

# HUSCH BLACKWELL

Eric M. McLeod  
Partner

33 East Main Street, Suite 300  
P.O. Box 1379  
Madison, WI 53701-1379  
Direct: 608-234-6056  
Fax: 608-258-7138  
Eric.McLeod@huschblackwell.com

November 21, 2016

City of Madison Plan Commission  
City-County Building  
210 Martin Luther King, Jr. Blvd. Room 201  
Madison, WI 53703

Re: Proposed Ordinance to Create Nonmetallic Mineral Extraction District

Dear Plan Commission Members:

I represent Yahara Materials, an aggregate producer that has operated in Dane County for several decades. Yahara's principal business is the production and sale of aggregate and other materials for local road and other construction projects. A key aspect of Yahara's business is the location of its quarries and mineral processing operations. It is critically important to have quarry operations located in reasonably close proximity to where material is needed in order to minimize the cost to the state and local governments and to reduce energy usage and other impacts associated with transporting that material. Accordingly, Yahara has quarry operations and properties in a variety of locations in Dane County.

One of Yahara's active quarry operations is located on Buckeye Road east of Interstate 90 in what was previously the Town of Blooming Grove, but is now in the City of Madison due to an annexation that became effective in December of 2015. The Buckeye Quarry predates Dane County's zoning amendments of 1969 and that land was properly registered with the County. Thus, the Buckeye Quarry is a legal nonconforming use and, given that zoning status, Yahara has the right to continue that use regardless of the zoning district it occupies or any current or future local regulations.

Yahara also has an interest in expanding and adding property to the Buckeye Quarry. Because of the high quality minerals located at this site, Buckeye Quarry provides a valuable resource for local road projects. Thus, Yahara is interested in a City ordinance amendment that creates a nonmetallic mineral extraction district or otherwise allows for mineral extraction in the City, and Yahara was pleased to learn that the City had chosen to work on such an ordinance. However, after having reviewed the current proposed draft of that ordinance (hereafter "ME

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Ordinance”), Yahara has serious concerns and believes that various provisions contained in that draft render it unworkable. Those concerns are addressed below.

Given these concerns, Yahara respectfully requests that the Plan Commission refer this item to a future meeting to allow City staff and the City attorney’s office additional time to discuss and address the issues below with Yahara and other affected property owners.

## Blasting CUP

An essential component of any quarry operation is the use of explosives, as blasting is necessary for the extraction of nonmetallic minerals. Blasting is also an activity that must be regulated given the potential impacts that can occur off-site if not done properly. Pursuant to state statute, the Department of Safety and Professional Services (“DSPS”) has established rules “to effect the safety of mines, explosives, quarries and related activities” and those rules “provide for the establishment of uniform limits on permissible levels of blasting resultants to reasonably assure that blasting resultants do not cause injury, damage or unreasonable annoyance to any person or property outside any controlled blasting site area.” Wis. Stat. § 101.15(2)(e).

The applicable rules regulating blasting are contained in Wis. Admin. Code ch. SPS 307. Those rules, which were previously housed within the Department of Commerce, are a product of decades of technical study by experts in the field. In other words, these rules contain well-established best practice standards for the use of explosives at a quarry that are designed to ensure that such activity does not cause injury, damage or unreasonable annoyance to persons or property outside of the blasting site. Moreover, Yahara, along with the vast majority of other nonmetallic mining companies, employ licensed third-party blasting contractors that are experts in the design and management of blasting events in order to ensure compliance with the applicable standards.

The proposed ME Ordinance requires a quarry operator to obtain a Blasting CUP in order to engage in blasting at a quarry. Standing alone, a CUP requirement is not necessarily problematic. Without quibbling over certain details of the requirements of a Blasting CUP (e.g., the requirement of four seismographs; see comments below), those requirements in the current draft largely track existing regulations referenced above. The problem arises with the five-year expiration and renewal requirement for a blasting CUP.

From a regulatory perspective, imposing the standards contained in the current draft (with some minor changes) through a CUP makes some sense. It identifies the applicable rules that apply and provides the City with a clear enforcement mechanism in the event those rules are violated. However, a quarry operator has no certainty that those rules will apply for longer than five years and it has no certainty that it will even be able to obtain a CUP at the end of five years. The City could significantly change those rules rendering compliance impossible and, thus,

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withhold approval of a Blasting CUP. Under such circumstances, quarrying activity could no longer continue.

