

ADDITIONAL MATERIALS FROM APPLICANT

Brauer, Rick

From: Steve Parent <sparent@baudhuin.com>
Sent: Friday, September 4, 2020 10:58 AM
To: Brauer, Rick; Riemer, Linda
Cc: Julian Hagen; Tom Jordan
Subject: Nonmetallic Mine Appeal - DNR Update
Attachments: Jordan DNR Update.pdf

Attached is the DNR update and our response. Hopefully, it's possible to include this information for the appeal hearing next Tuesday.

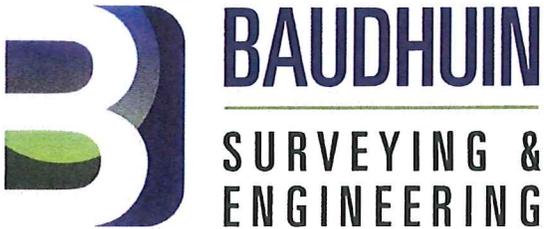
Thanks.

Steve

Steven J. Parent, P.E.
Baudhuin Surveying & Engineering
312 North Fifth Avenue
PO Box 105
Sturgeon Bay, WI 54235

Phone (920) 743-8211
Cell (920) 421-1413

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SEP 4 2020
DOOR COUNTY
LAND USE SERVICES DEPARTMENT



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September 4, 2020

Richard Brauer, Zoning Administrator II
Door County Planning Dept.
Door County government Center
421 Nebraska Street
Sturgeon Bay, WI 54235

Re: *Appeal of Nonmetallic Mining Permit (028-04-32343033R)*

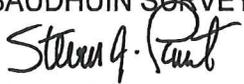
Dear Rick:

Conditions of approval imposed by the Resource Planning Committee for the Thomas Jordan nonmetallic mine site included obtaining a storm water permit from the WI DNR as well as determining if the mine site is in whole or in part of the Hine's Emerald Dragonfly designated habitat area. Attached is correspondence received this week from the DNR in this regard.

The DNR is recommending a phased approach to the mine construction as well as incorporating additional best management practices (BMP's) into the design. Due to the time constraints between the DNR notification and the deadline to submit additional information for the upcoming hearing, we have not finalized our reply yet, but I did want to include the plan revisions in our submittal. I can discuss in detail with the Board of Adjustment, the DNR requirements and our approach to address them.

Respectfully submitted,

BAUDHUIN SURVEYING & ENGINEERING


Steven J. Parent, P.E.

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2984 Shawano Avenue
Green Bay WI 54313-6727

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



August 31, 2020

Thomas Jordan
1481 Main Road
Washington Island, WI 54246
Sent via email: tomtjcorp@yahoo.com

Site: Hagen – Jordan Quarry
Location: SW ¼, SW ¼, Section 32, T34N, R30E, Town of Washington
FIN: 72650

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LAND USE SERVICES DEPARTMENT

Dear Mr. Jordan:

Thank you for submitting the Notice of Intent (NOI) for the proposed nonmetallic mine site identified above. This letter is to inform you that the Wisconsin Department of Natural Resources (Department) cannot issue coverage under the Nonmetallic Mining Operations WPDES Permit No. WI-0046515-06 at this time.

A Natural Heritage Inventory (NHI) screening of the project area revealed impact concerns to the Hine's Emerald Dragonfly habitat, a state and federally listed endangered species. Due to this concern, additional best management (BMPs) shall be employed to address quality and quantity of storm water recharge for the aquifer and potentially for recharge area for the Hine's Emerald Dragonfly habitat in Wickman Marsh. In order to move forward with the storm water permit process, please address the following and resubmit site plans.

1. Update plans to incorporate phasing. Plans should outline mining activities to begin on the North end of the property as phase 1, which would be about 1 acre in size and also be outside of the 1000' Buffer for the Groundwater Contribution Area. Phase 1 should be mined and reclaimed/partially reclaimed to accept storm water runoff as mining proceeds into phase 2 (southern 3 acres). The purpose of phasing would be that as mining extends into the buffer area stormwater runoff would be directed to the reclaimed phase 1 area to encourage infiltration into soil and vegetation. This approach will help filter out potential contaminants prior to the water entering fractured bedrock.
2. For initial start-up, and until internal drainage can be proven, this site will be classified as externally drained. A requirement of externally drained sites is the creation and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP should be submitted prior to initiating any land disturbing activities. The SWPPP should contain measures outlined in NR 216.27 Wis Adm Code, including:
 - a. An erosion control plan to address all phases until anticipated internal drainage will be achieved. This should include erosion control details for all land disturbance such as clearing, stripping, berm construction, and soil stockpiles, as well as a revegetation plan.
 - b. Spill prevention measures including an emergency spill response plan, onsite spill kits, and maintenance of equipment to prevent spills and leaks. Please also consider:
 - i. Not storing fuel on site.

- ii. Store equipment offsite during non-use, or store equipment in northern non buffer area.
- c. In the unlikely event, mining activities would penetrate an unknown cavern or fissure unexpectedly, please notify the DNR storm water program directly.

You should not begin mining activities until you have received permit coverage for storm water discharges. Violations are enforceable under ch. 283, Wis. Stats. Please call me at: 920-427-0983, or email: sarah.anderson@wisconsin.gov, if you have any questions. Thank you.

Sincerely,



Sarah Anderson
Storm Water Specialist

Cc: Renee Borkovetz, Baudhuin Surveying & Engineering
Shauna Marquardt, US FWS
Betsy Galbraith, US FWS
Greg Coulthurst, Door County
Lisie Kitchel, DNR
BJ Brenneke, DNR
Joe Baeten, DNR

