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August 5, 2022

**VIA US MAIL AND HAND DELIVERY**Green Lake County Board of Adjustment  
Government Center, County Board Room #0902  
571 County Road A  
Green Lake, WI 54941

Re: Notice of Appeal and Position Statement of Green Lake County Planning & Zoning Committee July 7, 2022 conditional use permit issued to Donald Kinas, parcel no. 004-00787-0000, and letter/permit issued by the Land Use Planning & Zoning Department

Dear Members of the Green Lake County Board of Adjustment:

We represent the Green Lake Association, Inc., Green Lake Conservancy, Inc., Green Lake Sanitary District, and Ernie Neuenfeldt (collectively, "Appellants").

Pursuant to Green Lake County Ords. §§ 350-62(A), 350-63(B)(1), and the authority set forth below, this letter and its enclosures hereby serve as Appellants' appeal to the Green Lake County Board of Adjustment of the Green Lake County Planning & Zoning Committee's ("Committee") July 7, 2022 decision ("Decision") to issue a conditional use permit (CUP) to landowner Donald Kinas for a non-metallic mine project known as Skunk Hollow Mine ("Mine"), and the Land Use & Zoning Department's subsequent memorialization of that Decision on July 13, 2022 ("Permit").<sup>1</sup> According to the CUP

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<sup>1</sup> See July 7, 2022 Determination of the Land Use Planning and Zoning Committee, attached and incorporated herein as Exhibit A.

application and approval, the site location is Parcel 004-00787-0000, part of the SW  $\frac{1}{4}$  of S36, T16N, R13E, Town of Brooklyn, 40 acres, to be used as a limestone quarry.

Appellant Green Lake Association (GLA) is a 501(c)(3) non-profit organization founded in 1951. It is dedicated to improving, protecting, and ultimately restoring the water quality in Green Lake. It does so through education, outreach, research, and projects designed to improve the quality of water in and entering Green Lake. One of those projects is the "Bring Back the Brookies" initiative, to bring back brook trout to Dakin Creek, a tributary of Green Lake. The proposed Mine would likely disrupt ground water and surface water flow to the Creek, which is highly sensitive to these disruptions. GLA is aggrieved by the Decision and Permit because, *inter alia*, the CUP would allow these disruptions to occur. The proposed Mine is 1.1 miles from Green Lake and 0.75 miles from Dakin Creek.

The Green Lake Conservancy (GLC) is a 501(c)(3) all-volunteer, non-profit land trust with a mission to preserve and protect special places throughout Green Lake County and the surrounding region. GLC owns a scenic, high value property, known as Powell Spring, which is 0.44 miles from the proposed CUP site. (*See Exhibit B.*) The Powell Spring property protects a large cold-water spring, which is highly sensitive to groundwater and surface water disruptions, and GLC is aggrieved by the Decision because it permits these impacts to occur, and as a nearby landowner who will be affected by the additional noise, traffic, dust, vibration, and other disturbance from the proposed Mine.

The Green Lake Sanitary District (GLSD) is a governmental entity organized under Wis. Stat. § 60.71, with its principal office located at N5295 County Road TT, Princeton, Wisconsin. GLSD owns a scenic, high value property, known as Mitchell Glen, which is 0.32 miles from the proposed CUP site. (*See Exhibit B.*) Mitchell Glen is also highly sensitive to groundwater and surface water disruptions, and GLSD is aggrieved by the Decision because it permits these impacts to occur, and as a nearby landowner who will be affected by the additional noise, traffic, dust, vibration, and other disturbance from the proposed Mine.

Ernie Neuenfeldt is a property owner residing at N5139 Brooklyn G Road, Ripon, Wisconsin, within 300 feet of the parcels that will be utilized for the mining project. He is aggrieved by the Decision because he did not receive written notice of the CUP hearing until he called the County to complain, and then only received a notice on July 1. He will be harmed by the additional noise, traffic, dust, vibration, and other disturbances caused by the proposed Mine, along with potential runoff from the outlet structure of the Mine's retention pond.