The better approach is to provide for a perpetual CUP, which is the norm with respect to the vast majority of other conditional uses. Requiring compliance with the state standards, which are specifically designed to properly manage off-site impacts, should be a key part of that CUP approval. However, based on political considerations or otherwise, future City councils could amend those standards in a way that effectively render blasting a prohibited activity and make renewal of a CUP impossible. Given the reality of such uncertainty, Yahara would not seek to rezone its Buckeye Quarry under the ME Ordinance as currently proposed.

## Other Concerns

Yahara views the five-year Blasting CUP as a deal breaker. However, there are a number of other concerns Yahara has with many of the technical, operational and procedural requirements contained in the ME Ordinance. A very brief summary of those concerns is outlined below. Given that the five-year CUP presents an absolute impediment from an operator's standpoint, we have not provided significant detail on these other items, but we would be happy to elaborate further if that would be helpful to the Plan Commission.

- (a) A 100-foot boundary set back is far too large. For comparison purposes, Dane County imposes a minimum set back of 5 feet to preserve existing topography, making this requirement 20 times more restrictive.
- (b) Access Drive/Tracking Pad.
  - Recycled asphalt should be an allowed material for the construction of an access drive. The proposed draft only allows concrete or hot-mix asphalt.
  - Indeed, the City may consider recommending recycled asphalt as the preferred material given the environmental benefit of using recycled materials.
- (c) Haul Routes
  - A map with designated haul routes must be established before an operator will even consider rezoning to the ME district.
  - Assuming designated haul routes are acceptable from an operational perspective, there must be restrictions on the arbitrary future change of those routes given the importance of limiting transportation distances and the corresponding cost and impact benefits.
- (d) Noise Abatement
  - During the standard hours of operation between 6:00 a.m. and 6:00 p.m., compression brakes should be allowed (unless already prohibited

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everywhere else in Madison)Erosion Control and Stormwater Management

- (e) Erosion Control and Stormwater Management
  - The City should consider using Dane County's Land Conversation Department for the erosion control and stormwater management plans.
- (f) Insurance
  - A general liability insurance requirement of at least five million dollars is far too high.
- (g) Annual Public Meeting Requirement
  - A window of only one month to hold this meeting is too restrictive; it should be expanded to a 3-month window.
  - The annual meeting requirement should be waived during periods of low or no activity at a particular quarry. For example only require an annual meeting if:
    - More than 250,000 tons were sold from the site in the previous year
    - Site was operable more than 125 days during the previous year
    - More than 10 blasts were performed during the previous year
    - More than 5% of those invited to the previous year's meeting attended
- (h) Site Plan
  - The requirements to identify archaeological features and the specific location of signage is excessive.
  - Asking for the specific location of proposed extraction areas, staging areas, and equipment storage is problematic. If such information is required, it must be for informational purposes only and should not create an enforceable commitment. Equipment used on a quarry site is intentionally portable, and there are factors out of the operator's control (e.g. the need to switch to a different face to meet high performance aggregate specification, water issues from extended periods of heavy rain, etc.) that make it impossible to predict extraction areas in the upcoming year with any certainty.
- (i) Annual Mining Report
  - The scope of this proposed provision is excessive. An appropriate requirement would be limited to a general phasing plan.

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- (j) Blasting CUP
- (See comments above)
  - If the Blasting CUP were a standard, perpetual permit, the following issues should still be addressed.
    - i. Requiring an operator to provide the Fire Department with the calculations for each blast outlined in (4) is excessive. As written, the requirement is inconsistent with state regulations. State rules require the notification calculation only upon the very first blast at a site.
    - ii. A requirement for 4 seismographs is excessive according to industry practice. Seismograph requirements need clarification. For example, does this language require the permanent installation of four seismographs at the boundaries of the site?
    - iii. The phrase "when feasible" contained in sub. (9) should be clarified to reduce ambiguity

Thank you for the Plan Commission's careful consideration of this matter. We appreciate the opportunity to have input on this draft and are happy to provide additional information that the Plan Commission believes will be helpful.

Sincerely,



Eric M. McLeod

EMM/jlw

cc: John Strange, Assistant City Attorney  
Denise DeMarb  
Samba Baldeh