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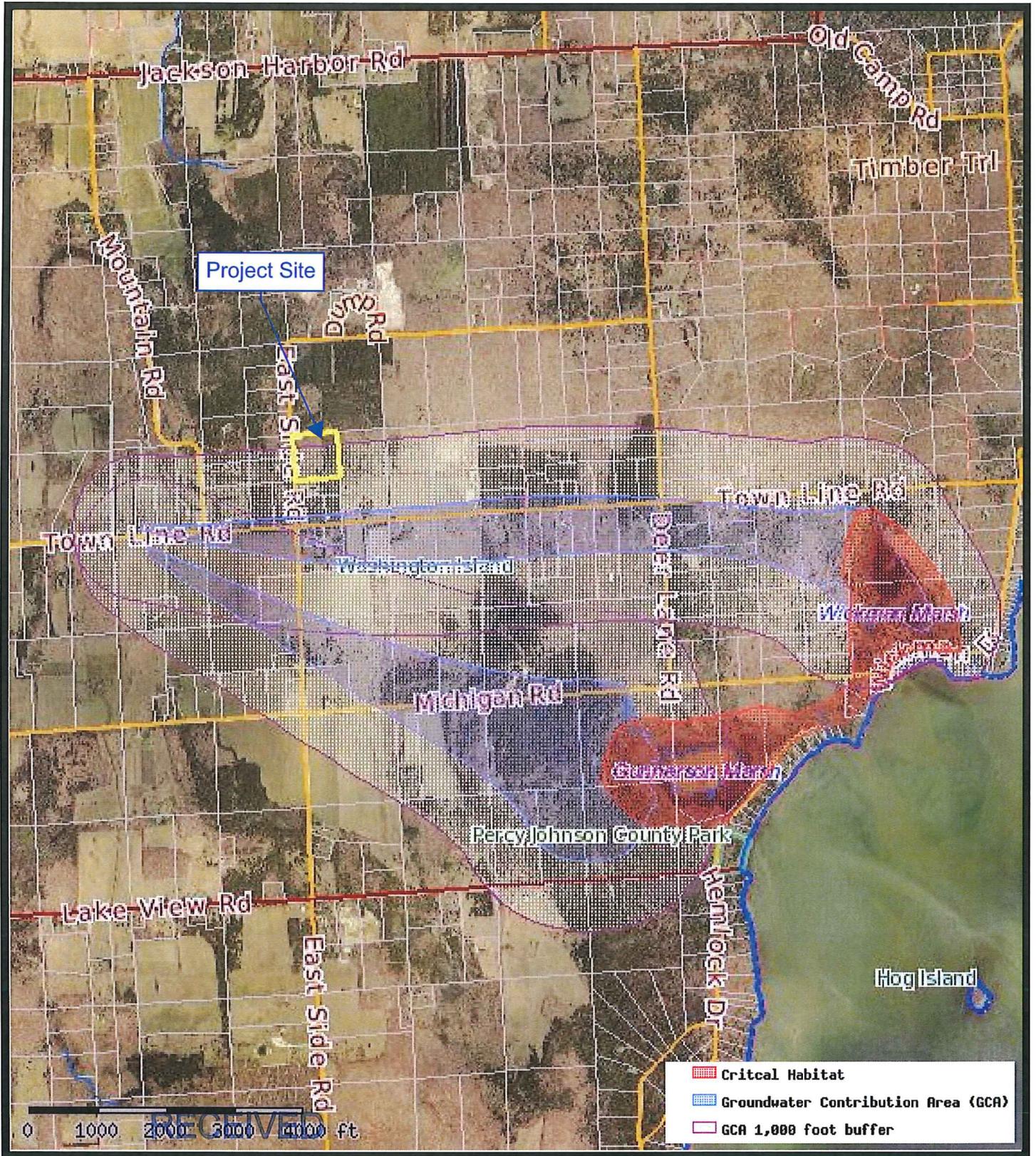
DOOR COUNTY
LAND USE SERVICES DEPARTMENT

Map

Printed 09/04/2020 courtesy of Door County Land Information Office



... from the Web Map of ...
(//www.co.door.wi.gov)
Door County, Wisconsin
... for all seasons!



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Map

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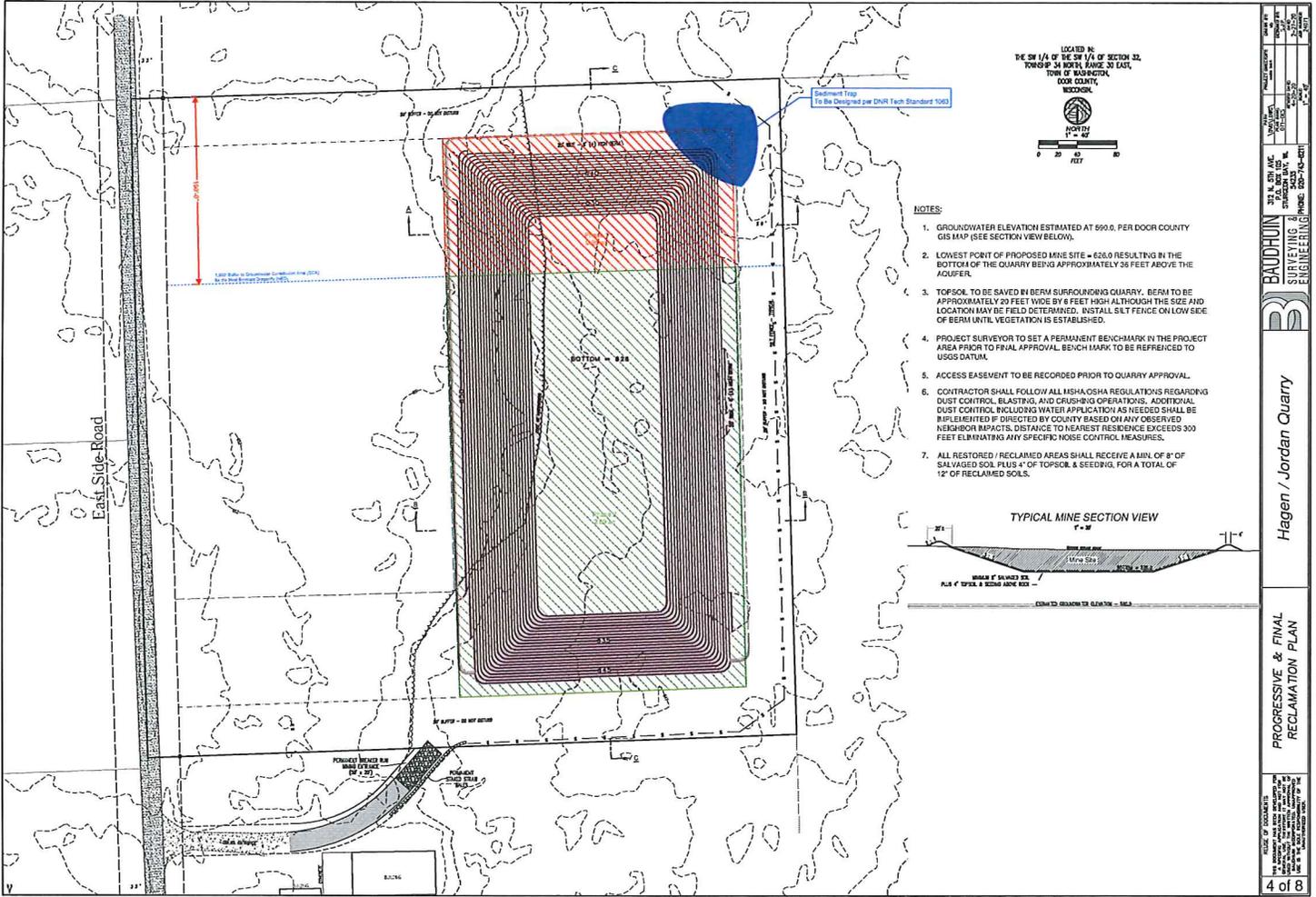
... from the Web Map of ...
(/www.co.door.wi.gov)
Door County, Wisconsin
... for all seasons!



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LOCATED IN:
 THE SW 1/4 OF THE SW 1/4 OF SECTION 32,
 TOWNSHIP 28 NORTH, RANGE 20 EAST,
 TOWN OF WASHINGTON,
 DOOR COUNTY,
 WISCONSIN.

