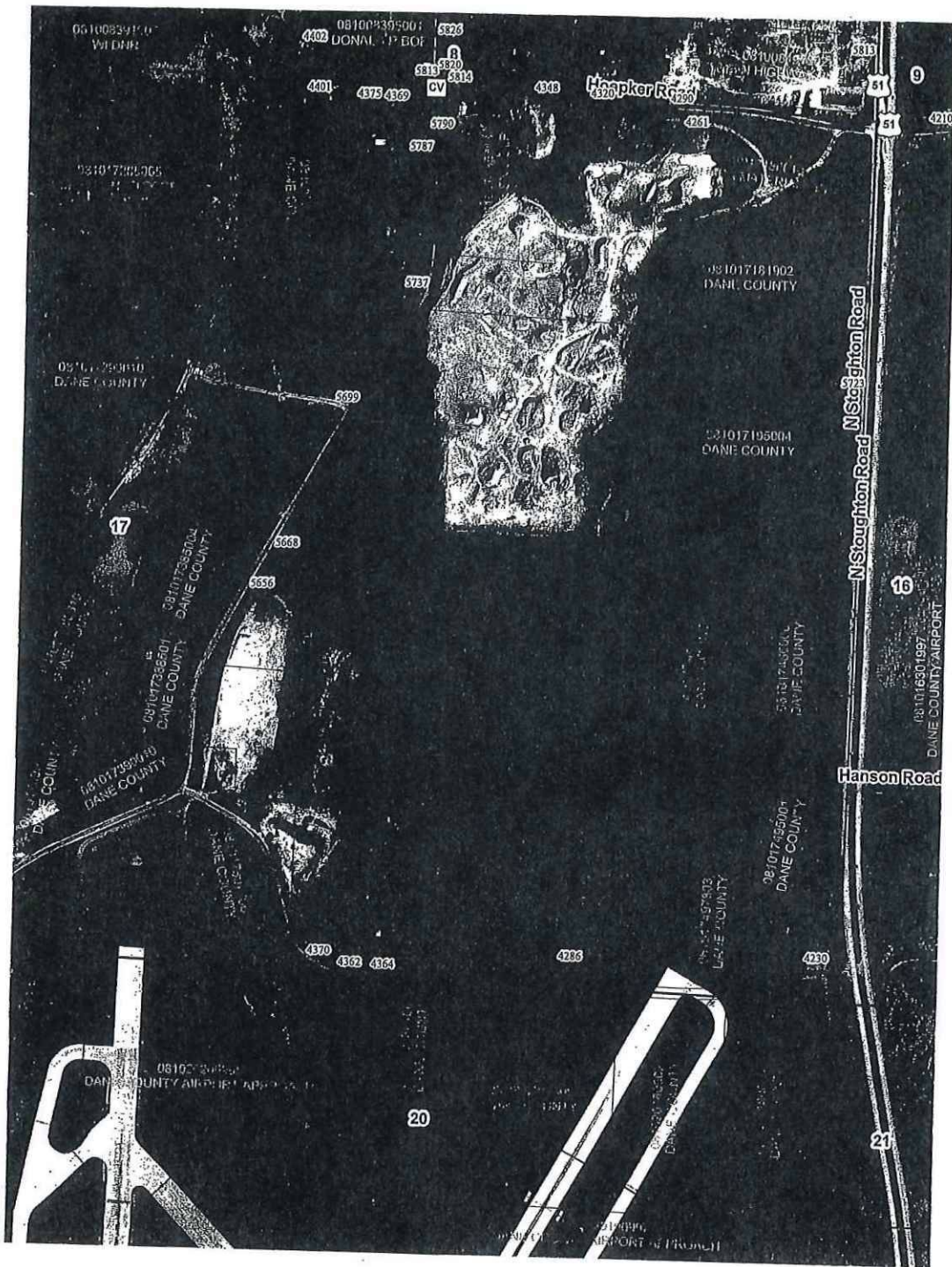
## DESCRIPTION PARCEL "A"

A parcel of land located in part of the Southwest  $\frac{1}{4}$  and Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , and in part of the Southeast  $\frac{1}{4}$  and Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , and in part of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , all in Section 17, T8N, R10E, in the Town of Burke, Dane County, Wisconsin being more particularly described as follows:

Beginning at the South  $\frac{1}{4}$  corner of said Section 17; thence N  $00^{\circ}34'14''$  E along the east line of the Southwest  $\frac{1}{4}$ , 991.28 feet; thence N  $87^{\circ}57'03''$  W, 660.09 feet; thence N  $87^{\circ}58'00''$  W, 167.54 feet; thence N  $09^{\circ}58'40''$  E, 782.69 feet; thence N  $09^{\circ}15'23''$  E, 352.95 feet; thence S  $87^{\circ}05'26''$  E, 304.56 feet; thence N  $02^{\circ}02'40''$  E, 329.67 feet; thence N  $87^{\circ}57'20''$  W, 236.87 feet; thence N  $02^{\circ}02'40''$  E, 199.92 feet; thence N  $87^{\circ}57'20''$  W, 239.76 feet to the centerline of County Highway CV; thence N  $29^{\circ}33'37''$  E along said centerline, 514.32 feet; thence N  $30^{\circ}23'07''$  E along said centerline, 993.17 feet to the north line of said Northwest  $\frac{1}{4}$ ; thence S  $88^{\circ}05'22''$  E along said north line, 72.10 feet to the west line of said Northwest  $\frac{1}{4}$ ; thence S  $01^{\circ}01'19''$  W along said west line, 1330.65 feet to the Center of Section 17; thence S  $88^{\circ}02'37''$  E along the north line of said Southeast  $\frac{1}{4}$ , 1320.44 feet; thence S  $00^{\circ}43'52''$  W along the west line of said Northwest and Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , 1071.90 feet; thence S  $28^{\circ}31'37''$  W, 1754.66 feet to the south line of said Southeast  $\frac{1}{4}$ ; thence N  $88^{\circ}05'36''$  W along said south line, 494.60 feet to the point of beginning. This description contains 102.68 acres and is subject to a road right of way of 33 feet over the most southerly and northwesterly part thereof.







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% BENJAMIN HOFFMAN  
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MADISON, WI 53704

HIGHWAY 51 LLC  
PO BOX 277  
WAUNAKEE, WI 53597

DANE COUNTY  
210 MARTIN LUTHER KING BLVD  
RM 114  
MADISON, WI 53703 3342

YAHARA MATERIALS INC  
PO BOX 277  
WAUNAKEE, WI 53597

JAMES ROTHFUSS  
4364 MESSERSCHMIDT RD  
MADISON, WI 53704

JAMES S ROTHFUSS  
4364 MESSERSCHMIDT RD  
MADISON, WI 53704

HIGHWAY 51 LLC  
PO BOX 277  
WAUNAKEE, WI 53597

DANE COUNTY AIRPORT  
APPROACH  
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MADISON, WI 53704 3158

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# WILLIAMSON SURVEYING & ASSOCIATES, LLC