Collectively, Appellants appeal the Decision and Letter on at least the following grounds:

1. **Failure to make required findings of fact under Ord. § 350.27(A)(2)(e):** The subject property is located in Green Lake County's A-1 Farmland Preservation District. The County's zoning ordinances require the Committee to make seven specific factual findings in order to approve a conditional use permit for non-metallic mineral extraction in a farmland preservation district. Ord. § 350.27(A)(2)(e). During its July 7, 2022 deliberations, the Committee made none of the required findings, including but not limited to a finding that the operation and its location in the farmland preservation district are consistent with the purposes of the farmland preservation zoning district and a finding that the operation and its location are reasonable and appropriate, considering alternative locations outside the farmland preservation district. These findings are also required to be made under state statute. Wis. Stat. § 91.46(6) (permitting non-metallic mineral extraction as a conditional use "if the political subdivision determines that all of the following apply . . .").
2. **Failure to make findings of fact under Ord. § 350-56(B)(2) supported by substantial evidence or sufficiently explain its reasoning:** Conditional use permits may only be granted if the Committee determines, *inter alia*, that the use "will not have a negative effect upon the health, safety, and general welfare of occupants of surrounding lands," "will not be hazardous or disturbing to existing and future neighboring uses," "will not be detrimental to property in the immediate vicinity or to the community as a whole." The Committee lacked substantial evidence to make these findings in light of groundwater supply and groundwater quality problems in the area, particularly related to sulfide minerals, and also insufficiently explained its decision on these points. Substantial evidence is "facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion." Wis. Stat. § 59.69(5e)(a)2.; *see also* Ord. § 350-77.
3. **Failure to include conditions ensuring Ords. §§ 350-56(B)(2) and 350.27(A)(2)(e) will be met:** Pursuant to Ord. § 350-56(C), the Committee may require additional standards and conditions necessary for the conditional use requested to meet CUP standards. Any such conditions must be "reasonable and, to the extent practicable, measurable." Ord. § 350-56(B)(1)(b); Wis. Stat. § 59.69(5e)(b)(2). The 15 conditions the Committee imposed on the CUP do not

ensure that both the ordinary CUP standards and farmland preservation district CUP standards will be met. Specifically, Condition ##13, 14, and 16, call for studies to investigate shallow groundwater flow and sulfide materials, factors that will be hazardous, disturbing, and detrimental to neighboring property uses and the health, safety, and general welfare of those property owners and the community as a whole, in violation of Ord. § 350-56(2)(a), (c), and (d). (*See Exhibit A.*) However, because the studies have no specific, measurable parameters such as duration or even when they must be performed, they cannot possibly ensure that the CUP standards will be met upon their performance.

4. **Procedural errors at and around July 7, 2022 public hearing:** The Committee is subject to common law concepts of due process and fair play, and also follows procedural rules set in ordinance and informally by the Committee. Its decisions may not be arbitrary and capricious. The Committee's consideration of the CUP violated these principles in at least three ways, impairing the ultimate decision and the rights of neighbors who objected to the development:
  - a. Due to the complicated factual and scientific issues surrounding the proposed Mine, many Committee members expressed interest in tabling the proposed CUP. However, the county corporation counsel advised the Committee that it must "approve, deny, or approve with conditions" that night, and that "[t]here is no ability under the statute to set this out to another meeting, in my opinion." While Ord. § 350-56(A) does provide that the Committee must ultimately approve, deny, or approve a CUP with conditions, it provides no limitations on when and how that decision may be made, or defeat normal procedures such as tabling.
  - b. Similarly, GLA had arranged for a Wisconsin Department of Natural Resources hydrogeologist to join the Committee meeting by Zoom to advise it on groundwater issues and sulfide minerals. Many Committee members had expressed interest in having him speak, but the corporation counsel stated that he could not speak because the public hearing was closed, despite the fact that the Committee had suspended its rules to hear from other persons or entities.
  - c. Pursuant to Green Lake Co. Ord. § 350-54(C), all property owners within 300 feet of the "lot or tract to be affected by any proposal for which the Land Use Planning and Zoning Committee's approval is required" shall receive "special notice" by mail. Upon information and belief, the Green Lake County Land Use and Zoning Department

(“Department”) mailed special notice to property owners within 300 feet of parcel no. 004-00787-0000, part of the SW ¼ of S36, T16N, R13E, but some notices were not received until June 25, 2022. Additionally, according to the Kinas CUP application, the lot or tract to be affected by the proposal activity extends to parcel no. 004-00786-0000, the NW ¼ of SW ¼ of S36, T16N, R13E, where the applicants plan to construct and maintain their sediment basin. (See Exhibit C, p. 34, Applicant’s PowerPoint, July 7, 2022 Committee meeting packet.) Property owners within 300 feet of parcel no. 004-00786-0000, including Appellant Ernie Neuenfeldt, did not receive special notice of the July 7, 2022 public hearing, until some of them complained directly to the Zoning Department. At that point, some received notices, but not until July 1, 2022 at the earliest, or three working days before the hearing. The Committee did not sufficiently fulfill the notice requirements in the statute, because the mailed notices were only received shortly before the hearing, with a holiday weekend intervening, and did not permit neighbors sufficient time to gather “substantial evidence” in opposition to the CUP application.