- NOTES:
1. GROUNDWATER ELEVATION ESTIMATED AT 599.0, PER DOOR COUNTY GIS MAP (SEE SECTION VIEW BELOW).
 2. LOWEST POINT OF PROPOSED MINE SITE = 628.0 RESULTING IN THE BOTTOM OF THE QUARRY BEING APPROXIMATELY 35 FEET ABOVE THE AQUIFER.
 3. TOPSOIL TO BE SAVED IN BERM SURROUNDING QUARRY. BERM TO BE APPROXIMATELY 20 FEET WIDE BY 6 FEET HIGH ALTHOUGH THE SIZE AND LOCATION MAY BE FIELD DETERMINED. INSTALL SILT FENCE ON LOW SIDE OF BERM UNTIL VEGETATION IS ESTABLISHED.
 4. PROJECT SURVEYOR TO SET A PERMANENT BENCHMARK IN THE PROJECT AREA PRIOR TO FINAL APPROVAL. BENCH MARK TO BE REFERENCED TO USGS DATUM.
 5. ACCESS EASEMENT TO BE RECORDED PRIOR TO QUARRY APPROVAL.
 6. CONTRACTOR SHALL FOLLOW ALL MSHA/OSHA REGULATIONS REGARDING DUST CONTROL, BLASTING, AND CRUSHING OPERATIONS. ADDITIONAL DUST CONTROL INCLUDING WATER APPLICATION AS NEEDED SHALL BE IMPLEMENTED IF DIRECTED BY COUNTY BASED ON ANY OBSERVED NEIGHBOR IMPACTS. DISTANCE TO NEAREST RESIDENCE EXCEEDS 300 FEET ELIMINATING ANY SPECIFIC NOISE CONTROL MEASURES.
 7. ALL RESTORED / RECLAIMED AREAS SHALL RECEIVE A MIN. OF 8" OF SALVAGED SOIL PLUS 4" OF TOPSOIL & SEEDING, FOR A TOTAL OF 12" OF RECLAIMED SOILS.

TYPICAL MINE SECTION VIEW

DATE OF PROJECT	2/20/20
PROJECT NO.	2019-001
PROJECT NAME	HAGEN / JORDAN QUARRY
CLIENT	BAUDHON SURVEYING & ENGINEERING
SCALE	1" = 40' FEET
DATE OF PRINT	SEP 4, 2020
PROJECT NO.	2019-001
PROJECT NAME	HAGEN / JORDAN QUARRY
CLIENT	BAUDHON SURVEYING & ENGINEERING
SCALE	1" = 40' FEET
DATE OF PRINT	SEP 4, 2020

PROGRESSIVE & FINAL RECLAMATION PLAN

4 of 8

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 LAND USE SERVICES DEPARTMENT

LETTER IN OPPOSITION TO APPEAL
(IN FAVOR OF CONDITIONAL USE
PERMIT)

Brauer, Rick

From: Valerie Carpenter <townoffice@washingtonisland-wi.gov>
Sent: Friday, September 4, 2020 1:46 PM
To: Brauer, Rick
Subject: Fwd: Scan from town of Washington Island
Attachments: doc20200904140221.pdf

Sincerely,

Valerie Carpenter, Wisconsin Certified Municipal Clerk (WCMC)
Town of Washington
910 Main Road
P.O. Box 220
Washington Island, WI 54246

920 847-2522
Fax -2303
Population Estimate 717

----- Forwarded message -----

From: <washingtontownwi@gmail.com>
Date: Fri, Sep 4, 2020 at 1:44 PM
Subject: Scan from town of Washington Island
To: <townoffice@washingtonisland-wi.gov>

TASKalfa 4501i
[00:17:c8:24:7f:44]

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SEP 4 2020

**Door County Planning Department
Request for Town Recommendation**

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

Thomas Jordan proposes to establish a nonmetallic mine on a 10.17 acre parcel. The mine would cover 3.94 acres of this lot. Mr. Jordan also owns the property directly to the south of and adjacent to this property. There are currently two commercial storage buildings on that lot. The mine would be accessed from an easement road through this property. The easement road extends out to a town road known as East Side Road.

The Zoning and Planning Committee of the Town of Washington held a legally noticed and posted meeting on 8/27/20, at which, by a vote of 3 (Yea) to 0 (Nay), the town recommended (check one) **SUPPORT** **DENIAL** for a conditional use permit for mining activities outside of the 1,000ft buffer zone only that has been established for the groundwater contribution area that directly feeds the Hines Emerold Dragonfly critical habitat of the Wickman and Gunnerson Marsh(s) along with the (5) conditions listed below.

Reason(s) for the town's decision:

Open pit mining is permitted on land that is zoned General Agriculture (GA) with a conditional use permit. However, substantial evidence was presented by the Door Co. Environmental Council (see HED Critical Habitat Map of Washington Island) that Fractured Traces may be present on the parcel in question which are contained within the 1,000ft. buffer zone. These Fracture Traces can lead directly to the water table by way of sink hole, crevice or other direct path. Non metallic mining in this buffer zone would not only be potentially harmful to the endangered dragonfly habitat but also allow for unintended point source pollution of the water table due to the direct access pollutants may have to the aquifer.

Is the proposal consistent with the Town Comprehensive Plan?

Open pit mining is a permitted use on land zoned GA. The 1,000ft. buffer zone was also established on the Door Co. GIS Zoning Map as a layer of consideration when making decisions that may affect the public health safety and welfare. If the ground water becomes contaminated or degradation of the Dragonfly habitat occurs, the public interest will be adversely affected.

Concerns or objections the town may wish to see potentially addressed through conditions:

1. Operator to incorporate the WI DNR Stormwater Management Plan, Recommendations and US Fish & Wildlife recommendations into the Door Co. Soil & Water Department Reclamation Plan so enforcement can occur if needed.
2. Permit is non-transferable, permit ends if land is sold.
3. Haul route shall be from East Side Road to Michigan Road and back when hauling stone to the Hagen gravel pit on West Harbor Road, no trucks on Main Road.
4. Conditions of the Approval by the Door Co. Regional Planning Committee on June 4, 2020 shall also apply, see attached minutes.
5. Conditional Use Permit shall be reviewed and renewed in 1 year from issuance of permit to determine compliance with conditions. Recommendation to not renew the permit may occur at that time if the conditions outlined above or any other conditions that become part of the approval are not abided by.


Town Clerk Signature

9-4-2020
Date

Brauer, Rick

From: Valerie Carpenter <townoffice@washingtonisland-wi.gov>
Sent: Friday, September 4, 2020 1:20 PM
To: Riemer, Linda; Brauer, Rick; Michael Kickbush; Dick Tobey
Subject: Fwd: Scan from town of Washington Island
Attachments: doc20200904132619.pdf

Good afternoon All,

Attached is the correspondence from the Special Town Board Meeting, 9/4/2020 concerning the Tom Jordan nonmetallic mine on Washington Island. If you would like the originals mailed to you please let me know.
 Happy long weekend.