104 A WEST MAIN STREET, WAUNAKEE, WISCONSIN, 53597.

NOA T. PRIEVE & CHRIS W. ADAMS

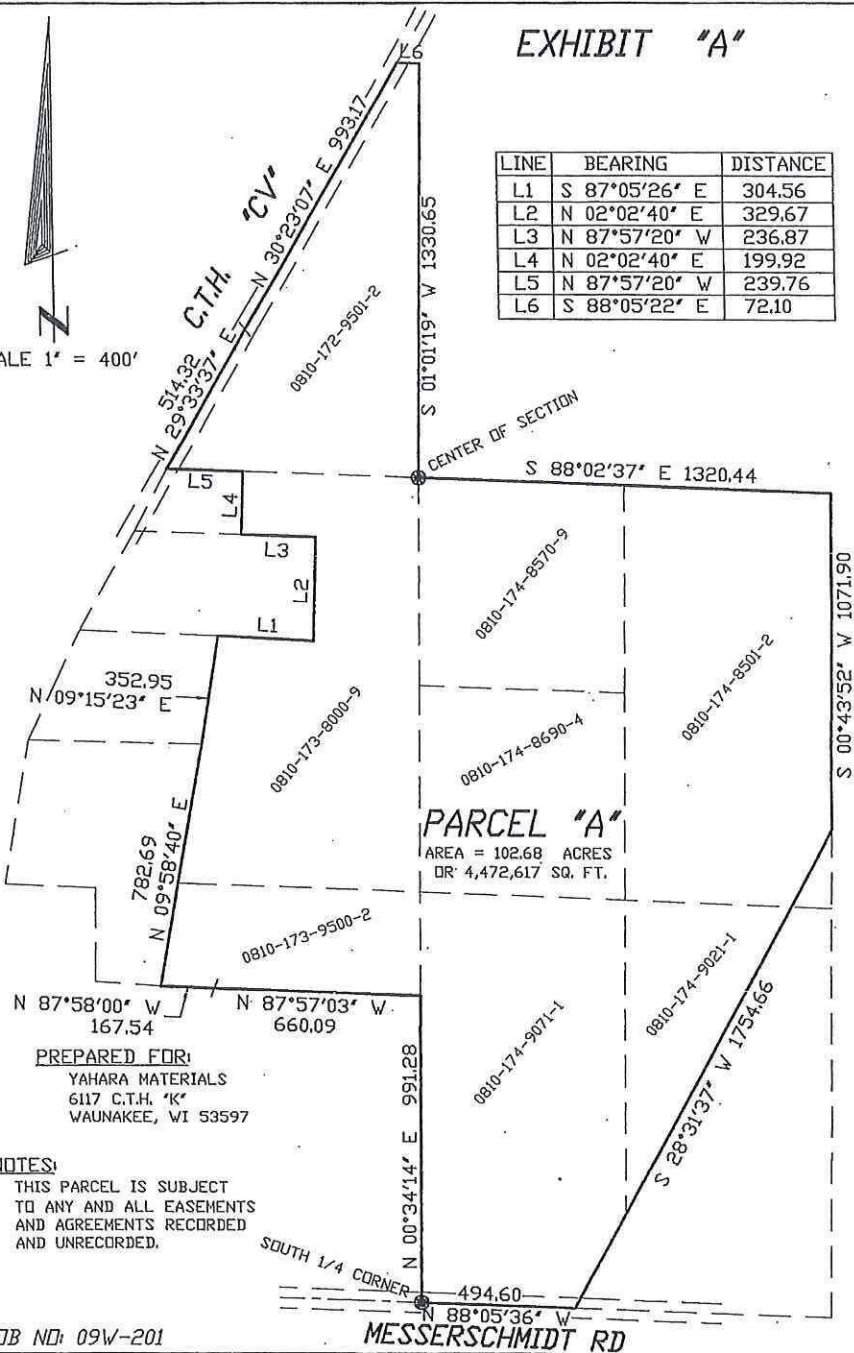
REGISTERED LAND SURVEYORS

PHONE: 608-255-5705 FAX: 608-849-9760 E-MAIL: WILL.SURV@TDS.NET

## EXHIBIT "A"

LINE	BEARING	DISTANCE
L1	S 87°05'26" E	304.56
L2	N 02°02'40" E	329.67
L3	N 87°57'20" W	236.87
L4	N 02°02'40" E	199.92
L5	N 87°57'20" W	239.76
L6	S 88°05'22" E	72.10

SCALE 1" = 400'



PREPARED FOR:  
YAHARA MATERIALS  
6117 C.T.H. "K"  
WAUNAKEE, WI 53597

### NOTES:

THIS PARCEL IS SUBJECT  
TO ANY AND ALL EASEMENTS  
AND AGREEMENTS RECORDED  
AND UNRECORDED.

JOB NO: 09W-201

MESSERSCHMIDT RD





P.O. Box 277 Waunakee, WI 53597-0277 Phone 608-849-4162 Fax 608-849-5062

**Yahara Materials, Inc.  
HWY 51 Quarry**

**Intro:**

The Hwy 51 Quarry was originally opened in 1936 and has been in operation since that time. Yahara Materials, Inc. purchased the quarry in 1984 and has been operating the quarry since that time. In 1997 a conditional use permit application was made by Yahara Materials, Inc. for an additional 104.4 acres south of the original quarry. This land is owned by Yahara Materials, Inc. and is located in an area that will be providing aggregate for the community in the future years. During the course of pursuing CUP 1407, operational plans were developed, erosion control and reclamation plans were submitted and approved and are on file with Dane County Zoning and Dane County Land Conservation. These plans were presented to the Township of Burke plan committee and town board and were approved by both. CUP 1407 was brought before the Dane County ZLR committee and was tabled/postponed in lieu of further information. The additional information requested was submitted and approved however, there is no record of further action by the Dane County ZLR committee. In an effort to clarify the record, Yahara Materials, Inc. is resubmitting a request for a Conditional Use Permit on 104.4 acres of land, south of the existing quarry for use as a mineral extraction site.

**Location:**

The permit area is described as the W ½, E ½ Section 17, E½, SW ¼ Sec 17, T8N-R10E, Burke Township, Dane County, Wisconsin.

**Ownership:**

Hwy 51, LLC  
Yahara Materials, Inc.  
P.O. Box 277  
Waunakee, WI 53597

**Operator:**

Yahara Materials, Inc.  
P.O. Box 277  
Waunakee, WI 53597-0277

**Description of  
Operations:**

This quarry is currently used to produce limestone products for various municipalities, WisDOT, Dane County Airport and private contracts. Quarrying operations vary as market demands dictate. Typically drilling, blasting and crushing operations occur three to five times per year. Loading and hauling occur throughout the year as necessary to meet demand. Due to the high quality of material in this deposit, concrete

batch plants and asphalt plants need to be set up when construction projects are located in the area. These plants are portable and are removed upon completion of the projects.

**Transportation  
Routes:**

The primary haul route is via Hoepker Road to Hwy 51. When producing material at the south end of the property, the route from Messerschmidt road to Hwy CV would be used.

**Reclamation:**

The approved reclamation plan that is on file with Dane County complies with all requirements of NR135.19 and will be implemented and followed.

**Erosion Control:**

The approved plan that is on file with Dane County will be followed as approved.

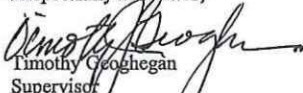
**Hours of Operation:**

Due to the short time frames to complete DOT contracts, extended hours of operation may be necessary to include 24 hours a day for short periods of time. Aside from special circumstances, our normal hours of operation would be:  
Monday – Friday 6 a.m. to 6 p.m.  
Saturday 6 a.m. to 4 p.m.

**Conclusion:**

This site is a critical source of high quality aggregate to the community. In order to provide the products necessary to maintain our infrastructure, it is vital that this site be approved. We estimate that this quarry could be viable for fifty years and our request is that time frame be approved. This would allow us to supply a stable supply of aggregate to the greater community.

Respectfully Submitted,

  
Timothy Geoghegan  
Supervisor  
YAHARA MATERIALS, INC.

## Fugitive Emissions Control Plan

Yahara Materials, Inc. recognizes the need for a comprehensive and consistent company policy that outlines control measures, activities, and management options that contribute to a reduction in fugitive emissions from crushing, processing, and transporting of non-metallic mineral aggregates at quarry locations. This plan specifies potential fugitive emissions sources, appropriate control options, operator responsibilities and responsible persons, and record keeping requirements for maintaining documentation of plan use.

### Plan Outline

#### I. POTENTIAL FUGITIVE EMISSION SOURCES

- A. Transport of shot rock to crusher
- B. Crushing Operations
- C. Screening Operations
- D. Conveying of Aggregate Products
- E. Stockpiling and Stockpile Maintenance
- F. Truck Transport of Final Products
- G. Total Facility

#### II. FUGITIVE EMISSIONS CONTROL OPTIONS

- A. Water Spray Application
- B. Shrouding
- C. Chemical Dust Suppressant Application
- D. Drop Height Management
- E. Site Traffic Speed Control
- F. Timing Management
- G. Climatic Influence
- H. Paving/Sweeping

#### III. RESPONSIBLE PERSON / RESPONSIBILITIES

- A. Maintain Control Equipment in Operable Condition
- B. Evaluate Fugitive Emissions and Need for Control Application
- C. Maintain Access to Water Sources as Needed
- D. Enforce Speed Limits on Process Vehicular Traffic
- E. Utilize Management Options - Plan Awareness
- F. Document Control Activities

#### IV. RECORD KEEPING / ACTIVITY DOCUMENTATION

- A. Document Material Throughput
- B. Document Suppressive Activity - Amount and Type
- C. Sign Daily Tracking Document



## **I. Potential Fugitive Emission Sources and Management Controls**

**A. Transport Shot Rock to Crusher** - Loader traffic to and from the primary crusher from the shot rock or rubble pile may create excess fines in the tire lanes when surface moisture conditions are dry. Loader operators should scrape and replace traffic lane aggregates when necessary to reduce surface fines. Water may be added as necessary to maintain fugitive suppression.

