MEMO (VIA EMAIL)

From: Mikey O'Connor (mike@haven2.com)

To: Buffalo County Board of Adjustments

RE: Public Testimony OPPOSING the R&J Rolling Acres Mine

Date: February 17, 2012

The issues and concerns surrounding this mine application are substantial and complex and my testimony attempts to document as many of those as I can. Rather than burden the public hearing with a complete reading of this document (which is quite long), I only ask that this introduction be read into the record and the Attachments to this testimony be included in the public record by reference.

Overview

According to the Buffalo County Zoning Ordinance, the Board of Adjustments, when considering a conditional use, is supposed to consider, among other things, the following:

- Its harmony with the future development of the district
- Its relationship to the public interest, the purpose and intent of this ordinance and substantial justice to all parties concerned

The testimony I'm submitting today is intended to assist the Board of Adjustments advance both of those goals. Indeed, I do not oppose sand mining in Buffalo County. Rather, my goal is to see an open and transparent process find an approach to this business that can be supported by all stakeholders, rather than continuing the non-transparent "win/lose" conversation which pits the needs of the few (sand miners and their associated businesses) against the needs of the many (residents and businesses in the "River and Coulee Country" that makes up substantially more than half of the land-area of the county).

My hope is that this application will be denied today, that the applicant for the permit to operate this mine will be encouraged to enter into an open and transparent conversation with other stakeholders, and that the resulting proposal can be one that everybody can testify in favor of.

As a contribution to that goal, I have started a web site (www.FracSandFrisbee.com) and an email list server that is open to all participants who are interested in working on finding constructive solutions to the issues I'm raising here. I invite all who read this to join that conversation.

Due diligence

Attachment A provides a list of documentation which I believe is needed in order to properly evaluate the impact of this mine on stakeholders in the region. Here is a summary list of examples of the documentation I believe are required to do a proper job of evaluating this application (both at the site and along proposed transportation routes) include:

- An environmental impact statement
- An assessment of cultural, scenic, habitat, archeological and historic resources
- An assessment of groundwater, wetland, floodplain or surface water resources
- An assessment of public health concerns including toxic waste, impact on potable wells and air quality
- An assessment of public safety concerns
- Documentation that this application will not generate any local negative tax, fiscal and economic, municipal, and resident concerns, including financial Assurances to allow proper and timely closure and reclamation.
- An assessment of potential public nuisance concerns including dust, noise, traffic congestion, odor, blasting, drilling, light pollution and erosion
- A plan that addresses closure or reclamation concerns
- An assessment of work place and local resident safety, health and financial concerns
- A transportation study both at the mine site and along proposed haul routes
- A financial assessment of the applicant

Requests with regard to due diligence:

- If this documentation is available for the application I request that updated versions of these documents be made a part of the information made available to the public prior to public hearings regarding the application
- If this documentation is available for the application I request that it be incorporated into any permit issued to, or agreement made with, the applicant
- I request that the application be withdrawn or denied if it does not include documentation of this type.
- If the application is resubmitted in the future, I request that it include this documentation and that the documentation be made available to the public at least 30 calendar days in advance of the first public hearing of the application to allow sufficient time for review and comment by affected stakeholders.
- If the Board of Adjustments decides to approve the application in the absence of this documentation, I request that immediately after that decision the Board verbally state for the record their justification for proceeding with that

decision and that they publish a public written summary of their justification within 14 calendar days.

Issues

Attachment B provides a list of specific issues which I believe need to be addressed before approving this application. Again, in the interest of time I will only summarize the list in this covering memo and refer you to the attachment for details. These issues fall in the following general categories:

- Public safety concerns
- Public nuisance concerns
- Closure/reclamation concerns
- Negative tax. fiscal and economic concerns
- Public health concerns
- Groundwater, wetland floodplain and surface water concerns
- Cultural, scenic, habitat, archeological or historic resource concerns
- Threatened or endangered species concerns

Requests with regard to issues of this type

- If these issues have been addressed by this application I request that updated versions of these documents be made a part of the information made available to the public prior to public hearings regarding the application
- If these issues have been addressed by this applicant I request that their responses and commitments be incorporated into any permit issued to, or agreement made with, the applicant
- If the applicant has not addressed these issues, I request that the application either be withdrawn or denied.
- If the application is resubmitted in the future, I request that the application include documentation as to how these issues will be addressed and that the application be made available at least 30 calendar days in advance of the first public hearing in order to allow sufficient time for the public to review and comment on the proposals.
- If the Board of Adjustments decides to approve the application in the absence of plans to address these issues, I request that immediately after that decision the Board verbally state for the record their justification for proceeding with that decision and that they publish a public written summary of that justification within 14 calendar days of their decision.

Regional land use

Attachment C provides a series of maps which describe the regional land-use issue that is created by mine permits that are granted without considering the impact of transportation modes and routes on the county through which they pass.