Sincerely,

Valerie Carpenter, Wisconsin Certified Municipal Clerk (WCMC)
 Town of Washington
 910 Main Road
 P.O. Box 220
 Washington Island, WI 54246

920 847-2522
 Fax -2303
 Population Estimate 717

----- Forwarded message -----

From: <washingtontownwi@gmail.com>
 Date: Fri, Sep 4, 2020 at 1:09 PM
 Subject: Scan from town of Washington Island
 To: <townoffice@washingtonisland-wi.gov>

 TASKalfa 4501i
 [00:17:c8:24:7f:44]

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SEP - 4 2020

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LAND USE SERVICES DEPARTMENT

Door County Planning Department

Request for Town Recommendation

Thomas Jordan proposes to establish a nonmetallic mine on a 10.17 acre parcel. The mine would cover 3.94 acres of this lot. Mr. Jordan also owns the property directly to the South of and adjacent to this property. There are currently two commercial storage buildings on that lot. The mine would be accessed from an easement road through this property. The easement road extends out to a town road known as East Side Road.

The Town of Washington held a legally noticed and posted meeting on September 3, 2020, at which by a vote of 5 (five) "Yea" and 0 (zero) "Nay" the Town recommended "**Support**" for a conditional use permit for mining activities.

At the meeting the Town Board reviewed and accepted the recommendation by the Washington Island Zoning and Planning Committee (WIZAP). However, the Town Board elected to modify the conditions as recommended by WIZAP noted below. In addition, the Town Board reviewed and considered additional input provided by James R.E. Smith⁽¹⁾.

Reason(s) for the Town's decision:

Significant investigation and analysis of the conditional use permit has occurred since the permit was originally filed in March. At least six public meetings/hearings have taken place, resulting in a comprehensive engineering and operational plan as well as a set of conditions being recommended and agreed to by the applicants at the June 4, 2020 Regional Planning Committee. As a condition of its support, it was understood by the Town Board that these pre-existing conditions would be applied to the conditional use permit if approved through the appeal process.

Within the above, continuing substantive concerns over the conditional use permit have principally focused on Karst topography (e.g. fractures and/or fissures) leading to groundwater contamination and/or hydrology disruption (e.g. groundwater flow), impacting either local wells or the Hines Emerald Dragonfly (HED) habitat.

The Town Board does not claim expertise in these areas of concern, and previously deferred these issues to the US Fish and Wildlife in their letter to Door County Land Use Services Department dated August 4, 2020⁽²⁾.

Reasoning for the deferral to US Fish and Wildlife was that the Board felt inadequate to determine whether the ~3 acres of the proposed ~4 acre mine which would be within the HED 1,000' buffer zone constituted *substantial evidence* for denial of the conditional use permit as required under Wisconsin Act 67 for the protection of landowners.

In specific, the HED zone on Washington Island constitutes approximately 1,500 acres, of which 180 acres of marsh is the critical HED habitat. Of the remaining acres, approximately 400 acres have been identified as the groundwater contribution area, while the remaining 920 acres constitute a

1,000' buffer zone surrounding the groundwater contribution area. Therefore, the conditional use permit constitutes a ~0.2% overlap with the designated area, but is neither within the HED critical habitat or groundwater contribution areas.

Further, the proposed non-metallic mine surface is at an elevation of 650', whereas the HED habitat is below 590', such that at the requested 30' depth for the mine, the bottom elevation would be >30' above the marsh.

Regarding the potential for groundwater contamination (for both area wells and the HED), the Board felt that the pre-existing County restrictions for routine vehicle inspection (e.g. fuel, coolant, oil and/or hydraulic fluid leakage), and no storage of equipment within the mine, sufficiently addressed the concern.

Regarding the potential for the mine to significantly impact the hydrology, wherein excessive quantities of water needed to be removed from the mine (i.e. the mine 'hit' an aquifer and required draining it to recover the gravel), the Board observed that this concern had already been identified and the mine operators were required to notify the County if it occurred. Furthermore, all water discharge from the mine was already regulated by the Wisconsin Department of Natural Resources (DNR).

Regarding the WIZAP recommended restriction for mining only outside of the 1000' HED buffer zone, the conditional use permit was submitted for 3.94 acres. Therefore, the Board felt that the permit should either be granted, or the permit re-written to comply with any restrictions imposed by the US Fish and Wildlife or County.

Regarding the WIZAP recommendation for the permit to be non-transferable, the Board felt that this was an undue restriction. Future value of the property would include the mine (as in a benefit), or the costs for reclamation (as a detriment). In either case, the conditional use permit should not restrict future use if the use is deemed acceptable.

Regarding the WIZAP recommendation that the haul route be restricted to East Side and Michigan roads, the Board felt this was not advisable. In specific, the County roads are constructed with a higher load rating than the Town roads, thereby potentially leading to premature deterioration of the Town roads. Further, no other commercial entities with similar loads and vehicles are bound to any such restriction (e.g. Hanlin Excavating, Small Excavating, PCI, etc.).

Regarding the James R.E. Smith proposed conditions, the Board considered these and included all agreed upon conditions below.

Is the proposal consistent with the Town Comprehensive Plan?

Yes, open pit mining is a permitted use on land zoned General Agricultural (GA). Further, within the Town approved Future Landuse map, the parcel is zoned Industrial.

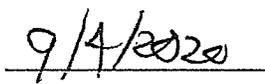
Concerns or objections the Town may wish to see potentially addressed through conditions:

- 1) US Fish and Wildlife to approve or deny the ~3 acre overlap between the nonmetallic mine and the 1,000' HED groundwater contribution area buffer zone.

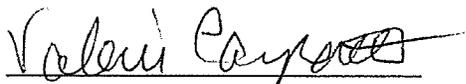
- 2) Operator to incorporate the WI DNR Stormwater Management Plan and any US Fish and Wildlife recommendations into the Door County Soil and Water Department reclamation plan(s) so enforcement may occur, if needed.
- 3) Conditions of the approval by the Door County Regional Planning Committee on June 4, 2020 shall also apply.
- 4) Conditional use permit shall be reviewed one year from issuance to assure compliance with conditions. Recommendation to not renew the permit may occur at this time.
- 5) Operator shall notify neighbors, in writing, within 1/3 of a mile radius (1,700 feet), within 30 days of any planned blasting activity.



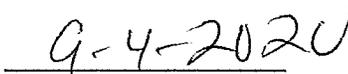
Chairman Signature



Date



Town Clerk Signature



Date

attachments:

- 1) James R.E. Smith Proposed Conditions for Conditional Use Permit Application dated 8/28/20
- 2) Door County Land Use Services Department c/o Linda Reimer dated 8/4/20

THE LAW OFFICE OF

JAMES R. E. SMITH, S.C.