**B. Crushing Operations** - Each reduction phase of the crushing process has the potential to generate fugitive emissions. Primary crushing typically exhibits the least fugitive generation, with each successive reduction having a greater potential for emissions. Each facility or crushing spread has spray equipment on site, including pumps, hose, spray nozzles, and spare parts. Spray nozzle location and water application rate is determined by the operator to provide maximum control under situational circumstances. The nozzle or nozzles may be located on one crusher or all crushers at the facility, depending on the needed control.

**C. Screening Operations** - Screening operations may generate fugitive emissions and are particularly susceptible to wind and low moisture conditions. The initial screen may have adequate material moisture for good emissions control in most circumstances, but as with the reduction phase, each successive screening operation has an increased potential for emissions, with decreased material moisture contents and finer fractions. Water addition during crushing typically exhibits the best control for screening operations. When water applications are ineffective, shrouding may be added to the screen units to minimize wind influence on the under-size fraction. Severe conditions may require that screen units be re-oriented to minimize wind influence on the screen face.

**D. Conveying of Aggregate Products** - Conveyance of rock products during the processing of aggregates exhibits the least potential for fugitive emissions of all the processes at a facility. The drop or transfer points between processes and conveyors provide the most opportunity for emissions, but are typically the easiest to control. Wind and/or low moisture conditions may be abated by water application, shrouding of the transfer point, enclosure hoods and boots, and minimizing the drop height between transfer points. For normal operations, application of a single management tool may be very effective in controlling emissions. Extreme conditions of wind and low aggregate moisture may necessitate the use of two or more of the available control options to provide adequate emissions reduction.

**E. Stockpiling and Stockpile Maintenance** - Stockpiling operations at crushing facilities consist of placing aggregates in storage piles with stackers or front-end loaders. Stackers are typically adjustable, so drop height to the pile can be controlled as with other conveyors. Loader transfer results in fewer emissions from dumping, but greater potential from the loader traffic and tire contact with generated fines. Travel roads may be sprayed with water or chemical dust suppressant for longer lasting control. Scraping and application of new aggregate can also be effective in controlling fugitive emissions from this operation. In quarries where travel distances are greater or material tendencies exhibit greater fugitive potential, traffic lanes may be paved

## **II. Fugitive Emissions Control Options**

**A. Water Spray Application** - Water may be added directly to aggregate product with spray nozzles at any phase of the production cycle. Each facility is equipped with adequate equipment to make multiple-point application of water if needed. The person responsible for plant operations decides where application affords the best control efficiency for current conditions. In addition to material control, the plant foreman is responsible for water application to site roads and stockpiles as necessary to maintain acceptable site opacity.

**B. Shrouding** - Shrouds may be constructed and maintained on any process equipment where it affords fugitive emissions control or may be used only on a site-specific or equipment-specific basis. Shrouds used for emissions control must meet MSHA safety standards.

**C. Chemical Dust Suppressant Application** - For climatic conditions where natural moisture is deficient and traffic volume is a contributing emissions source, the application of persistent controls such as calcium chloride or forest product resins may be necessary to provide longer-lasting effective control. Applications may be supplemented with truck applied water as needed.

**D. Drop Height Management** - Facility foreman is responsible for minimizing drop height at all material transfer points, including stacker and loading operations.

**E. Site Traffic Speed Control** - Facility foreman or company responsible official enforces appropriate speed limit in the production area. Speed limit determination is influenced by site-specific conditions and may be lowered at the foreman's discretion, to provide greater control influence.

**F. Timing Management** - The supervisor of crushing operations may change scheduling of processing or blasting in a particular location or quarry to take advantage of climatic influence in providing additional emissions suppressive effect. While this option is variable, it can provide significant benefit in problematic geologic formations or urban locations.

**G. Climatic Influence** - Climate variations during the crushing season may have significant impact on emissions depending on precipitation frequency and duration. Mid-western locations provide opportunity for natural suppressive effects during the processing season, either by direct precipitation on process materials, or through retained moisture from those events. Seasonal variations in precipitation amounts, heat degree days, and wind determine the degree to which additional control activities are needed to meet permit terms and opacity limits.

**H. Paving/Sweeping** - Haul and access roads at some locations receive heavy traffic volume and may generate road surface fines in unmanageable quantity. For these extreme conditions, paving with hot-mix asphalt or recycled asphalt pavement and/or sweeping may be helpful in reducing emissions on an ongoing basis. More intensive management practices such as these are normally supplemented with water spray or chemical suppressants to provide maximum emissions

and/or swept as more intensive management practices.

**F. Stockpile Maintenance (continued)** - Fugitive emissions from stockpiles are highly dependent on aggregate gradation, weather, location, stockpile age, and amount of loading face activity. Aged stockpiles generally exhibit lower fugitive emissions than fresh crush aggregate materials. In areas where one or more of the listed influences are responsible for emissions above acceptable levels, water application to the stockpile exterior can provide adequate control. Intermittent applications may be necessary when emission conditions are persistent. Orienting the working face to avoid cross-winds can also be an effective management tool for lowering emissions.

**G. Truck Transport of Final Product** - Truck traffic in the area of crushing operations has the potential to generate excessive surface fines on haul roads. While climatic and situational circumstances can contribute to effective controls on a short-term basis, other more intensive and continuous practices are usually required to maintain control of fugitives from this source. Paving, sweeping, watering, chemical application, and speed controls are the most effective options for controlling fugitive emissions from truck traffic. Any one or more of these management options may be incorporated into routine operations to provide continuous benefit.

**H. Total Facility** - Minimizing the emissions from fugitive sources at a crushing and processing facility requires a commitment of resources from top-level management, a knowledge of potential contributing factors on the part of operations level personnel, and a common-sense application of available management options to provide significant control of fugitive emissions from crushing operations. The crushing operations foreman is trained to recognize state and federal opacity limits for various processes, continually evaluate operating conditions and resulting opacities, and apply appropriate controls to provide compliant operation. The foreman or other company responsible personnel document production, conditions, and controls to demonstrate compliance with permit conditions.



reduction.

### **III. Responsible Person/ Responsibilities**

**A. Maintain Control Equipment in Operable Condition** - The facility foreman is responsible for managing emissions control and is required to maintain all suppressive equipment in operational condition according to the Malfunction Prevention and Abatement Plan. He must maintain adequate spare parts inventory to accommodate changing conditions and equipment replacement.

**B. Evaluate Fugitive Emissions and Need for Control Application** - The facility foreman or other person designated as being responsible for operations management is required to evaluate conditions, process variables, and fugitive emissions on a continuous basis during crushing operations. From this evaluation, the responsible person determines whether opacity and emissions are within allowable levels, and if not, to apply available control options as needed to gain the required level of fugitive control.

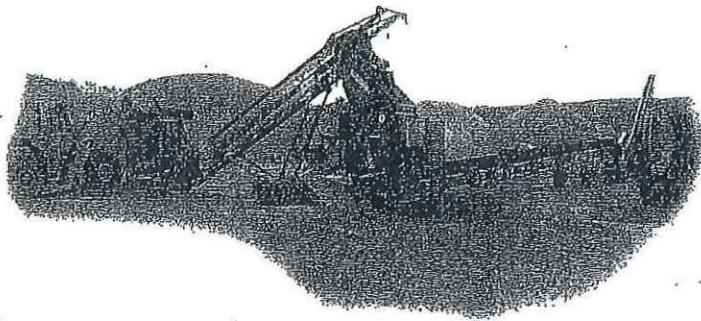
**C. Maintain Access to Water Sources as Needed** - The foreman is responsible for locating and maintaining access to water resources to provide adequate fugitive emissions control. The water resource utilized may be truck delivered, well pumped, quarry or pit groundwater, or surface water available at the site.

