

MEMORANDUM

DEPARTMENT OF COMMUNITY DEVELOPMENT/PLANNING DIVISION

TO: City Council

FROM: Carlos Espinosa, Assistant City Planner

DATE: January 16, 2013

SUBJECT: Sand Moratorium Questions

At the Pre-Council meeting on January 7 there were a number of questions asked by Council and the public. Answers to those questions are provided below. If there are further questions about this memo or the sand moratorium in general, please contact me at 457-8216 or cespinosa@ci.winona.mn.us.

Who will enforce the new ordinances?

The proposed ordinances will be enforced by primarily by the Community Development Department with assistance from other City departments such as Engineering and Police. The ordinances consist primarily of reports submitted to the Community Development department for review. After such reports have been reviewed for validity, City staff may inspect operations for compliance.

What is the procedure for enforcing the ordinances? How would non-compliance be dealt with? (Response provided by City Attorney's office)

The procedure that will be followed to enforce an ordinance and/or deal with non-compliance will depend on the individual case. Potential violations may be observed by City staff or received through citizen complaint. Regardless of who reports the alleged violation, the City will need answers to the following basic questions to determine what course of action to take:

- What is the alleged violation?
- Who is the violator?
- What is the factual basis (evidence) supporting the allegation?

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- What is the content of the ordinance, license, or permit being violated?
- What is the remedy that is desired?

With this information in hand, city staff will investigate the allegation and recommend one of the following:

- Voluntary abatement . Request the person/business violating the ordinance to correct the situation;
- Administrative sanctions. Impose non-criminal penalties, e.g. monetary fines, suspension or revocation of licenses and/or permits (including a Conditional Use Permit);
- Civil action. Commence a legal action to end the activity, e.g. an abatement action or an injunction;
- Criminal action. Commence a criminal action to end the activity.

Each case will need to be reviewed on its own merits. Initiating one course of action does not necessarily preclude the City from pursuing another remedy as the case progresses. In non-emergency situations, an offender must be provided notice before any action is taken by the City.

Civil actions require a lower burden of proof (preponderance of the evidence) and the relief that the City seeks would be set forth in the pleadings.

Criminal actions require proof beyond a reasonable doubt. With regard to a criminal action, the Winona City Code, in Section 21.06, provides that a violation of the Code is a misdemeanor unless another penalty is provided in the Code for a specific offense. A misdemeanor is punishable by a sentence of up to 90 days in jail or a fine of not more than \$1,000 or both. Every day that a violation continues constitutes a separate offense.

Are future mining activities likely in bluffland areas?

Conceptual future mining sites are shown on Attachment A. These locations are in the A-G zoning district and lie outside a 1,000 foot buffer from residential districts and the Bluffland Impact Overlay district (which prevents development of bluffs). It should be emphasized that these locations are only conceptual and only based on three factors:

- 1) Inclusion in the A-G zoning district
- 2) Location outside of a 1,000 foot residential buffer
- 3) Location outside the Bluff Impact Overlay district

Sand mining in these areas is unlikely to occur primarily because of the costs involved to reach the product. In addition, many of the locations are very small, have access issues, or lie within the Shoreland Overlay district – which restricts excavation activities adjacent to sensitive water resources. In order to address potential impacts from *any* future mining, the Planning Commission recommended the proposed mining ordinance amendments. The amendments provide for a detailed review of future mines through a Conditional Use Permit.

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How does the proposed 200' setback relate to setbacks for mines and uses in the M-2 zoning district?

The proposed 200' setback requirement relates to sand processing and transportation operations – not mines. The proposed amendment would apply to any future operations that apply for a CUP. City code already requires that processing equipment and stockpiles within 500 feet of a residential or business district be enclosed by a structure. The amendment would require all such structures to be at least 200 feet from a residential property. An example of this is provided in Attachment B.

It should be emphasized that the 200' setback is to residential property – not just residential zoning districts. This ensures that the setback also applies to residential properties which are in an M-2 General Manufacturing zoning district (See Attachment B).

The proposed 200' setback is consistent with other permitted uses in the M-2 zoning district. For example, the following uses also have a 200' setback to residential:

- Junk/Scrap yards
- Crematories
- Railroad yards and freight stations
- Large breweries
- Trucking or motor freight stations or terminals
- Storage and sales of grain, livestock feed or fuel

The 200' requirement for processing and transportation facilities is significantly less than the 1000' setback for mines because no blasting occurs at these sites and any processing or stockpiling is required to be enclosed (if within 500' of a residential or business zoning district).

What is the potential cumulative impact of truck traffic from sand operations?

The CUP requirement for sand processing and transportation operations has put a cap on sand facilities in Winona. Existing facilities may not add additional equipment or expand their footprint without obtaining a CUP. New facilities are required to obtain a CUP – which would presumably put a limit on the number of trucks per day.

Staff has reviewed the EAWs (Environmental Assessment Worksheets) for the two mines (Yoder and Dabbelstein) proposed in Winona County. According to the EAWs, potential truck traffic from these mines will replace existing traffic at processing and shipping facilities in the Winona area. Thus, there will be no net increase in truck traffic if these mines become operational.