August 28, 2020

Via U.S. Mail and E-Mail

Town of Washington
Attn: Mr. Richard Tobey, Chairman
910 Main Road
Washington Island, Wisconsin 54246
(chairman@washingtonisland-wi.gov)

**Re: Proposed Conditions for Conditional Use Permit Application
Parcel No. 028-04-32343033B
Applicants Julian Hagen & Thomas Jordan**

Dear Mr. Tobey:

On behalf of my clients Ted & Juliann Gardner, please find enclosed herewith a list of proposed conditions for the above-referenced conditional use permit application before the board.

A more comprehensive version of this list was submitted to the Washington Island Planning & Zoning Committee ("WIZAP") in advance of their meeting on August 27, 2020 at 4:00 PM. WIZAP, however, *did not* entertain these proposed conditions. The stated reason was that they were not received in time to be considered.

It had been represented to my clients by WIZAP that additional thoughts, questions or concerns would be taken in the form of written correspondence *up to the time of the meeting*. To be clear, the proposed conditions were submitted on August 26 at 4:25 PM, approximately 24 hours before the WIZAP meeting commenced.

As these proposed conditions were not duly considered by WIZAP, I respectfully request that the Town Board give them full and fair consideration.

Thank you in advance for your attention to this important matter.

Sincerely,

THE LAW OFFICE OF JAMES R. E. SMITH, S.C.



James R. E. Smith

cc: Ted & Juliann Gardner

PROPOSED CONDITIONS FOR CONDITIONAL USE PERMIT

GENERAL

1. Operator shall be required to purchase and maintain a policy of liability insurance for water quality, well casements and property value loss. Operator shall provide property value guaranty to property owners within 1/2 mile of the mine site, effective until one year prior to the proposed site termination.
2. Conditional Use Permit shall not be transferrable to subsequent purchaser of subject matter property.
3. Town, county, or state shall be responsible for monitoring mining operations for compliance with CUP.

OPERATIONS

4. Operator shall cap annuail loads at 50-75 per the oral testimony of applicants Julian Hagen and Thomas Jordan. Any intensification of use or change in approved plans shall require the issuance of an amended conditional use permit.
5. Hours of operation shall be 9:00 AM – 5:00 PM, Monday through Friday.
6. Operator shall not crush rocks on subject matter property.
7. Neighbors shall be given notice of at least 3 months prior to any blasting.

GROUNDWATER, SURFACE WATER & PRIVATE WATER SUPPLY

8. Operator shall provide a private well guarantee to protect the integrity and quality of neighboring water supply wells.
9. Operator shall provide documentation to verify depth of groundwater at the property and record seasonal changes in groundwater elevation. Groundwater quality at the property shall be documented by sampling groundwater monitoring wells and neighboring water supply wells to establish pre-development baseline conditions. Prior to commencing operations, the operator shall be responsible for conducting water quality tests for all private and public wells within 1 mile of any mining operations to provide an initial water quality baseline. Test results shall be provided to applicable property owners.

Per Paul J. Killian, PE, GEI Consultants, Inc.: Establishing baseline conditions for groundwater quality generally requires several rounds of sampling to document natural variations in water quality. Three of four monitoring wells installed around the perimeter of the property could be used to document groundwater elevations and groundwater quality prior to operations and changes in elevations/quality during operations.

10. Operator shall install and monitor dust monitoring system to document air quality. Operator shall install a truck wash or wheel wash and tracking pad to facilitate the control of traffic mud and dust. The pad must be paved at a minimum of 200' from a public road. Any truck wash, wheel wash, or tracking pad must be complete prior to any product leaving the site. Operator shall provide solution for disposal of truck wash effluent which can contaminate groundwater and storm water further.

Per Paul J. Killian, PE: The current mining operations plan includes a gravel tracking pad to "minimize truck traffic mud" on vehicles exiting the site. While a tracking pad is typical for reducing mud and dust, it is not a means to minimize these conditions.

August 4, 2020

Linda Riemer

Door County Land Use Services Department

421 Nebraska Street

Sturgeon Bay, Wisconsin 54235

cc: Kirby Foss, Michael Kickbush, William Nauta (WIZAP Committee)

Town of Washington Response to Jordan/Hagen Conditional Use Permit

To whom it may concern, below is the response to the Request for Town Recommendation regarding the Jordan and Hagen Conditional Use Permit.

Reason(s) for the Town's decision:

- 1) Wisconsin Act 67, which became effective November 28, 2017, reads: "*If an applicant for a conditional use permit (CUP) meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county **shall** grant the conditional use permit.*" In addition, the Act allows that the local zoning board can impose additional requirements or conditions which are based on substantial evidence after the public hearing and before granting a permit. In the Act, *substantial evidence* means facts and information, other than merely personal preferences or speculation. Further, the Act specifies that the "*conditions must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer or renewal.*"
- 2) Members of the Town Board were present at the two local public hearings concerning the CUP. In summary, there were eight concerns raised during the Washington Island Zoning and Planning (WIZAP) hearing. From the Town Board perspective, the questions were legitimate and required a response. However, the fact that the questions were unanswered being (part of) the basis for the WIZAP "denial" was troubling to the Board. In fact, the dissenting votes from the Board approval were based on the view that WIZAP should have allowed for a complete response to the questions, prior to their action, such that the Board would have had the opportunity to affirm their recommendation on the basis of a complete

evaluation. Instead, the Board was “forced” to vote on an assessment by WIZAP, which included unanswered questions at the time of their ruling. That being said, the Town view on the eight objections were:

- a. **Hines Emerald Dragonfly Groundwater Contribution Buffer Zone.** This question, and the implications thereof, is clearly out of the Board scope of expertise. Therefore, the Board relied on the engineering and County assessments. In specific, in Section #2 of the Mine Site Narrative, Baudhuin engineering concluded that the groundwater table was estimated at 590 feet, while the proposed base of the quarry would end at 626 feet, resulting in an estimated 36 feet of separation to the aquifer. As such, both the engineering and county assessment of the quarry having a material impact on the groundwater flow to the Hines Emerald Dragonfly water supply (actual habitat located 6,000 – 7,800 feet away) was deemed acceptable. Furthermore, US Fish and Wildlife recommendations for preserving the Emerald Dragonfly habitat emphasize water conservation, inspection and minimization of sanitary systems, and eliminating the use of fertilizer, pesticides and herbicides on agricultural land, none of which are relevant to the operation of a quarry located above the water table. Regarding County action on the concern, the CUP required the applicants to consult with the US Fish and Wildlife Service as to whether the property, in whole or in part, is designated as critical habitat for the Hine’s Emerald Dragonfly, and to assure that the habitat is not destroyed, altered or fragmented. Furthermore, that copies of the recommended practices (to assure the above) be provided to the Land Use Services Department.
- b. **Run off.** The Baudhuin engineering study (Section #2) determined the slope of the proposed region to be 1-2% to the East. The nearest residence in that direction is 2,200 feet away. Further, the owners of that adjacent property did not express concern with the CUP. Therefore, impact of runoff by the concerned property owners did not represent *substantial evidence*. Regarding County action on the concern, the four conditions outlined in Greg Coulhurst’s April 15, 2020 memo shall be met to the satisfaction of the Door County Soil and Water Conservation Department.
- c. **Dynamite Blasting will affect nearby wells.** Per Act 67, *substantial evidence* cannot rely upon speculation. Blasting is performed routinely on the Island, and the Board is not aware of damage to the aquifer and/or neighboring properties/wells associated with this activity. Per their response to the CUP, Jordan and Hagen acknowledged that this activity would be performed by qualified and licensed contractors. Liability for this activity would rest with the contractor and the permit holder. However, the determination that the blasting would damage the neighboring wells was considered by the Board to be speculative. Further, calculation of the demand for material shows that for each 1 foot of quarry depth, 6,453 cubic yards of material would be produced. Based on maximum use estimates (see “e” below) of 750 yards gravel per year, the need for blasting is likely less than once every five to seven years. Regarding County action on the concern, it was not specifically called out.