**D. Enforce Speed Limits on Process Vehicular Traffic** - The facility foreman/responsible person must determine if enforced speed limits are effective in controlling fugitive emissions from that source. He has authority to reduce vehicular speeds as appropriate to gain the needed control. Site speed limits affect all process vehicles, including loaders, trucks, and visitors.

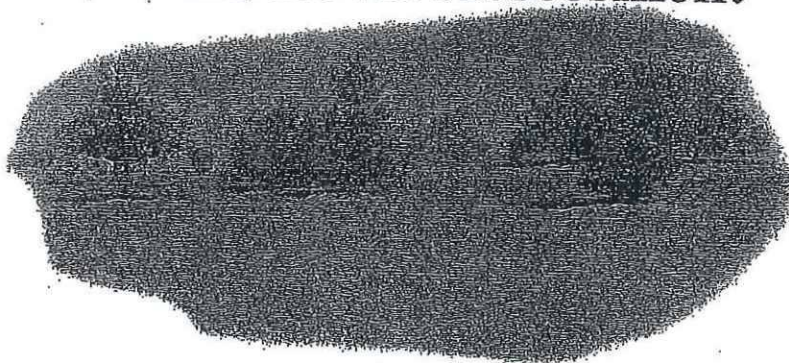
**E. Utilize Management Options** - The facility foreman has authority to implement any available control option at his discretion. If conditions do not respond favorably to applied controls, the foreman may terminate production until additional resources are available or site conditions change. If available control options are ineffective in maintaining fugitive emissions at acceptable levels, the foreman is required to report that circumstance to company management for further action.

**F. Document Control Activities** - The foreman or other person designated by the company as responsible for facility compliance must maintain daily records of production throughput, fuel use, fugitive emissions suppressive control activities, and relative weather conditions, to comply with permit terms. Records for current year production are maintained at the facility and at the company headquarters for an additional 4 years.

**IV. Record keeping / Activity Documentation** - The company is committed to accurate and complete documentation of crushing process parameters that influence and indicate compliance with applicable state and federal regulations. The facility foreman / responsible party is required to record important process information on a daily basis, maintain the daily records for inspection, and to deliver the records to the company office for storage and reference for an additional four years. Daily records are required to be signed by the respective observer, who is responsible for the accuracy of the recorded information.



## Aggregate Processing Plant Sound Level Assessment



*Gail Jensen, P.E.*  
*Keith Mathison*  
*Mathy Construction Company*  
*920 10th Avenue North*  
*Onalaska, WI 54650*  
*January 30, 2004*

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## Section 1.0

### Introduction

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#### 1.1 Purpose

Sounds generated by industry, transportation and normal day to day activities are receiving attention by the general public. Sound generated by aggregate processing plants is among the industries that are becoming a local interest. Expanding residential developments are encroaching on the areas where aggregate processing plants operate. Concerned neighbors are becoming more interested in aggregate processing plant operations in their neighborhoods. To this end, a study was conducted last construction season (2003) to measure, record and comment on the sound levels generated by normal operation of aggregate processing plants. The result of these sound pressure readings is used to determine any potential problems with sound leaving the plant site boundaries and to examine any preventive measures to any problems that may exist.

#### 1.2 Acoustics

In order to put the data recorded into perspective, it is necessary to understand how sound is measured. When an object moves it produces a vibration. When an object vibrates in the atmosphere it moves air particles around it, and in turn, these air particles move air particles around them creating a pulse of the vibration through the air. Sound is measured in decibel (one tenth of a bel), which is the amount of air pressure on the eardrum.

The human ear perceives sound that occurs within the frequency range of 20Hz (Hertz) and 20kHz. In addition the human ear will detect sound that is above the hearing threshold, which is a function of frequency. A standardized A-weighting curve was developed to measure the change in sensitivity of the ear with respect to frequency. Sound level measured is typically denoted as decibels (dBA).

A quiet home or whisper is about 33 dBA (decibels). Normal conversation is about 63 dBA and a jackhammer is about 103 dBA. Table 1 lists the typical sound levels encountered each day by most people. Sound intensity can be perceived differently by individuals due to the efficiency of the individuals hearing ability.

80-89	Concrete Mixer, Noisy Workshop, Main Road Traffic
70-79	Noisy Office, Car Interior, Vacuum Cleaner, TV, Radio
60-69	Busy Office, Normal Speech
50-59	Urban Residence, Average Office, Quiet Restaurant
40-49	Small Town Residence, Living Room
30-39	Quiet Home, Whisper, Normal Sleep
20-29	Broadcast or Recording Studio
10-19	An-echoic Chamber

Table 1 Typical Sound Levels

A change of 3 dBA is barely noticeable to the human ear, but a change of 5 dBA is clearly noticeable to the human ear. A change of 10 dBA is a doubling of the typical loudness of the sound. Theoretically, sound levels decrease by 6 dBA from a point source for each doubling of the distance from the source.

### 1.3 Study Parameters

For this study, sound pressure levels were measured with a Radio Shack 33-2055A and/or a Casella Cel-231 Digital Sound Survey hand-held meter. Aggregate processing plants were taken to be a point source center at the generator trailer (loudest source of an aggregate processing plant), rather than the individual components of the plant. Sound emanates from a source in a spherical pattern therefore a ray pattern of measurement was used to intersect the spherical wave at a given distance. Distances from the generator were measured and readings were taken in each quadrant for set intervals from the source.

### Noise Measurements at an Actual Sand and Gravel Operation and Other Everyday Noises

- (1) Noise measurements were taken at the Mally Construction Sievertson Sand and Gravel Operation on October 3 and 5, 2000. Results are provided below.
- (2) Background noise measurements were also taken at the intersection of County Highways B and P on October 7, 2000. Results are provided below.
- (3) Reference everyday noise levels were obtained from the League of the Hard of Hearing. These noises are also provided for reference.

#### Sand and Gravel Operation Noise Levels

<u>Location</u>	<u>Noise Level (in Decibels, dBA)</u>
Immediately adjacent to primary crusher	88
Immediately adjacent to screener	95
Immediately adjacent to generator	99
Immediately adjacent to loading trucks	76
Average	90
500 feet from processing equipment	60
750 feet from processing equipment (behind berm)	49
1000 feet from processing equipment (behind berm)	47
1500 feet from processing equipment (behind berm)	43
2 miles from processing equipment	47
1000 feet from processing equipment (no berm)	58

#### Other Everyday Noises

Highway B & P background	57
Highway B & P background when vehicles pass	75
Immediately adjacent to <sup>Farm</sup> Tractor in high Idle	97
Normal conversation	60



## Home

- 50 refrigerator
- 50 - 60 electric toothbrush
- 50 - 75 washing machine
- 50 - 75 air conditioner
- 50 - 80 electric shaver
- 55 coffee percolator
- 55 - 70 dishwasher
- 60 sewing machine
- 60 - 85 vacuum cleaner
- 60 - 95 hair dryer
- 65 - 80 alarm clock
- 70 TV audio
- 70 - 80 coffee grinder
- 70 - 95 garbage disposal
- 75 - 85 flush toilet
- 80 pop-up toaster
- 80 doorbell
- 80 ringing telephone
- 80 whistling kettle
- 80 - 90 food mixer or processor
- 80 - 90 blender
- 80 - 95 garbage disposal
- 110 baby crying
- 110 squeaky toy held close to the ear
- 135 noisy squeeze toys

## Work

- 40 quiet office, library
- 50 large office
- 65 - 95 power lawn mower
- 80 manual machine, tools
- 85 handsaw
- 90 tractor
- 90 - 115 subway
- 95 electric drill
- 100 factory machinery
- 100 woodworking class
- 105 snow blower
- 110 power saw
- 110 leafblower
- 120 chain saw, hammer on nail
- 120 pneumatic drills, heavy machine
- 120 jet plane (at ramp)
- 120 ambulance siren
- 125 chain saw
- 130 jackhammer, power drill
- 130 air raid
- 130 percussion section at symphony
- 140 airplane taking off
- 150 jet engine taking off
- 150 artillery fire at 500 feet
- 180 rocket launching from pad

## Recreation

- 40 quiet residential area
- 70 freeway traffic
- 85 heavy traffic, noisy restaurant
- 90 truck, shouted conversation
- 95 - 110 motorcycle
- 100 snowmobile
- 100 school dance, boom box
- 110 disco
- 110 busy video arcade
- 110 symphony concert
- 110 car horn
- 110 - 120 rock concert
- 112 personal cassette player on high
- 117 football game (stadium)
- 120 band concert
- 125 auto stereo (factory installed)
- 130 stock car races
- 143 bicycle horn
- 150 firecracker
- 156 capgun
- 157 balloon pop
- 162 fireworks (at 3 feet)
- 163 rifle
- 166 handgun
- 170 shotgun

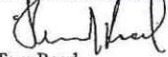


P.O. Box 277 Waunakee, Wisconsin 53597-0277 Phone 608-849-4162 Fax 608-849-5062

#### YAHARA MATERIALS BLASTING PROCEDURE

- 1.) Blasting will be conducted by a properly licensed class 5, 6 or 7 Blaster.
- 2.) Notifications will be made by either the Blasting Contractor and/or Yahara Materials twenty-four (24) hours prior to any blast.
- 3.) A blasting log will be required for each blast.
- 4.) All blasting will be recorded by a seismograph.
- 5.) All seismograph records will be available at any time for review by the township.
- 6.) All blasting will meet the Wisconsin's Department of Commerce Administrative Code Chapter 7.

