

## Schacht, Samantha

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**From:** McLeod, Eric  
**Sent:** Wednesday, May 20, 2020 12:12 PM  
**To:** Schacht, Samantha  
**Subject:** FW: Yahara Materials -- Carlson Nonconforming Site

**Eric M. McLeod**  
**Partner**  
Direct: 608.234.6056  
[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)

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**From:** Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>  
**Sent:** Wednesday, May 20, 2020 10:40 AM  
**To:** McLeod, Eric <[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)>  
**Cc:** Lane, Roger <[lane.roger@countyofdane.com](mailto:lane.roger@countyofdane.com)>  
**Subject:** RE: Yahara Materials -- Carlson Nonconforming Site

[EXTERNAL EMAIL]

Eric:

Assuming the deed notice accurately describes the area that was registered as a NCU, that's correct.

David R. Gault  
Assistant Corporation Counsel for Dane County  
Room 419, City-County Building  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703  
(608) 266-4355

*NOTICE: CONFIDENTIAL LEGAL COMMUNICATION:* The contents of this communication may be subject to the attorney-client privilege and should not be released under an open records request or otherwise without first consulting with legal counsel.

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**From:** McLeod, Eric <[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)>  
**Sent:** Wednesday, May 20, 2020 10:37 AM  
**To:** Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>  
**Subject:** RE: Yahara Materials -- Carlson Nonconforming Site

Thanks again, Dave. To confirm: per Roger Lane's instructions, given that County offices are not open, Yahara is to put the Deed Notice in the mail today along with a check for the recording fee of \$30 and it will be deemed timely submitted today. As you also indicated, the Deed Notice must be notarized.

Yahara will likely also forward these items via email today in order to confirm that they have been timely submitted.

Regards,

EMM

**Eric M. McLeod**  
**Partner**

Direct: 608.234.6056

[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)

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**From:** Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>

**Sent:** Tuesday, May 19, 2020 8:20 PM

**To:** McLeod, Eric <[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)>

**Subject:** RE: Yahara Materials -- Carlson Nonconforming Site

[EXTERNAL EMAIL]

Eric:

I had a chance to discuss this matter with Roger Lane and Dan Everson. I realize the e-mails discussed the reclamation plan, That's not the real issue. I real issue is the deed notice that was submitted.

DCO s. 10.004(1)(b)3 requires recording a deed notice that "(a) describes the boundaries of the nonconforming mineral extraction site, and; (c) is signed by the landowner and the zoning administrator."

The nonconforming mineral extraction site that was registered in 1969 was 52 acres. The area described by the proposed deed notice submitted by your clients describes an area of 130.5 acres. This includes 78.5 acres that is separated from the registered site by STH 188. Your clients cannot expand the size of the nonconforming use by simply submitting a deed notice that over doubles the size of the original area. I believe that if your clients submit a deed notice that only covers the 52 acres originally registered there will not be an issue with ncu status so long as DCO 10.004(b) is complied with. However, the Zoning Administrator will not sign off on the deed notice as submitted.

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**From:** McLeod, Eric <[Eric.McLeod@huschblackwell.com](mailto:Eric.McLeod@huschblackwell.com)>

**Sent:** Sunday, May 17, 2020 3:11 PM

**To:** Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>

**Subject:** Yahara Materials -- Carlson Nonconforming Site

CAUTION: External Email - Beware of unknown links and attachments. Contact Helpdesk at 266-4440 if unsure

Dave,

Thanks for your time on Friday to discuss the above matter. Here is a brief summary of the situation:

Yahara has a lease on the Carlson site in the Town of Roxbury. The site was registered in 1969. A copy of the registration and plat map are attached.

The Owners received the attached notice concerning the revisions to Ch. 10 and the requirements for maintaining the nonconforming status of the site. Specifically, the notice, which was dated May 28, 2019, stated that the Town of Roxbury had adopted the revised Ch. 10 on May 20, 2019. The notice then referenced section 10.004(1)(b) in stating that a nonconforming use shall be deemed abandoned or discontinued unless the owner or operator takes certain actions, including “[w]ithin twelve months of the effective date of this ordinance has submitted a reclamation plan under Chapter 74, Dane County Code[.]”

On May 14, 2020, Yahara submitted a reclamation plan for the Carlson site via email from Chris Kromm to Dan Everson. A copy of that email and Mr. Everson’s response is attached. In his response that same day, Mr. Everson stated: “You will need to discuss this with Roger Lane. A reclamation permit submitted this late in the game will not be approved by May 28th, the one year in which the town adopted the new zoning ordinance.” Mr. Everson also said that a CUP would be required. That email was followed by an email from Roger Lane, also on May 14, 2020, in which Mr. Lane stated that the Carlson site was deemed abandoned or discontinued and would require a CUP. Mr. Lane’s email is also attached. Mr. Lane does not indicate the basis for his statement that the Carlson site had lost its nonconforming status, but we presume it is based on the date of the reclamation plan submission.

We are puzzled by the responses from Mr. Everson and Mr. Lane. The language of the ordinance clearly states that a reclamation plan must be submitted within one year of the effective date of the ordinance. It does not say that the reclamation plan must be submitted at some unspecified earlier date sufficient to allow for the approval of that plan. Thus, we believe any determination that the Carlson site’s nonconforming status has been abandoned or discontinued on that basis is erroneous.

I am providing you with this background for at least a couple of reasons. First, to seek your analysis on this matter. While Mr. Lane makes his own decisions, we are hopeful that your involvement may allow for a resolution other than yet another BOA appeal and further litigation. Second, we are also asking for some clarification on whether Mr. Lane’s May 14 email constitutes an actual determination that starts the 30-day appeal clock running. Again, we would prefer to resolve this matter without having to appeal, and knowing whether such an appeal is due within 30 days of May 14 will inform the parties’ decisions going forward.

Please feel free to contact me if you have any questions.

Thanks again.

EMM

**Eric M. McLeod**  
**Partner**

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