- d. **Early Late Hours of Operation.** The original CUP application included extended hours of operation from 6 am to 7 pm, including weekends. As part of the hearing process, the applicants agreed to reduced operating hours to M-F 8 am to 5 pm. Regarding County action on the concern, the above reduced hours of operation were placed as restrictions on the CUP.
- e. **Increased Traffic.** The proposed quarry is arguably located on one of the busiest roads in the Town – as it is the primary route to the dump. With ~1,100 households accessing the dump 1X per week, it is estimated that there are over 500 cars (in/out) on that road each day. The proposed Operational Plan estimated 1,500 yards of concrete per year, half of which is gravel. Therefore, 750 yards of gravel, at 10 yards per truckload is 75 trucks per year – which was the estimate provided during the hearings. Therefore, the division of 75 truckloads over ~9 months of operation, would result in 2-3 truckloads per week. On that basis, the addition of 2-3 truckloads to the daily >500 vehicles did not seem *substantial*. Furthermore, since Mr. Jordan already owns the adjacent property, and stores his equipment/trucks there. It seemed unlikely to the Board that the traffic would increase at all, as whether the trucks left the property full of gravel, or empty to go get gravel, the incremental increase would actually be zero. Regarding County action on the concern, it was not specifically called out.
- f. **Noise (from “jake breaking” and crushing).** There are currently no Town Ordinances covering “jake breaking”. Further, the CUP applicants are not the only owners of vehicles on the Island capable of “jake breaking”. Therefore, objection to the CUP on the basis of “jake breaking” was considered by the Board to be immaterial. That being said, the Board does agree that the practice of “jake breaking” should be unnecessary (except in an emergency), and would be amenable to considering a Town Ordinance to address the concern. Regarding crushing, only in the event that an off-island crushing firm were to be used would crushing occur at the quarry site. Otherwise, the rough material would be hauled to the cement plant location on West Harbor Road, where it would be crushed. As noted in “c” and “e” above, the frequency of any contractor crushing at the site would be limited to M-F, and once every 5+ years, and was thus not deemed to be *substantial*. Regarding County action on the concern, it was not specifically called out.
- g. **Affect on Property Values.** According to the county zoning maps, the parcel in question was previously zoned Light Industrial for future use. Further, while it was currently zoned General Ag, it was also not identified as prime farmland due to the shallow soil depth of 10”-20”. Therefore, the view of the Town Board was that the proposed CUP is consistent with current zoning, proposed future uses and existing Town Comprehensive Plan. The Board also found it peculiar that two of the most vocal objectors to the CUP were recent property owners (<3 years), who were both taking advantage of the Light Industrial zoning for their personal businesses. Regarding County action on the concern, it was not specifically called out.
- h. **Visibility, as the proposed mine and adjacent industrial use are within 350’ of the public right of way.** The Board is unaware of this requirement. Further, other

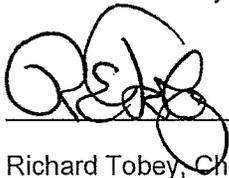
Commercial and Light Industrial activities on the Island are generally within 350' of the public right of way. Regarding County action on the concern, restrictions on any lighting to be erected were made, such that 'light pollution' would be minimized.

Is the proposal consistent with the Town Comprehensive Plan?

- 1) As noted above, the proposed property was previously zoned Light Industrial for future use. No current and/or official Town of Washington Board, Economic Development Committee plan or Washington Island Zoning and Planning Committee plan has altered this designated use pattern. Further, the existing County restrictions on setbacks and vegetation removal have resulted in the proposed quarry being located ~300 foot from the roadway, which restricts the view through trees, on the Western edge of the quarry (i.e. the view from East Side Road).
- 2) Regarding the area zoning and its similarity to other uses in the area, the proposed use is directly adjacent to six (6) other Light Industrial parcels. Furthermore, it is within ¼ of a mile to the entrance to the Town Dump, the Town Gravel Pit, as well as an additional 80-acre parcel owned by the Town, whose discussion of future uses include gravel mining and land spreading (septage).
- 3) Regarding the question of how many mines (quarries) are necessary, the Town Board does not hold the responsibility for creating "winners and losers" in commercial or industrial endeavors. As noted, the County did approve a CUP for another non-metallic mine (aka quarry) earlier in the year. However, arranging or sustaining a monopoly and/or forcing the importation of gravel for the manufacture of cement, is not in the best interest of the residents and property owners of the Town of Washington.

Concerns or objections the Town may wish to see potentially addressed through conditions:

- 1) There have been no other concerns raised during the public hearings, and it would appear that the county has addressed all of the concerns associated with any *substantial evidence*.



Richard Tobey, Chairman Town of Washington



Valerie Carpenter, Clerk Town of Washington

Rierner, Linda

From: achinacres@schoolhousebeach.com
Sent: Saturday, September 5, 2020 9:21 PM
To: Rierner, Linda
Subject: [FWD: Support for Jordan/Hagen Mine]

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SEP -7 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

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

Subject: Support for Jordan/Hagen Mine
From: <achinacres@schoolhousebeach.com>
Date: Sat, September 05, 2020 9:02 pm
To: "Irierner@co.door.wi.us" <Irierner@co.door.wi.us>
Cc: "Tomtbjcorp@yahoo.com" <Tomtbjcorp@yahoo.com>, "JulianVHagen@gmail.com" <JulianVHagen@gmail.com>

To whom it may concern:

I was made aware of the noon friday time constraint for submitting this after that time had passed. With the holiday occurring on Monday, I am hoping that you will still consider this written letter of support. If it is too late to do so, I am providing it to both Jordan and Hagen and they can include it in their testimony.

Please register this letter as support for the conditional use permit for the Jordan/Hagen mine.