YAHARA MATERIALS, INC.

  
Tom Poad  
Supervisor

**Reclamation Plan  
HWY 51 Quarry**

**Intro:** The Hwy 51 Quarry is a non-conforming site, with a long history of supplying aggregate to the community since the 1930's. Currently, the quarry is used as a commercial source of aggregate for the local area. The adjacent woods and agricultural lands support native wildlife such as coyotes, white-tailed deer, raccoons, fox, opossums, skunks, various birds and other wildlife commonly found in Southwestern Wisconsin. The native plant life in the adjacent woods is typical of the woodland areas of Southern Wisconsin. The surrounding agricultural fields are annually rotated between soybeans, wheat, corn, oats and alfalfa.

**Location:** The permit area is described as the W ½, E ½ Section 17, E½, SE ¼ Sec 17, T8N-R10E, Burke Township, Dane County, Wisconsin.

<b>Ownership:</b>	<b>Hoffman Farms, Inc.</b>	<b>Larry &amp; Karen Burcalow Trust</b>
	2662 Hoard Street Madison, WI 53704	P.O. Box 277 Waunakee, WI 53597

**Operator:** Yahara Materials, Inc.  
P.O. Box 277  
Waunakee, WI 53597-0277

**Description of Operations:** This quarry is currently used to produce limestone products for various municipalities, WisDOT and private contracts. Quarrying operations vary as market demands dictate. Typically drilling, blasting and crushing operations occur three to five times per year. Loading and hauling occur throughout the year as necessary to meet demand. This site has been operating in a West to East direction since it was opened and that pattern will continue until the resource is depleted and commencement of final restoration.



**Soils:** Dodge silt loam DnC2-Fine silty mixed Mesic McHenry silt loam.  
MdD2, Fine loamy mixed Mesic St. Charles silt loam. ScC2 fine silty mixed Mesic. Typically top soils in this area are 4" to 6" thick over 2 to 4' of silty clay on top of the limestone.

**Reclamation Measures:** In order to comply with the mandates of NRI35.19, Yahara Materials, Inc. is proposing the following reclamation measures.

**1. Vertical Faces:**

All vertical faces will be blasted down in a bench pattern.  
This will allow for the construction of slopes where possible.

\* Please see attached detail

**2. Grading:**

This site has large quantities of topsoil and unclassified soils stock-piled around the perimeter of the quarry. Primarily at the north end of the site. This dirt will be loaded and hauled on the quarry floor and slopes, and graded to form the landscape as per our drawing. This grading will take place as the depletion of the limestone allows. The soil will be spread at a minimum rate of 9-12 inches on the floor, and 6" to 9" on the slopes. Naturally where more dirt is available it will be used on the level areas to promote agricultural land use. As the operation progress, stock-piled soils will be seeded to prevent erosion.

**3. Seeding:**

All slopes and non-farmable areas will be seeded at a rate of 7 pounds per 1,000 square feet of #20 WI DOT specification seed mixture. Within 7 days of completion of the grading operations. To optimize growth all planting will be conducted between May 15<sup>th</sup> in the spring, and no later than September 15<sup>th</sup> in the fall. Fertilizer shall be applied at the rate of 10 pounds per 1,000 square feet 16-8-8 (NPK). The steep side slopes of the quarry will be stabilized with seed and polymer treatment to prevent any erosion. As our long range plan is to return this site to agriculture, the relatively flat or gently sloping area would be returned to either row crops, such as corn and soybeans or to alfalfa. Therefore seeding of the quarry floor will be unnecessary except to allow for any waterways within the site.

Note\*: Please see enclosed WisDOT specifications for seed properties and germination rates.

#### **Criteria for Successful Reclamation**

Percent cover of vegetation will determine successful reclamation. Randomly selected sample sites (square meter sections, two per acre) will be employed. Sampling will be conducted during peak growing periods and will compare sample sites to vegetation cover of undisturbed soils in neighboring area. A minimum of 70 percent vegetation (determined by visual count) or equal to percent cover of similarly vegetated areas in undisturbed location will qualify as successfully reclaimed. Annual site inspection will be performed to ensure standards for revegetation and reclamation are followed. If Dane County recommends grading and/or seeding remedial /repair measures or additional erosion control, they will be implemented and later re-evaluated to accomplish successful revegetation and reclamation of the site.

#### **4. Drainage:**

Currently the sites drainage pattern is self contained within the quarry area. Clear stone weepers, erosion control and drainage structures, as need be will be used to accomplish the final drainage pattern.

#### **5. Phasing:**

Due to the nature of this site a phasing plan is not practical. As the deposit is depleted reclamation will begin as soon as possible, and be completed in a timely fashion.

#### **6. Fencing:**

Currently there is a farm fence on two sides of the property. This fencing will be maintained, and additional fencing will be added to the property to protect the public.

**Erosion Control:** During all phases of the reclamation, disturbed area will be closely monitored for potential erosion. The use of silt fencing, rip-rap, hay bales, and prompt seeding and mulching of the finished area will minimize any erosion, as all slopes will drain into the quarry itself and be contained on site.

Upon completion of restoration this site will be monitored to ensure that all erosion control measures are maintained and functioning as designed.  
Approved erosion control plan on file.

**Post Mining  
Land Use:** Agriculture- Pasture, Row Crops.

**Reclamation  
Estimate:**

Grading: - 1' of topsoil or topsoil substitute, @ 1600 cubic yards per acre @\$0.63  
per cubic yard = \$1000.00 per acre  
Seeding, fertilizer and mulch per acre= \$300.00  
Miscellaneous landscaping and grading per acre= \$200.00

Total per acre= \$1500.00

The majority of the restoration work will be done by Yahara Materials, Inc, crews in the course of quarry operations in an ongoing pattern. As new areas are stripped the overburden will be used in the reclamation of the previously mined areas. Our plans try to sequence stripping and reclamation so that areas of the quarry can be permanently restored while stripping other sections of the quarry.

**Conclusion:** We feel that this is well designed, and can be easily implemented; while still meeting all the requirements of NR135.

Respectfully Submitted,

Timothy Geoghegan  
Supervisor  
YAHARA MATERIALS, INC.





P.O. Box 277 Waunakee, Wisconsin 53597-0277 Phone 608-849-4162 Fax 608-849-5062

## **EROSION CONTROL AND STORMWATER MANAGEMENT PLAN**

### **EROSION CONTROL MEASURES:**

#### **ENTRANCE:**

The entrance to this site has 200 feet of paved driveway, which prevents tracking of material onto public roads. All slopes are seeded with grasses to provide cover.

#### **BERMS:**

The stripped soils will be separated in stock piles, the overburden will be stripped and used as the base of the berm, the top soil will be used to top dress the berms. The top soil and the subsoil will be used in the final restoration. The berms will be constructed with a depression that will serve as a sediment trap at the base of the berm. (See detail. The berms will be seeded and mulched in the spring from May 15 to May 30.). If needed the berm will have a buffer beyond the limits of the berm. This buffer will be seeded and mulched.

#### **SILT FENCING:**

Silt Fencing is used as necessary when soils are being stripped and stockpiled.