Our county is divided between the scenic, recreational "River and Coulee Country" in the southeastern 4/5ths of the county and the more industrial and agricultural "Sand Country" in the northeast.

Much of the concern about these mines arises from the impacts that are felt by property and business owners who live and work in the area when haul routes and rail transfer facilities are either passing through, or located in, Coulee Country.

Requests

- Deny this application and request that two applications be submitted to replace it -- one application to address the mine, the other to address the proposed processing plant (which, if approved will create pressure to transport sand through "Coulee Country" for decades and perhaps generations to come).

- If the application are resubmitted in the future, I request that prior to resubmitting the application the mine operators actively engage all interested stakeholders in an open, transparent, good-faith effort to arrive at a solution to these issues that is at a minimum acceptable to all -- rather than continuing the "win/lose" dialog that characterizes the process to date.

- If the Board of Adjustments decides to approve the application, I request that immediately after that decision the Board verbally state for the record their reasons for proceeding with that decision in the absence of plans to address these regional land-use issues and that they publish a public written summary of that justification within 14 calendar days of that decision.

ATTACHMENT A – Due Diligence

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I am concerned that the current process to grant permits for frac sand mines does not achieve an appropriate level of due diligence to assure that the County is properly evaluating industrial frac sand proposals before granting conditional use permits.

Detailed list of documentation

1) Provide documentation of an **environmental impact statement** addressing both the mine site and proposed haul routes
    a. By a licensed professional, that
    b. Confirms that this application will comply with all relevant federal, state and local laws regarding threatened or endangered species, and
    c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those species

2) Provide documentation of an **assessment of cultural, scenic, habitat, archeological and historic resources** both at the mine site and along proposed haul routes
    a. By a licensed professional, that
    b. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
    c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources

3) Provide documentation of an **assessment of groundwater, wetland, floodplain or surface water resources** both at the mine site and along proposed haul routes
    a. By a licensed professional, that
    b. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
    c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources

4) Provide documentation of an **assessment of public health concerns including toxic waste, impact on potable wells and air quality** both at the mine site and along proposed haul routes
    a. By a licensed professional, that
    b. Documents all of the chemicals that will be used at the site
    c. Documents all of the chemicals that may find their way into the ground water system as a result of mine operations,

d. Demonstrates that there are mitigation plans in place to minimize ground and water pollution, and provides monitoring and enforcement mechanisms to ensure that spillage is kept at a minimum and any spillages are quickly remediated,
e. Confirms that this application will comply with all relevant federal, state and local laws regarding those resources, and that
f. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact on those resources

5) Provide documentation of an **assessment of public safety concerns** both at the mine site and along proposed haul routes
   a. By a licensed professional engineer, that
   b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
   c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature

6) Provide documentation demonstrating that this application **will not generate any local negative tax, fiscal and economic, municipal, and resident concerns, including financial assurances to allow proper and timely closure and reclamation.**
   a. By a financial professional with documented competence in the analysis of municipal and county finances, that
   b. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature

7) Provide documentation of an **assessment of potential public nuisance concerns including dust, noise, traffic congestion, odor, blasting, drilling, light pollution and erosion** both at the mine site and along proposed haul routes
   a. By a licensed professional mining engineer, that
   b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
   c. Demonstrates that the least disruptive methods of operation and transportation are used to minimize impact of that nature

8) Provide documentation of a **plan that addresses closure or reclamation concerns**
   a. By a licensed professional mining engineer, that
   b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
   c. Demonstrates that the plan will minimize issues of this type

9) Provide documentation of an **assessment of work place and local resident safety, health and financial concerns** both at the mine site and along proposed haul routes

a. By a licensed professional engineer, that
b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
c. Demonstrates that the plan will minimize issues of this type

10) Provide documentation of a **transportation study** both at the mine site and along proposed haul routes
    a. By a licensed professional engineer, that
    b. Confirms that this application will comply with all relevant federal, state and local laws regarding those issues, and that
    c. Confirms that all expected routes have adequate design complying with the most current design standards related to both safety and wear, and
    d. Demonstrates that the least disruptive routes are utilized to minimize impact on residential, recreational and business uses

11) Provide documentation of a **financial assessment** of the applicant
    a. By a certified public accountant, that
    b. Confirms that this applicant has the business wherewithal and the financial resources to undertake a project of this type,
    c. Demonstrates that the applicant is planning appropriate measures to maintain a viable business throughout the life of the project, and that
    d. Demonstrates that the applicant will be able to fulfill any financial requirements that may arise after the project is completed

Requests with regard to due diligence:

- If this documentation is available for the application I request that updated versions of these documents be made a part of the information made available to the public prior to public hearings regarding the application
- If this documentation if available for the application I request that it be incorporated into any permit issued to, or agreement made with, the applicant
- I request that the application be withdrawn or denied if it does not include documentation of this type.
- If the application is resubmitted in the future, I request that it include this documentation and that the documentation be made available to the public at least 30 calendar days in advance of the first public hearing of the application to allow sufficient time for review and comment by affected stakeholders.
- If the Board of Adjustments decides to approve the application in the absence of this documentation, I request that immediately after that decision the Board verbally state for the record their justification for proceeding with that decision and that they publish a public written summary of their justification within 14 calendar days.