Several points I would like to make:

A conditional use permit was granted to another party for a nonmetallic mine less than one mile away from this location. I was present for the blasting operation that occurred at this location and was in fact approximately 500 ft away from the actual blast zone. I was present, because in my capacity as manager of the Washington Island Electric Cooperative, as a precautionary measure during the blast, we de-energized a primary (7200v) line that essentially ran over the northern portion of the area. The operation was no more than a dull thud and quite frankly significantly quieter than many of the fireworks that people set off numerous times during the summer. Based on my understanding, this single blast released enough material that it will be several years before another operation is needed. Our overhead lines were completely unaffected. As far as blasting goes, more than 40 % of the utility poles installed in the area over the last 75 years have required blasting.

It seems odd to me that, after granting a conditional use permit to one operation so close to the one proposed by Jordan/Hagen, that there would be any doubt that one should be granted to this one.

In addition, the Town of Washington operates both a nonmetallic mine and a landfill/dumpster site less than 2000 ft away from the proposed location. Not only has the Town had very extensive crushing operations that have occurred at their site, but it is also the DNR approved disposal site for dredging spoils that were accumulated during the dredging of the Detroit Harbor channel in 2013.

The prior owner of the proposed site operated a DNR approved, EPA regulated petroleum storage facility for quite a number of years. I was involved in the Region 5 EPA inspection of the facility in 2010. This facility consisted of 6 30,000 gallon tanks storing various petroleum products, mostly

Fuel oil and Diesel Fuel. The site was approved by the DNR. I would think that the risk of groundwater contamination from any potential spills would have been a much larger concern than a small mining operation.

Over the last 20 years, I have seen many, many loads of gravel and breaker run brought to the Island from other locations. This is an expensive and unnecessary situation when suitable material is available.

Both Tom Jordan and Julian Hagen are long term residents and business owners on Washington Island and both have contributed significantly to not only the Island's economy, but positively to the community for many years. I believe they can both be counted on to continue to do so. I would ask that you vote in favor of the conditional use permit.

Robert B. Cornell
1792 Washington Harbor Rd
Washington Island, WI 54246

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SEP - 7 2020

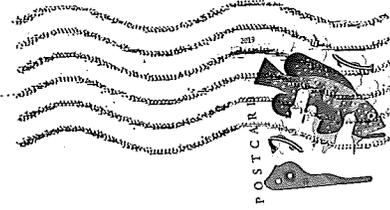
DOOR COUNTY
LAND USE SERVICES DEPARTMENT

LETTERS IN FAVOR OF APPEAL
(OPPOSED TO CONDITIONAL USE PERMIT)



Irene Cornils
6300 Bluff Court
Sturgeon Bay, WI 54235-8135

31 AUG 2020 PM 2 L

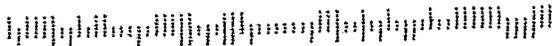


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SEP - 2 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT
to: Door County Land Use Services
County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235

1235-222521



To the Board of Adjustments:

In reference to Appeal of Conditional Use Permit Approval for Tax Parcel #028-0432343033B (mine) and #028-04-32343033B1 (access road)

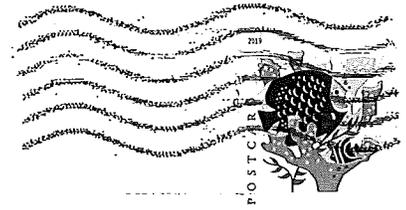
Why have another gravel pit on the Island?

Tom Jordan is not to be trusted. That is why Julian's name is on there. Tom pulls crooked stuff.

I am also worried about what it will do to my water.

Ms. Jean Kokes
2162 Gudmundsen Dr
Washington Island, WI 54246-9034

GREEN BAY WI 543
24 AUG 2020 PM 3-1



TO: Door County Land Use Services

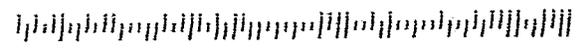
County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235

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AUG 26 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

4295-222521



To the Board of Adjustments:

In reference to Appeal of Conditional Use Permit Approval for Tax Parcel #028-0432343033B
(mine) and #028-04-32343033B1 (access road)

Please vote "yes" to what
Needs protecting on our
Small island -

by voting NO to this
Permit!

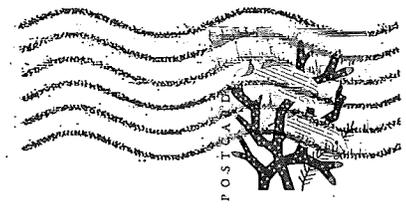
Jeannie
Kees
business owner & full time resident -

Return Address:

MINNEAPOLIS MN 553

W JACKSON HBR R1
WASH IS1
54246

25 AUG 2020 PM 7 L



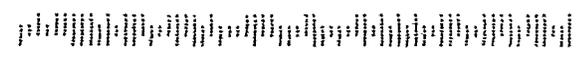
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AUG 27 2020

TO: Door County Land Use Services

DOOR COUNTY County Government Center
LAND USE SERVICES DEPARTMENT 21 Nebraska Street
Sturgeon Bay, WI 54235

205-999955



AND REDUCED PROPERTY VALUES

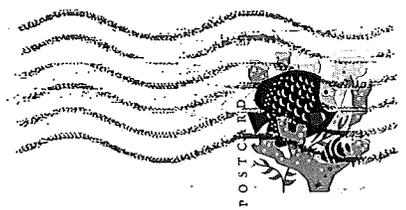
To the Board of Adjustments:

In reference to Appeal of Conditional Use Permit Approval for Tax Parcel #028-0432343033B (mine) and #028-04-32343033B1 (access road)

I BELIEVE THE APPLICANT AND/OR FUTURE PERMIT HOLDERS ^{SHOULD} PROVIDE INSURANCE PROTECTION FOR DAMAGE DONE TO NEIGHBORS WELLS. THEY SHOULD BE HELD TO MITIGATE NOISE / DUST, VIBRATIONS, AND FUMES AND OTHER NUISANCES RESULTING FROM OPERATIONS AND ~~DAMAGE~~ BE RESPONSIBLE IF OUTSIDE PARTIES ARE NEEDED TO ACHIEVE THESE RESULTS BECAUSE OF THEIR FAILURE TO DO SO - JACKSON HARBOR CO. N.H.

Return Address:

GREEN BAY WI 543
25 AUG 2020 PM 3 L



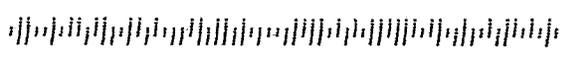
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AUG 27 2020

DOOR COUNTY ~~TO~~ Door County Land Use Services
LAND USE SERVICES DEPARTMENT

County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235

54235-22521



To the Board of Adjustments:

In reference to Appeal of Conditional Use Permit Approval for Tax Parcel #028-0432343033B
(mine) and #028-04-32343033B1 (access road)

The operation of a mine needs to be Always closely monitored with laws being followed at all times. Some of the previous business activities by one of the owners has not always been known to be "above board." He has been known to "bend the rules" to his benefit.

Ignorance of the law is no excuse. Is this the type of individual we want operating a mine? I think not. More research of this whole operation need to be done. Who will be monitoring this mine?