#### **STONE WEEPER:**

A stone weeper will be used to slow water velocity and trap any sediment as necessary. The weeper will be built with 3 to 6 inch clear stone, with a depression in the middle and higher at the slope of the ditch. The weeper will have a face with 1 to 2 inch stone.

## SEEDING & MULCHING:

### 3. Seeding:

All the berms and non-farmable areas will be seeded at a rate of 7 pounds per 1,000 square feet of #20 WisDot Specification seed mixture. Within 7 days of completion of the grading operations. To optimize growth all planting will be conducted between May 15<sup>th</sup> in the spring, and no later than September 15<sup>th</sup> in the fall. Fertilizer shall be applied at the rate of 10 pounds per 1,000 square feet 16-8-8 (NPK). The steep side slopes of the quarry will be stabilized with seed and polymer treatment to prevent any erosion. As our long range plan is to return this site to agriculture, the relatively flat or gently sloping area would be returned to either row crops, such as corn and soybeans or to alfalfa. Therefore seeding of the quarry floor will be unnecessary except to allow for any waterways within the site. The berms will be stabilized with 90 lbs per 1000 square foot (2.5 tons/sq.ft.) of mulch.

Note\*: Please see enclosed WisDOT specifications for seed properties and germination rates.

## MAINTENANCE:

The berms will be inspected and repaired according to needs of the site. This will include cleaning of the weeper, the sediment basins and additional application of seed and mulch if necessary. The drive way will be maintained free of sediment or soil deposits.

## COST:

The annual estimated cost of the erosion control measures is approximately \$1500.00 per year

## SCHEDULE:

All schedules are presented as an estimate, as work at this site is market driven, and operational dates may vary as market demands dictate.

June 1, 2004	Strip top soil and overburden, prepare and shape berms for seeding. Construct the swale next to the berms. Direct the excess of runoff into the quarry.
June 15, 2004	Seed and mulch berms and disturbed areas.

August 15, 2004      Seeding established and repair the areas where new vegetation is needed.

September 1, 2004    Inspect all erosion control measures to insure effectiveness.

**NOTE:**

The site is internally draining, no road ditches are present at the site, no cross section, runoff velocities, culverts, are applicable to this site.

Contact Person for Erosion Control Plan:

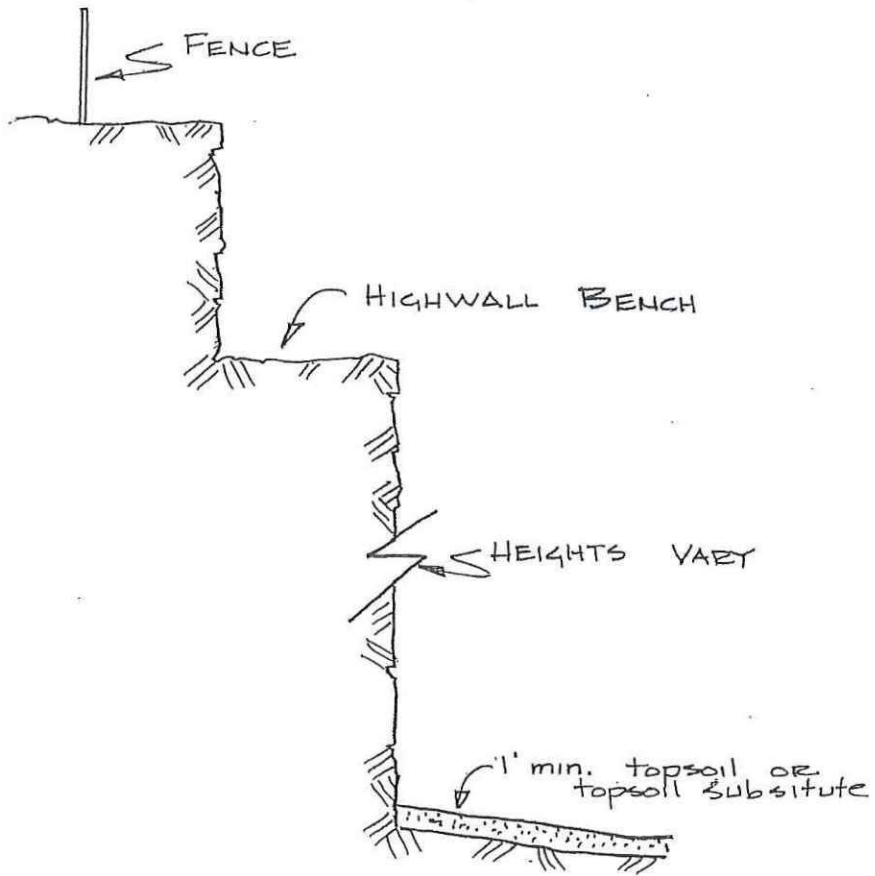
Tim Geoghegan  
Yahara Materials, Inc.  
P.O. Box 277  
Waunakee, WI 53597

Telephone: 608-849-4162

Sincerely,

Tim Geoghegan  
Supervisor  
YAHARA MATERIALS, INC.





# TYPICAL HIGHWALL SECTION

NO SCALE

TABLE OF NATIVE SEED MIXTURES

SPECIES	SPECIES BOTNICAL NAME	PURITY AND GERMINATION minimum %	MIXTURE PROPORTIONS in percent	
			NO. 70	NO. 70A
Canada Anemone	<i>Anemone canadensis</i>	PLS	2	
Butterflyweed	<i>Asclepias tuberosa</i>	PLS		2
New England Aster	<i>Aster novae-angliae</i>	PLS	2	2
Partridge-pea	<i>Chamaecrista (Cassia) fasciculata</i>	PLS		2
Purple Prairie Clover	<i>Dalea (Petalostemum) purpurea</i>	PLS	2	2
Canada Tick-trefoil	<i>Desmodium canadense</i>	PLS	2	
Flowering Spurge	<i>Euphorbia corollata</i>	PLS		2
Wild Geranium	<i>Geranium maculatum</i>	PLS	2	
Western Sunflower	<i>Helianthus occidentalis</i>	PLS	3	2
Rough Blazingstar	<i>Liatris aspera</i>	PLS		2
Prairie Blazingstar	<i>Liatris pycnostachya</i>	PLS	2	
Lupine	<i>Lupinus perennis</i>	PLS		3
Wild Bergamot	<i>Monarda fistulosa</i>	PLS	2	
Horse Mint	<i>Monarda punctata</i>	PLS		2
Yellow Coneflower	<i>Ratibida pinnata</i>	PLS	2	2
Showy Goldenrod	<i>Solidago speciosa</i>	PLS	2	2
Spiderwort	<i>Tradescantia ohimensis</i>	PLS	2	2
Golden Alexanders	<i>Zizia aurea</i>	PLS	2	
Big Bluestem	<i>Andropogon gerardi</i>	PLS	15	15
Sideoats Grama	<i>Bouteloua curtipendula</i>	PLS	15	20
Canada Wildrye	<i>Elymus Canadensis</i>	PLS	15	15
Junegrass	<i>Koeleria macrantha</i>	PLS		5
Little Bluestem	<i>Schizachyrium (Andropogon) scoparium</i>	PLS	15	20
Indiangrass	<i>Sorghastrum nutans</i>	PLS	15	

## 630.2.1.5.1.1.2 Mixture

(1) The contractor shall select a seed mixture or mixtures that meet with the engineer's approval, and unless specified otherwise in the contract, shall conform to the following:

1. Use seed mixture No. 10 where average loam, heavy clay, or moist soils predominate.
2. Use seed mixture No. 20 where light, dry, well-drained, sandy, or gravelly soils predominate and for all high cut and fill slopes generally exceeding 6 to 8 feet (1.8 to 2.4 m), except where using No. 70.
3. Use seed mixture No. 10 or No. 20 on all ditches, inslopes, median areas, and low fills, except where using No. 30 or No. 70.
4. Use seed mixture No. 30 for medians and on slopes or ditches generally within 15 feet (4.5 m) of the shoulder where a salt-tolerant turf is preferred.
5. Use seed mixture No. 40 in urban or other areas where a lawn type turf is preferred.
6. Use seed mixture No. 60 only on areas, the contract designates or the engineer specifies. Use it as a cover seeding for newly graded wet areas or as a nurse crop for specified wetland seed mixtures. The contractor shall not apply it to flooded areas.