ATTACHMENT B – Issues

Public safety concerns

Buffalo County's industrial frac sand mines are unusual in that they are located quite far from railheads, necessitating extraordinarily long truck haul routes to move the sand from mines to railheads. Most industrial frac sand mines are located within a mile or two of railheads and thus don't generate nearly the same level of truck-transport that the mines currently under review will.

In addition to the impact on the sub-standard Praag Valley Dugway portion of Highway 88 high volume industrial frac sand mining may cause significant public safety concerns on other and local roads throughout the region.

Of special concern is the impact of a large volume of truck traffic on river towns such as Nelson, Alma and Fountain City. State Highway 35 becomes the main central street of each of these towns. There are generally few crosswalks in the central business districts of these towns because of the press for parking spaces for local businesses. The addition of high volume sand-truck traffic to this mix may cause significant risks of accidents and fatalities in those areas. Unfortunately, all of our "river towns" are constrained between the bluffs and the river – there's nowhere to go if one were to consider building bypasses to route traffic away from downtown areas.

Buffalo County is a "hot spot" for White Tail Deer and all three state highways become hazardous (year round) as darkness falls and the deer venture out. Recent mine applications have granted "24x7" trucking schedules, which may cause increased risk of accidents as trucks or cars attempt to avoid deer strikes only to collide with each other or are forced off sub-standard state highways.

Sand trucks will share state highways with school busses, farm equipment, farm animals, recreational vehicles and all manner of pedestrians. The increased volume of traffic, coupled with aggressive driving motivated by tight schedules and "per load" rather than "per hour" compensation plans for drivers, may produce higher risk of collisions and fatalities.

Sand trucks routed to processing plants in Winona, MN will be using a river-crossing bridge that was closed for several weeks due to structural integrity and safety concerns. The additional load may shorten the lifespan of that bridge or cause failure of the structure.

Buffalo county roads are a favorite of tourists, birdwatchers, motorcyclists, bicyclists and others who enjoy the scenic beauty of the region and congregate at the many local businesses. Sand trucks operating at or above the speed limit may cause safety issues as they encounter unwary or erratic drivers who may make frequent stops, park on narrow shoulders, drive slowly and erratically and are in general not driving in a predictable way.

Highway 88 is a school-bus route with over 30 sub-standard sections indicated with sharp-curve, blind corner, no-passing and reduced speed signs and markers. One single school-bus crash is one too many.

Highway 88 is considered a "low-collector" farm to market road by the DOT. It has zero controlled intersections and numerous blind entrances in the stretch that is being proposed for hauling. In fact, the DOT and the County have recently been in conversations about converting Highway 88 to a County road, partly for this reason.

The "Praag Valley Dugway" on Highway 88 has steep drops of over 100 feet, narrow sub-standard blind corners, no guardrails, no shoulders or passing areas, and typically has one or two serious accidents (sometimes fatal) every year

Highway 88 is a favorite route for motorcyclists during the summer months -- unfortunately sometimes meeting with accidents on the Praag Valley dugway. There was a fatal crash on June 10, 2010.

Highway 88 is used to move farm equipment from place to place -- trucks will encounter combines, sprayers, large tractors and silage wagons during farming season. Given the number of blind corners, sharp curves and short sight-lines along much of the road, many of these encounters are likely to be quite sudden and may not provide sufficient time to react.

Conversations with DOT representatives confirm that the pavement on Highway 88 is in very poor condition -- largely because the road carries so little traffic that it's hard to justify repairs. Thus, if mine operations start running trucks over the road, it will have to be repaired almost immediately. When pavement is repaired, there are no suitable detour routes and in may places no shoulders or passing areas, so the road will most likely have to be done in short sections with flagging, moving the work zone so that one lane is viable during the project. Thus it's likely that the project would be done in multiple phases. This will cause significant delays, considerable expense, and safety issues along the whole route and especially on the Praag Valley Dugway.

Public Nuisance concerns including dust, noise, traffic congestion, odor, blasting, drilling, light pollution and erosion.

The noise of blasting, sand loading, truck transport or mine operations may cause emotional distress and psychological issues for nearby residents and those along proposed transportation routes.

Increased truck traffic may cause traffic congestion, noise, dust and odor in the old river towns through which sand trucks pass.