Prior to filing this appeal, Appellants’ representative Stephanie Prellwitz consulted with Matt Kirkman, Land Use Planning & Zoning Director. Mr. Kirkman denied Appellants’ position that they may appeal the Decision to the Board of Adjustment, citing Ord. § 350-56, later confirming the conversation in a July 21, 2022, email message. (See Exhibit D.) To the extent Mr. Kirkman’s July 21, 2022 determination is a “decision, order, or ruling” of the Department per Ord. § 350-62(A), Appellants appeal Mr. Kirkman’s determination as well.

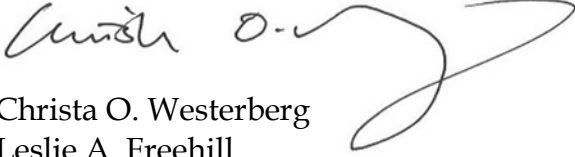
The Green Lake County Board of Adjustment has authority to hear this appeal pursuant to Ords. §§ 350-62(A), 350-58, and Wis. Stat. § 59.694(4) and (7); *see also Osterheus v. Bd. of Adj. for Washburn County*, 2005 WI 92, ¶ 25, 282 Wis. 2d 228, 698 N.W.2d 701. If the ordinance were interpreted to limit appeals to the Board of Adjustment only to CUP applicants, but not to others interested in a CUP, this would raise serious questions under the equal protection clause of the 14<sup>th</sup> Amendment to the United States Constitution. *Nankin v. Vill. of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 14; *see also Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 64, 357 Wis. 2d 469, 501, 851 N.W.2d 262, 278 (statutes and regulations should be interpreted in a manner that will avoid constitutional conflict whenever possible). Because a stay of the CUP will not cause imminent peril to life or property, Appellants’ appeal must stay all proceedings in furtherance of the CUP. Wis. Stat. § 59.694(5); Ord. § 350-62(A).

For the reasons above, the Appellants request the Board review this matter. Appellants further request that the Board schedule a de novo hearing.

Enclosed please find Appellants' Appeal Application Form and fee pursuant to Ords. §§ 350-62(A) and 350-76(B). Because the Department and Applicant are in possession of the Detailed Site Plan, Appellants have not included it here.

Sincerely,

PINES BACH LLP

  
Christa O. Westerberg  
Leslie A. Freehill

COW:LAF

Enclosures

cc: Planning & Land Use Committee  
Matt Kirkman

GREEN LAKE COUNTY  
Conditional Use Permit

**DETERMINATION OF THE LAND USE PLANNING AND ZONING COMMITTEE**

Public Hearing Date: July 7, 2022

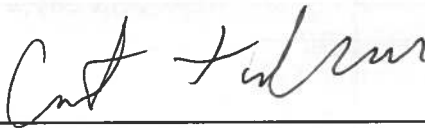
Owner: Donald Kinas

Applicant: Michael McConnell

Parcel: #004-00787-0000, Corner of Brooklyn G and Hyw K, Town of Brooklyn

Request: Conditional Use Permit to operate a nonmetallic mine.

**Land Use Planning and Zoning Committee:**

  
Curt Talma, Chair

recuse  
Harley Reabe

  
Chuck Buss, Vice Chair

  
William Boutwell

abstain  
Gene Thom

Date signed: July 7, 2022

Committee vote: Ayes 3 Nays      Abstain 1 Absent     

Roll Call : Buss 1 , Talma 1 , Boutwell 1  
Thom (abstain)  
Reabe (recuse)  
Page 1 of 2

**EXHIBIT  
A**

☒ Approve

☒ With the conditions (listed below)

☐ Deny.