7. Use seed mixture Nos. 70 and 70A on slopes and upland areas the contract designates or the engineer specifies. Use seed mixture No. 70 on loamy soils and seed mixture No. 70A on sandy soils.

#### 630.2.1.5.1.2 Temporary

- (1) Under the Seeding Temporary bid item, use a temporary seed mixture conforming to 630.2.1.5.1.4. Use oats in spring and summer plantings. Use winter wheat or rye for fall plantings started after September 1.

#### 630.2.1.5.1.3 Nurse Crop

- (1) If seeding bare soil with either mixture 70 or 70A, include the work under the Seeding Nurse Crop bid item.

#### 630.2.1.5.1.4 Borrow Pits and Material Disposal Sites

- (1) For seeding borrow pits and material disposal sites beyond the right-of-way, use seed mixtures conforming to seed mixture No. 10, No. 20, No. 70 or No. 70A of 630.2.1.5.1. for a borrow pit mixture composed of seeds of the species, purity, germination and proportions, by weight as given below:

PERMANENT		
SPECIES	% MINIMUM PURITY	% MINIMUM GERMINATION
Alfalfa	98	90
Bromegrass	85	85
Orchardgrass	80	85
Timothy	98	90
Red Clover	98	90
Alsike Clover	97	90
Ladino Clover	95	90
Kentucky Bluegrass	98	85
Birdsfoot Trefoil	95	80

TEMPORARY		
SPECIES	% MINIMUM PURITY	% MINIMUM GERMINATION
Annual Oats	98	90
Agricultural Rye	97	85
Winter Wheat	95	90

NURSE CROP		
SPECIES	% MINIMUM PURITY	% MINIMUM GERMINATION
Annual Oats	98	90
Annual Ryegrass	97	90
Winter Wheat	95	90

- (2) For the borrow pit mixture use, by weight, 60 percent temporary species seeds and 40 percent permanent species seeds.
- (3) For the temporary component, use any combination of temporary seeds listed in the table above.
- (4) For the permanent component, use seeds from not more than 4 of the permanent species listed in the table above in any combination.
- (5) When nurse crop is required for spring seeding before June 15, use annual oats. For fall seeding after October 15, use winter wheat, or annual ryegrass.

### 630.3 Construction

#### 630.3.1 General

- (1) If not protecting with a mulch cover, perform seeding, except Nos. 60, 70 and 70A mixtures at times of the year when temperature and moisture conditions are suitable for seeding, except during midsummer.
- (2) Perform seeding, except Nos. 60, 70 and 70A mixtures, in conjunction with mulching as specified in section 627 at any time the engineer allows.
- (3) The contractor may perform seeding of Nos. 60, 70 and 70A mixtures at any time soil conditions are suitable, except between June 15 and October 15, unless the engineer allows otherwise.



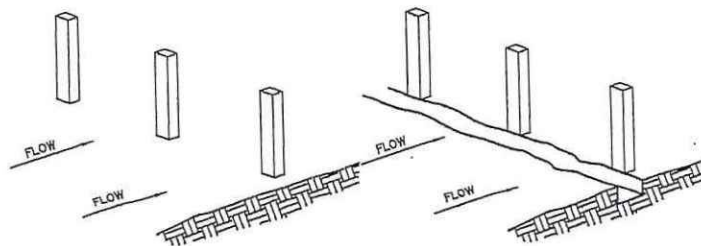
EROSION CONTROL NOTES:

1. Install a 50' X 20' X 1' deep pad of 6" "Breaker Run" stone at the end of the paved entrance road to prevent sediment from being tracked onto the adjacent paved public roadway. Sediment reaching the public roadway shall be removed by street cleaning (not hydraulic flushing) before the end of each workday.
2. Erosion Control measures shall be installed per these plans. Other erosion control measures may be necessary as directed by the engineer and may include silt fence, stone weepers, seed mixtures, or additional sediment traps.
3. Channelized Runoff from adjacent areas passing through the site shall be diverted around disturbed areas. Upon completion of the grading and site restoration shown on the site reclamation, the drainway from the north shall be re-directed through the site.
4. Stabilized Storage Piles: soil stockpiles or dirt storage piles shall be contained on the site by silt fence or other suitable means. The containment measures shall remain in place until the area is adequately stabilized. The soil stockpiles shall be seeded with temporary perennial rye seeding mixture within 7 days of completion of the stockpile.
5. Yahara Materials shall maintain the erosion control measures during quarry operations. The Town of Westport or the property owner shall be responsible for erosion control upon completion of the site reclamation.

## CONSTRUCTION OF A FILTER BARRIER

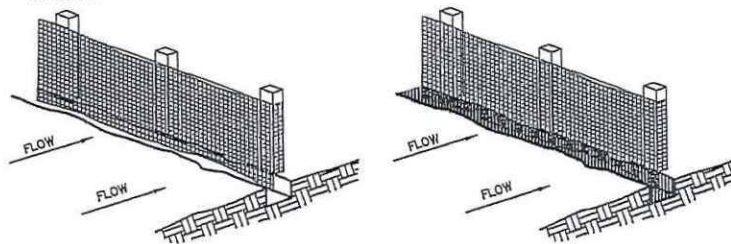
1. DRIVE STAKES INTO THE GROUND AT LEAST 8".  
STAKE SPACING TO BE PER MANUFACTURERS  
RECOMMENDATIONS.

2. EXCAVATE A 4" x 4" TRENCH UPSLOPE ALONG  
THE LINE OF STAKES.



3. STAPLE FILTER MATERIAL ON UPSLOPE SIDE  
OF STAKES AND EXTEND IT INTO THE TRENCH.  
WHEN JOINTS ARE NECESSARY, OVERLAP  
MATERIAL BETWEEN TWO STAKES AND FASTEN  
SECURELY.

4. BACKFILL AND COMPACT THE EXCAVATED SOIL.



## SILT FENCE DETAIL



# Universal Soil Loss Equation for Construction Sites

Dane County Land Conservation Department



Developer: Yahara Materials  
Project: HWY 51 Quarry  
Date: 7/6/2004

Version 2.1

Land Disturbing Activity	Begin Date	End Date	Period % R	Annual R Factor	Soil Map Unit	Soil Erodibility K Factor	Slope (%)	Slope Length (feet)	LS Factor	Land Cover C Factor	Soil loss $A = \%R \times R \times K \times L \times S \times C$ (tons/acre)	Percent Reduction Required
												(7.5 tons/acre)
bare ground	5/15/2005	9/15/2005	72.9%	150	WxC2	0.32	4.0%	600	0.82	1.00	28.7	
seeding	9/15/2005	11/15/2005	10.8%	150	WxC2	0.32	4.0%	600	0.82	0.40	1.7	
end	11/15/2005	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	
TOTAL											30.4	75%

Land Disturbing Activities:

input  
bare ground  
seed and mulch  
seeding  
sod  
end

definition  
activity which leaves the ground devoid of vegetation  
application of straw at 1.5 tons/acre with or without seeding  
temporary or permanent seeding without the use of mulching materials  
installation of sod  
end of 60 day cover establishment or permanent stabilization (required input)

Notes:

1. Yearly operation. All slopes and non-farmable areas will be seeded at a rate of 7 pounds per 1000 square feet of #20 WI DOT specification seed mixture within 7 days of completion of the grading operations
2. The steep side slopes of the quarry will be stabilized with seed and polymer treatment to prevent any erosion.
3. Drainage - closed basin no outlet
4. Typical bottom slope of 4.0% was assumed for purposes for determining soil loss.

Designed By:	JJK
Date:	7/6/2004
Checked By:	WNB
Date:	7/6/2004



**DANE COUNTY**  
**LAND CONSERVATION DEPARTMENT**

LYMAN F. ANDERSON AGRICULTURE & CONSERVATION CENTER  
1 Fen Oak Ct., Rm. 208, Madison, Wisconsin 53718-8812  
PH: 608/224-3730 • FAX: 608/224-3745  
[www.co.dane.wi.us/landconservation/](http://www.co.dane.wi.us/landconservation/)

DATE: September 8, 2004

TO: Pete Conrad  
Zoning Administrator

FROM: Aicardo Roa, Ph.D.  
Urban Conservationist

RE: Yahara Materials, Highway 51 Quarry, #74-69, Town of Burke

The submitted erosion control and storm water management plan meets the needs of the site.