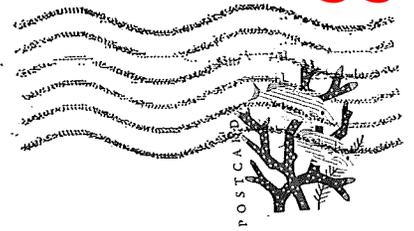
With concern,
Kerla Burroughs

33

Return Address:

GREEN BAY WI 54303

25 AUG 2020 194 3 L
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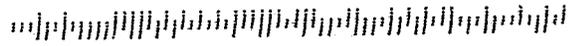
AUG 27 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

TO: Door County Land Use Services

County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235

14235-222521



To the Board of Adjustments:

In reference to Appeal of Conditional Use Permit Approval for Tax Parcel #028-0432343033B
(mine) and #028-04-32343033B1 (access road)

We have a home within 1 mile of this proposed mine. We are very worried about the possible contamination of our water/wells in the area. This can also affect the value of our property in a negative way. Will there be any insurance provided to cover any of the losses incurred from this mine activity?

With Concern

Karla + Mark

Gunnlaugsson

Riemer, Linda

From: Tony Wilkin Gibart <tjibart@midwestadvocates.org>
Sent: Tuesday, September 8, 2020 8:29 AM
To: Riemer, Linda
Subject: Written Testimony for CUP for the Jordan/Hagen Limestone Quarry
Attachments: 09.08.20 Door County Zoning Board of Adjustment Letter.pdf

Hello Ms. Riemer:

My understanding is that written comments for the County Board of Adjustment meeting will be accepted until 9 am this morning. We appreciate this extension, as the Town Board action in this matter occurred less than 24 hours before the start of the holiday weekend. Please find attached comments from Midwest Environmental Advocates regarding the CUP for the Jordan/Hagen Limestone Quarry.

Please let me know if you have any questions.

Thank you,

Tony

Tony Wilkin Gibart
Midwest Environmental Advocates
Executive Director
Pronouns: he/him/his
612 W. Main St. Suite 302
Madison, WI 53703
Phone: (608) 251-5047 ext. 4

www.midwestadvocates.org

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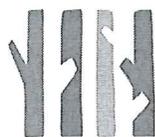
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SEP - 8 2020

DOOR COUNTY
LAND USE SERVICES DEPARTMENT

Support Appeal

36



Midwest
Environmental
Advocates

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DOOR COUNTY
LAND USE SERVICES DEPARTMENT

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President
Madison

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Amery

DAN COLLINS
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MORTENSEN

PEG SHEAFFER

ADAM VOSKUIL

JODI HABUSH SINYKIN
Of Counsel

To: Door County Zoning Board of Adjustment
From: Tony Wilkin Gibart, Executive Director
Date: September 8, 2020
Re: Support for Door County Environmental Council position on CUP for the Jordan/Hagen Limestone Quarry

Midwest Environmental Advocates (MEA) is a public interest environmental law center based in Wisconsin that works for healthy water, air, land and government for this generation and the next. We have a long history of partnership with the Door County Environmental Council (DCEC) and have found DCEC to be a highly knowledgeable and effective organization. For over 50 years, DCEC has played a key role in preserving the natural resources that make Door County a one-of-a-kind place in the Midwest. MEA supports DCEC's considered and informed opposition to a conditional use permit (CUP) for the Jordan/Hagen Limestone Quarry in the Town of Washington Island.

A key concern throughout the permitting process has been the critical habitat of the Hine's Emerald Dragonfly, which is a federally and state-protected endangered species. After extensive study, the U.S. Fish and Wildlife Service (USFWS) determined that both Little Marsh and Big Marsh on Washington Island have been identified as critical habitat for the Hine's Emerald Dragonfly. Because the health of the dragonfly's reproduction and habitat depends on the water quality of these groundwater-fed wetlands, the USFWS used sophisticated modeling to identify specific, relatively confined areas on Washington Island that feed the marshes. As you know, a portion of the proposed quarry would be within the USFWS-designated groundwater contribution area and the 1000-foot buffer zone the USFWS established to protect that area.

Deliberations on the CUP at the town level centered on what permit conditions, if any, could appropriately protect this important and highly sensitive ecological area. Both the Washington Island Zoning and Planning Committee (WIZAP) and the Washington Island Town Board proposed conditions on this point, but they took different approaches. The WIZAP recommended a straightforward condition that mining not be allowed within the USFWS-designated buffer zone. The Town Board took a more indirect route, recommending the permit be conditioned on possible future action by USFWS to "approve or deny the ~3 acre overlap between the...mines and groundwater contribution area buffer zone."

In our view, the condition proposed by the WIZAP is more sensible, both for legal and ecological reasons.

The Town Board was concerned that the issues at play were out of its area of expertise and that it would be better to defer to USFWS. There may have also been a concern that

MIDWESTADVOCATES.ORG

612 W MAIN STREET, SUITE 302 P 608.251.5047
MADISON, WISCONSIN 53703 F 608.268.0205

the WIZAP condition might not be “based on substantial evidence” as required under Wis. Stat. § 59.69(5e)(b).

Both concerns are misplaced, and they are not reasons to forego imposing direct conditions to protect the critical habitat of an endangered species. Wisconsin law vests the decision over this CUP with the County. Although the issues at hand may be somewhat technical, the County does have substantial evidence before it to make a determination that the WIZAP condition is necessary. The County has been presented with evidence that:

- (1) the Hine’s Emerald Dragonfly is a federally and state protected endangered species;
- (2) that its habitat is rare within the Midwest and has been extensively studied;
- (3) further, USFWS has engaged in a detailed study of groundwater recharge of the habitat and has mapped discrete areas of ecological significance;
- (4) the groundwater recharge occurs through a highly sensitive karst dolomite bedrock aquifer; and
- (5) the proposed mine is within the USFWS areas and would disrupt and alter this highly sensitive karst dolomite bedrock.

This is substantial evidence. Most zoning decisions do not have the benefit of over two decades of study. The Hine’s Emerald Dragonfly was federally listed as an endangered species in 1995. Since then, the dragonfly and its habitat have been the subjects of extensive study. Those efforts have led USFWS to produce the clearly defined areas of critical habitat and requisite buffer zones for Little Marsh and Big Marsh. We believe the County should avail itself of the research that has gone into the establishment of the buffer zone and adopt the WIZAP condition that prohibits the applicant from mining in this critical, well-defined and extensively study area of Washington Island.

In addition, adopting the Town Board’s recommended approach my result in unnecessary uncertainty. As stated above, USFWS is not an agency that has authority to approve or deny non-metallic mines. It is unclear USFWS will provide any approval or denial in this instance and, to the extent USFWS offers recommendations, whether those recommendations will be sufficiently specific that they can be adequately enforced by the county or interested landowners. Again, for those reasons, the County would be better served by heeding the USFWS’s existing research and advice and to respect the buffer zone.

Thank you for your consideration.

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SEP - 8 2020

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