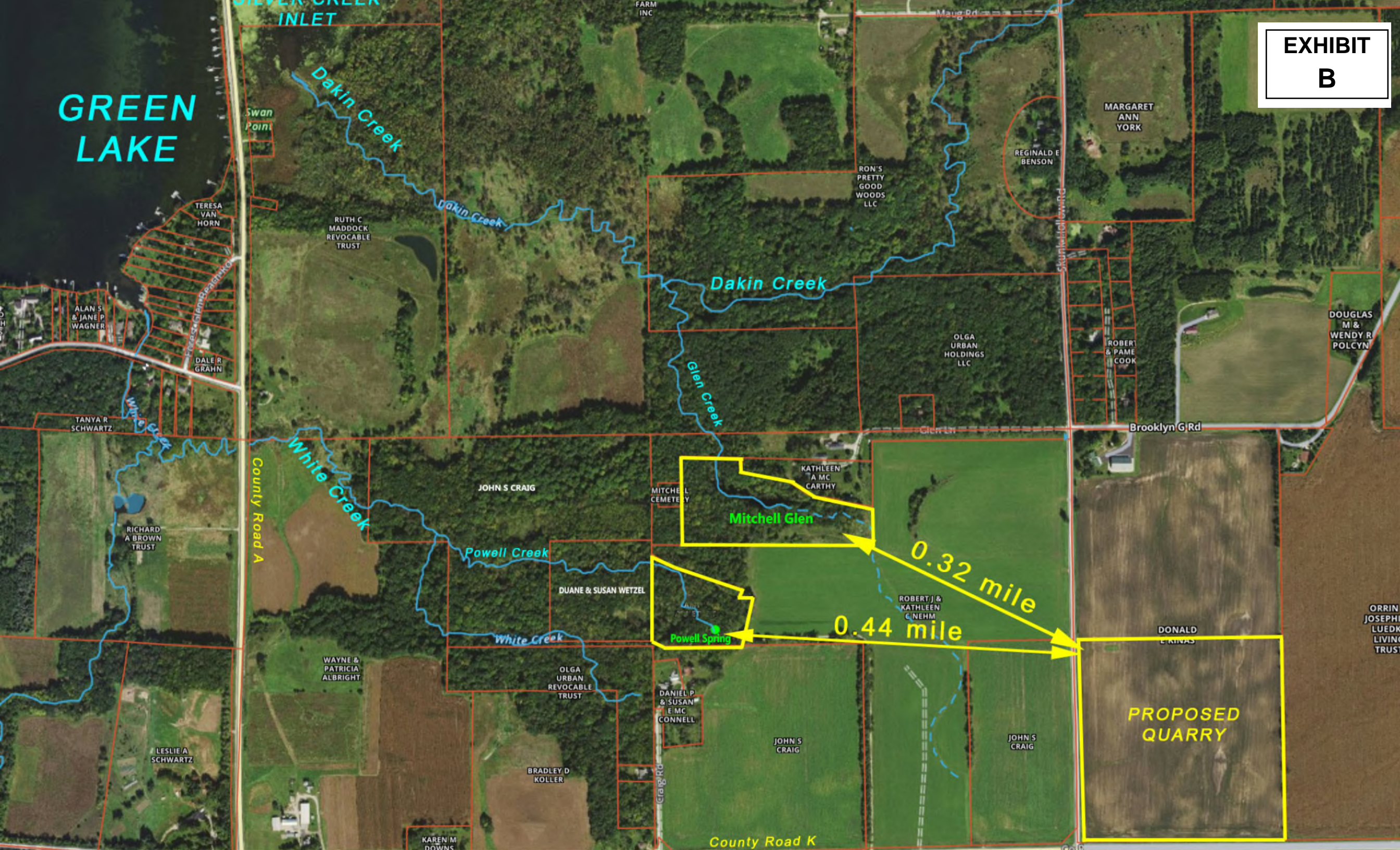
☐ Modify as follows:

**Conditions of Approval:**

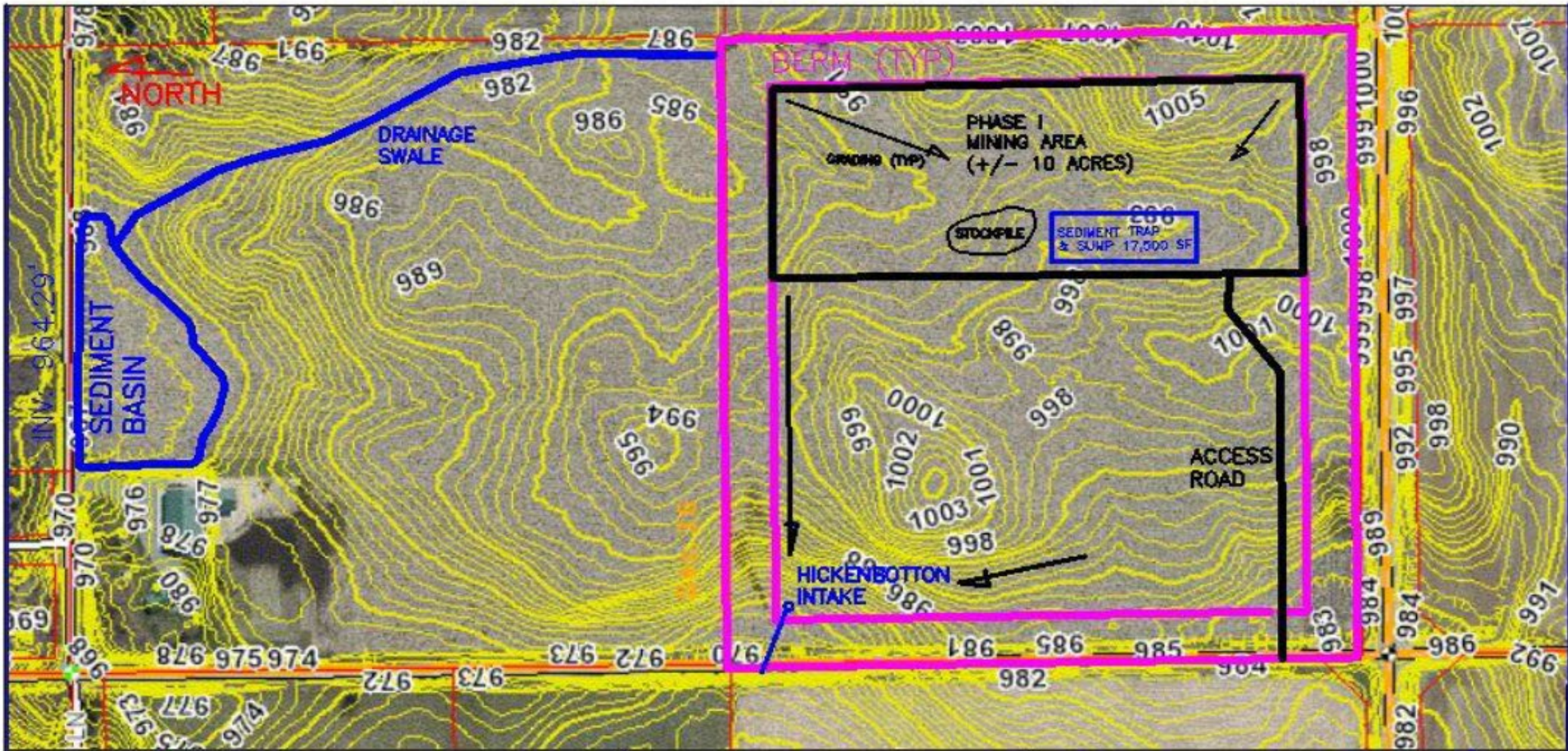
1. No additional expansion or addition of structures, mined area, and/or uses relating to this conditional use permit shall occur without review and approval through future conditional use permit(s).
2. Any outdoor lighting shall comply with Section 350-23 of the County Zoning Ordinance.
3. That the owners/applicants are responsible for obtaining permits and licenses from any other regulatory agency.
4. Pollution Prevention Best Management Practices Plan must be followed
5. Hours of Operation are from Monday- Friday from 5:30am to 6:00pm and Saturday from 6:00am to 3:00pm. <sup>M-F (9:00am - 3:00pm)</sup> Blasting may only occur during these hours.
- ~~6. The Committee should decide whether to grant extended hours or night hours. (Example: Operator may operate past the regular hours of operation one day a month no earlier than 5:00 am and no later than 10:00pm) —~~
7. All mining equipment should have mufflers (when applicable).
8. Emission Control Plan must be followed.
9. Operator must obtain an erosion control permit through the Green Lake County Land Conservation Department.
10. Owner must obtain and follow an Erosion control and Storm Water Management Plan.
11. Owner must obtain and follow a Stormwater Pollution Prevention Plan.
12. Owner must receive a Non-metallic Mining Reclamation Permit.
13. Owner to study the proposed site for the presence of shallow groundwater by installing five small diameter groundwater monitoring wells completed from the soil/bedrock upward to the ground surface. One well to be centrally located and the other four to be along the four property lines and within the 100ft buffers. The study must show that the flow of groundwater supplying Mitchel Glen, Powell Springs and White Creek will not be decreased.
14. The elevation of groundwater within the proposed mining site shall be determined. This shall be accomplished by installing two groundwater monitoring wells, one in the NW corner and the other in the SE corner of the proposed site. Each well to be constructed from the anticipated terminal depth of the quarry to the ground surface.
15. No mining of limestone shall occur below the aquifer or within five feet of the elevation of the spring orifice of White Creek (923.43ft above sea level).
16. A site specific study to be provided to the Land Use Planning and Zoning Department, performed by a qualified professional and reviewed and approved by the WDNR's hydrogeologist Dave Johnson, to study the site for sulfides. If the study indicates the site contains unsafe levels of sulfide minerals, and will be environmentally adverse to the nearby springs or groundwater the CUP shall be deemed void.