The site consists of approximately 114 acres that will be used for limestone products, such as gravel, and other forms of mineral extraction. The proposed future land use is agriculture (pasture, row-crops) after the minerals are extracted. Presently, the runoff goes to the south and is internally drained. All runoff from the 114 acres of the gravel pit will be directed to the existing low areas and is internally drained.

The following conditions must be implemented:

1. The sediment pond must be expanded and updated according to the needs of the site. The clear stone weepers, erosion control and drainage structures will be used as needed to accomplish the final drainage pattern.
2. The entire berms at the east of the property shall be restored and slope according to the reclamation plan of the quarry in the plan.
3. All berms are seeded and mulched. The berm at the east side of the property has stable vegetation and drains to the south of the property.
4. The existing internally drained system meets the needs of the site. The detention basin shall be enlarged, as needed.
5. Currently, the site is fenced.
6. The reclamation plan and final slopes are presented on map on the last page of the plan.
7. The stockpiles of soil around the perimeter of the quarry will be loaded and hauled to the bottom of the quarry. The soil will be graded as presented in the plan. The bottom of the quarry will be topsoiled with 9 to 12 inches and the slopes topsoiled with 6 to 9 inches and graded.
8. All vertical faces will be blasted down for the construction of the slopes according to the drawing of the reclamation plan.



9. These soils, due to the stripping procedure, will be compacted. All the areas to be determined post-mining land use need to be deep-tilled or sub-soiled to allow the vertical permeability to function.

#### Quarry Reclamation

1. The reclamation plan is to return the site to agriculture and row crops.
2. The topsoil shall be free of trees, brush, and other woody materials.
3. The backfill of the excavated pit will be done with clean, uncontaminated topsoil during the operation.
4. Redistribute the topsoil stockpiles from the berms, returning site grades to the predevelopment condition.
5. The topsoil shall be deep-tilled to increase infiltration and reduce the compaction that occurred during the backfilling of the site.

#### Time Schedule:

DATE	ACTIVITY
May 15,	Strip topsoil, separate subsoil and overburden. Construct berm and terraces.
Sept. 15,	Permanent seeding and mulching with WDOT #720 at a rate of 7 pounds per acre within seven days of completion of the grading. Do not use fertilizer with phosphorous.
Nov. 15,	Final reclamation of the some of the areas

The construction site will follow the plan according to the schedule approved by Dane County Land Conservation. The permit will expire on the final reclamation date included in the plan, and can only be amended prior to permit expiration.

This review is only for the requirements of Chapter 14, Dane County Code of Ordinances. Other approvals may be necessary. The applicant must obtain a permit card from the Dane County Zoning counter and display it on the site prior to disturbing ground. It is recommended that you contact Zoning prior to picking up the permit card to ensure that they have received a copy of this review.

Yahara Materials will notify Dane County that the plan has been implemented according to the design and specifications, as presented. Any proposed changes to the erosion control plan must be submitted in writing to the Dane County Zoning Office, with a copy given to Dane County Land Conservation Department for approval.

cc: Pam Andros and Daniel Everson, Dane County Zoning  
Larry Burcalow and Tim Geoghegan, Yahara Materials

# NONMETALIC MINING RECLAMATION

Permit # NMARP 33

Name of operator: YAHARA MATERIALS

Town: BURKE

Parcel #: 0810-171-8500-6

Fee Paid: \$189.75

Date: AUGUST 22, 2001

The application for this permit has been reviewed and approved pursuant to Chapter NR 135, Wis. Adm. Code and Chapter 74 Nonmetallic Mining Reclamation Ordinance, Dane County Code of Ordinances.

APPROVED: 8-28-2001

BY: D. EVERSON

Reclamation permit.doc

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FILED  
AUG 27 2001  
Hwy 51



# **EXHIBIT B**



## **Renee Burcalow**

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**From:** Lane, Roger <lane.roger@countyofdane.com>  
**Sent:** Friday, June 15, 2018 2:35 PM  
**To:** Renee Burcalow  
**Subject:** RE: Yahara CUP 2120

Dear Renee,

Thank you for sending me a copy of the letter that was written in 2009. It was not in my file. I agree that the wording is confusing. Dane County will work with you in regards to future approvals. Please disregard the email below.

Respectfully,

Roger Lane  
Dane County Zoning Administrator

-----Original Message-----

From: Lane, Roger  
Sent: Wednesday, June 13, 2018 12:14 PM  
To: 'Renee Burcalow'  
Subject: RE: Yahara CUP 2120

Dear Renee,

Attached is CUP 1407.

I have reviewed CUP 2120 and CUP 1407. After further review, the contents of either conditional use permit does not include the permission to operation or a concrete batch plant or a asphalt plant in the Highway 51 quarry. There is an active conditional use permit, CUP #1081, which allows a concrete batch plant to operate in the Highway 51 quarry.

There have been 5 conditional use permits that have been issued during a 30 year period for asphalt plants, all of which had limited time periods and are expired.

If you are aggrieved by this decision, you have a right to appeal the decision within 30 days to the Dane County Board of Adjustment pursuant to Dane County Code of Ordinances Section 10.26.

Respectfully,

Roger Lane  
Dane County Zoning Administrator

-----Original Message-----

From: Renee Burcalow [mailto:Renee@yahara.com]  
Sent: Wednesday, June 13, 2018 11:51 AM  
To: Lane, Roger  
Subject: Yahara CUP 2120

-----Original Message-----

From: copier@yahara.com <copier@yahara.com>

Sent: Wednesday, June 13, 2018 10:41 AM

To: Renee Burcalow <Renee@yahara.com>

Subject: Message from "Savin-C9135"

This E-mail was sent from "Savin-C9135" (C9135).

Scan Date: 06.13.2018 11:40:54 (-0400)

Queries to: copier@yahara.com

## **Renee Burcalow**

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**From:** Lane, Roger <lane.roger@countyofdane.com>  
**Sent:** Friday, June 15, 2018 2:28 PM  
**To:** Renee Burcalow  
**Subject:** Recall: Yahara CUP 2120

Lane, Roger would like to recall the message, "Yahara CUP 2120".

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**From:** "Lane, Roger" <[lane.roger@countyofdane.com](mailto:lane.roger@countyofdane.com)>

**Date:** June 15, 2018 at 11:46:31 AM CDT

**To:** 'Renee Burcalow' <[Renee@yahara.com](mailto:Renee@yahara.com)>

Thank you for sending me the copy of the letter that was written in 2009. I understand that the wording is confusing. The letter was pertaining to the location of concrete plants and asphalt plants within the pit area as noted in the heading. The letter basically states that positioning of the temporary plants could be moved around the pit without amending previous approvals. The past conditional use permits for concrete plants and asphalt plants noted specific areas which were now being used to store materials or were being excavated. It really would not make a difference in the location of the plant, given the expanse of the site. Thus, the letter.

In reading the letter, I can see how you can interpret it as the operations of concrete plants and asphalt plant would be allow under CUP 2120. CUP 2120 only allows for mineral extraction as you are aware. Concrete plants and asphalt plants are covered under numerous other conditional use permits, of which, some are expired.

In light of the confusion, the Dane County Zoning Division will honor the approvals of the past conditional use permits until time as they are updated in the near future



## Renee Burcalow

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**From:** Lane, Roger <lane.roger@countyofdane.com>  
**Sent:** Wednesday, June 13, 2018 11:38 AM  
**To:** Renee Burcalow  
**Cc:** Andros, Pamela; Everson, Daniel  
**Subject:** Asphalt plant at Hwy 51 site - no approvals  
**Attachments:** CUP 02120.pdf; DCPCUP-0000-01081.pdf; 2 CUP Application.pdf

Dear Renee,

I researched all the CUP's on the site. There are no active Conditional Use Permits to operate an asphalt plant out of the quarry.

CUP 729 – for asphalt plant, expired in 1989  
CUP 996 – for asphalt plant, expired in 1992  
CUP 1155 – for asphalt plant, expired in 1994  
CUP 1336 – for asphalt plant, expired in 1996  
CUP 1486 – for asphalt plant, expired at end of airport project

CUP 1081 – for a concrete batch plant, still active  
CUP 2120 – for non-metallic mineral extraction only, expires 2036

In order to operate an asphalt batch plant in the Hwy 51 quarry, a conditional use permit is needed.

Respectfully,

Roger Lane  
Dane County Zoning Administrator