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What happens if the top layer of a stockpile dries and blows in the wind?

It is a violation of City Code and state statute for stockpiled sand to blow across property lines. If this occurs, staff will take the enforcement measures detailed previously.

What is the scientific research supporting moisture content and reduction of dust?

According to the EPA, "*Emissions from the production of sand and gravel consist primarily of particulate matter (PM) and PM less than 10 micrometers (PM-10) in aerodynamic diameter that are emitted by many operations at sand and gravel processing plants, such as conveying, screening, crushing, and storing operations. Generally, these materials are wet or moist when handled, and process emissions are often negligible.*" (US EPA. *Emission Factor Documentation for AP-42 Section 11.19.1 Sand and Gravel Processing. Final report. 1995. Pg. 2-11*). Thus, if sand is wet or moist, emissions (dust) from processing is negligible. When staff consulted the MPCA regarding a baseline moisture content to ensure that sand is moist or wet, a range of 1.5-3% moisture content was recommended.

How would ordinances affect the operation at 25 McConnon Drive?

The proposed sand drying and transportation operation at 25 McConnon Drive may be constructed in accordance with the facility's site plan approved in May 2011. Any substantial changes to the plan would trigger review through a CUP. This process could only occur after the sand moratorium. In this case, all applicable ordinances adopted during the moratorium would apply.

What about baseline air quality monitoring?

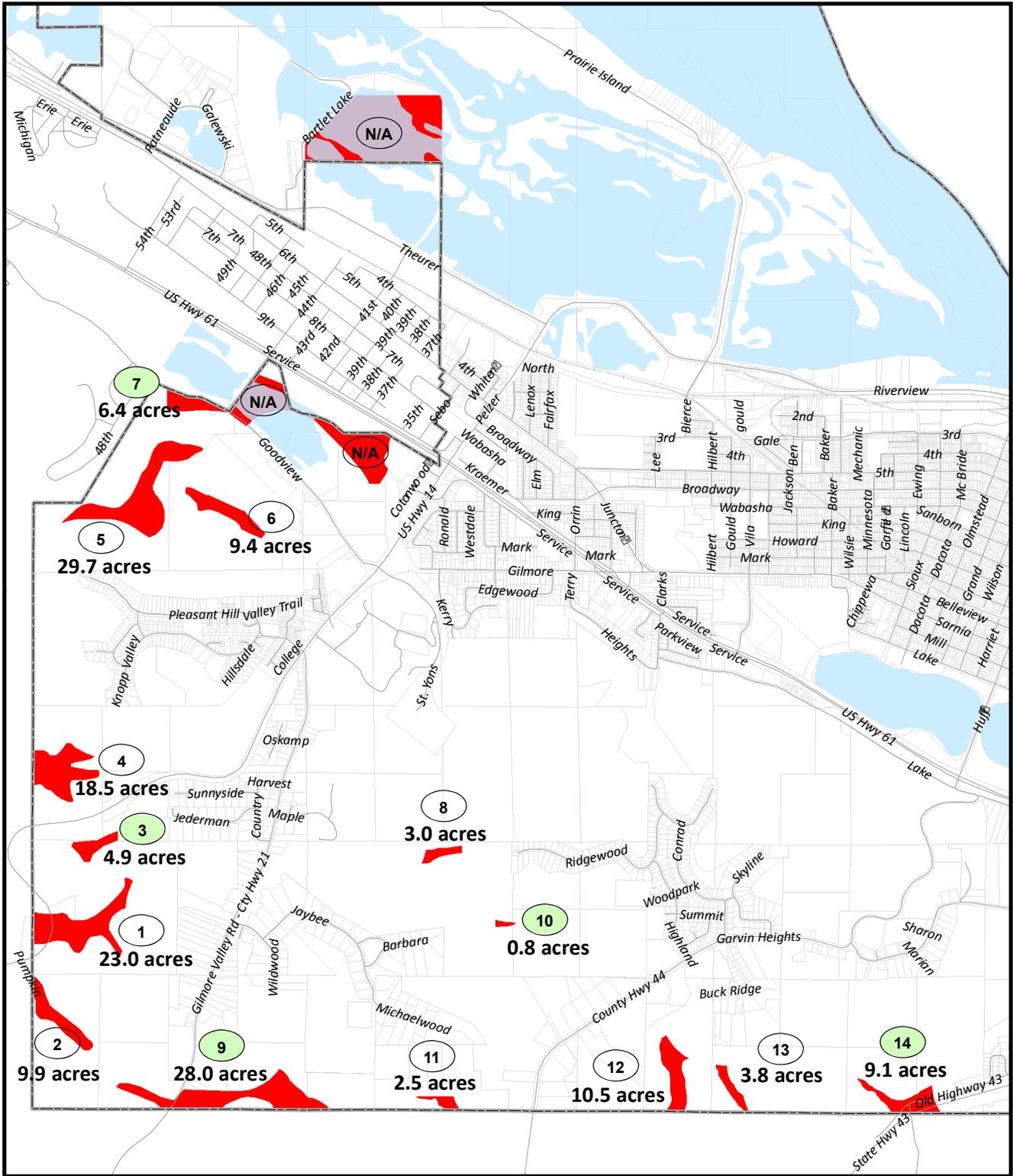
Baseline air quality monitoring was completed the afternoon of January 14. The monitoring was completed by three students from the University of Wisconsin Eau Claire and will be analyzed under the supervision of Dr. Crispin Pierce – a professor in the UW-Eau Claire College of Nursing and Health Sciences. The monitoring occurred at the City garage – 200' from a sand transportation facility which was active in 2011 and 2012. The site was not active during the monitoring – this will allow for comparison if additional monitoring is completed when the site is operating. Results from the monitoring will be provided to Council as soon as they are available.