EXHIBIT  
B







<div data-bbox="53 1263 122 1349" data-label="Image"> </div> <div data-bbox="180 1253 364 1368" data-label="Text"> <p>EXHIBIT C</p> </div> <div data-bbox="428 1263 486 1349" data-label="Image"> </div> <div data-bbox="496 1202 1014 1396"> <p>KOPPLIN &amp; KINASE CO. INC. GREEN LAKE</p> </div>	<p>SKUNK HOLLOW QUARRY BROOKLYN G ROAD GREEN LAKE, WI GREEN LAKE COUNTY</p>	<p>TITLE: FACILITY OVERVIEW DATE: 04/04/22 SCALE: AS NOTED</p>	<p>REVISIONS:</p> <ul style="list-style-type: none"> <li>1</li> <li>2</li> <li>3</li> </ul>	<p>SHEET: C1</p>
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**From:** Stephanie Prellwitz <stephanie@greenlakeassociation.org>  
**Sent:** Thursday, July 21, 2022 10:18 PM  
**To:** Christa Westerberg; Dick Martens  
**Subject:** Fwd: Appealing a CUP

FYI



Stephanie Prellwitz | Executive Director  
492 Hill Street, Suite 205  
PO Box 364 · Green Lake, WI 54941  
(920) 294-6480 | office  
[www.greenlakeassociation.org](http://www.greenlakeassociation.org) | web  
[Facebook](#) | [Instagram](#) | [LinkedIn](#) | [Twitter](#) | [YouTube](#)

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

From: **Kirkman, Matt** <[mkirkman@greenlakecountywi.gov](mailto:mkirkman@greenlakecountywi.gov)>  
Date: Thu, Jul 21, 2022 at 1:34 PM  
Subject: Appealing a CUP  
To: Stephanie Prellwitz, Green Lake Association <[stephanie@greenlakeassociation.org](mailto:stephanie@greenlakeassociation.org)>

Stephanie,

Per our conversation ... this email is intended to provide you with the Department's basis for its conclusion that only the person who has had their conditional use permit application denied may appeal the Land Use Planning & Zoning Committee's decision to the Green Lake County Board of Adjustment. Please see the excerpt from the County's Zoning Ordinance.

[Green Lake County, WI Code](#)

[Chapter 350: Zoning](#)  
[§ 350-56: Review of permit application; standards and conditions.](#)  
<https://ecode360.com/9771273>

**G.**

In the event that the Land Use Planning and Zoning Committee chooses to deny a person's conditional use permit application, the person may appeal the decision to the Board of Adjustment or to circuit court under the procedures contained in § 59.694(10) Wis. Stats.

Based on the above zoning ordinance limitation, and that the Kopplin-Kinas Quarry conditional use permit was conditionally approved, it is the position of the Land Use Planning & Zoning Department that the only pathway forward to appeal the Committee's decision is through circuit court under the procedures contained in § 59.694(10).

I hope this provides you with the information you were looking for.

All the best,

Matthew E. Kirkman, MS

Director of Land Use Planning & Zoning

Land Use Planning & Zoning Department

Green Lake County

Wisconsin

[mkirkman@greenlakecountywi.gov](mailto:mkirkman@greenlakecountywi.gov)

1(920) 294-4175

*"Legal maxims are not so legal, as they are moral. I believe in the eternal truth of 'sic utere tuo ut alienum non loedas' (Use thy own property so as not to injure thy neighbour's)." Mahatma Gandhi*