Attachments:

- A) Conceptual Future Mining Sites
- B) Example of Proposed Structure Setback

Mining within the City of Winona

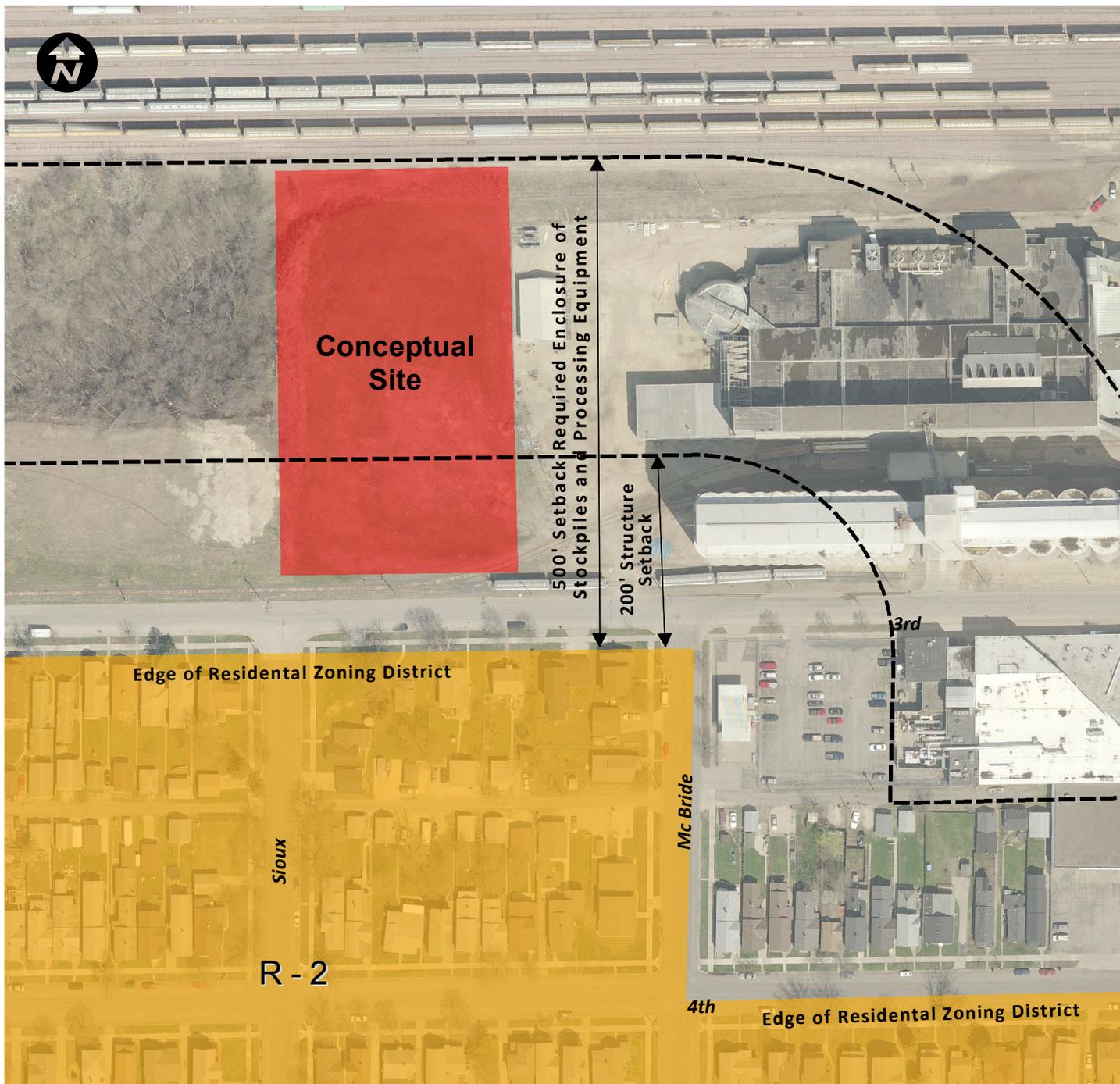
Agricultural land area after bluff overlay district and 1000' residential zoning buffer has been taken out.



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*For reference: A standard City block (300' X 300') is 2.07 acres.

Example of Required Setbacks for Sand Processing and Transportation Facilities



January 2013

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