Permits for 24-hour mine operation may cause light pollution for nearby residents.

Open-pit extraction of frac sand may cause erosion and runoff that damages local streams, waterways and groundwater.

Several residents of the Praag Valley portion of Highway 88 have expressed concerns about engine braking, especially on the steep turns leading off the Praag Valley Dugway.

Local residents have raised wind borne dust as a concern. Sources include blasting, uncovered sand piles, routine mining operations and uncovered (or partially-covered) trucks. Highway 88 runs through an extremely narrow valley, which will tend to concentrate the impact of truck dust. Impacts may be felt in fragile natural areas as well as residents' homes located close to the road.

Closure/Reclamation concerns

The applicant may not have sufficient assets at the time of closure to complete promised closure or reclamation activities.

The mine may leave toxic or industrial waste behind if ongoing containment, mine-closure and restoration are not conducted properly.

Negative Tax, Fiscal and Economic Municipal and resident concerns

Much of the property value of rural lands in the “Coulee and River Country” part of Buffalo County derives from the quiet beauty of the area. The transformation of area roads into transport corridors and/or a transportation hub for industrial sand mine trucks may dramatically reduce the value of those properties.

Many businesses in the county are here to serve the needs of tourists and occasional residents who come here to enjoy the recreational opportunities of

the region. The value of those businesses – both property value and ongoing revenue – may be dramatically reduced by the addition of frac sand trucks, perhaps to the point where some of those businesses are no longer viable.

As property values decline, so does the tax base for the county. Since sand mines will not appreciably add to the tax base, this may result in higher taxes for local property owners to make up the shortfall. Informal reviews of comparable situations indicate that property values could fall as much as 30 to 50% as the trickle of "for sale" signs turns into a torrent. One only needs to look as far as Maiden Rock, WI to see an example of this. And the Maiden Rock situation is the result of a much less disruptive underground sand mine that ports the sand directly to rail cars. The impact of open pit mines, located at least 25 miles from railheads, may be much larger.

Industrial frac sand mining may temporarily bring new jobs to the county, but the arrival of these mines may destroy more jobs than it creates. The wages paid to frac sand mine employees may be more than offset by the loss of wages paid by other employers as they go out of business, move elsewhere, or decide not to come here at all.

Economic development in the county may be harmed if prospective businesses find the area unsuitable due to sand mines. A recent news story tells of a high-tech business that abandoned its plan to locate in Chippewa county due to dust produced by a newly-opened sand mine close to the location they were planning to invest in.

Much of the property value along the Praag Valley portion of Highway 88 derives from the quiet beauty of the narrow twisting valley. Property owners are already indicating that they will sell if that is disturbed by high volume truck traffic.

Public Health concerns, including toxic waste, potable wells and air quality

Industrial frac sand mines and their associated processing plants may comprise a significant risk to local and regional ground water supplies. Processing plants may deplete the water table and ground water supply. They may also damage those underground waters when they "recycle" the water they use back into the aquifer, with the addition of toxic chemicals left over from processing activities.

The very high air quality of the region may be damaged by dust and particulates introduced into the air through blasting, trucking, sand-mine operations, and processing-plant operations.

Groundwater, Wetland, Floodplain and Surface water concerns

Much of the character of Buffalo County comes from the wetlands and river ways throughout the region. Industrial frac sand mining threatens those resources in a number of ways and once depleted those resources may never return.

Insufficient holding ponds may introduce pollutants into water supplies.

Dust from mine operations and transportation may pollute surface water.

High volume wells may deplete the water table.

"Recycled" water from mining operations may introduce pollutants into the water supply.

Highway 88 runs along fragile wetlands and sedge meadows -- with the attendant concerns about the impact of dust on native habitat and surface water and additional concerns about habitat loss if the road needs to be rerouted in order to handle heavy truck traffic.

Cultural, Scenic, Habitat, Archeological or Historical Resources concerns

Buffalo County has a wide variety of scenic, habitat and historical resources that comprise the basis for much of the reason why people visit and live in the area. Industrial frac sand mining (and the largely truck-based transportation of that sand from mines, to processing plants, to railheads) may have a significant negative impact on these resources. This in turn may cause significant disruption to the County economy, area property values, and quality of life of County residents.

Highway 88 runs within 50 feet Emmet Rutschou's house -- a possible historic building

Highway 88 runs in front of Mikey and Marcie O'Connor's farm -- which protects a number of Wisconsin Rare Plant and Animal species with a perpetual conservation easement to the West Wisconsin Land Trust

Highway 88 runs through the town of Cream -- a possible historic site with buildings immediately adjacent to the road

Threatened or Endangered Species concerns

Buffalo County is home to a number of threatened or endangered species – both plant and animal. The impact on these species could be quite substantial through habitat loss, stress, dust, traffic, groundwater and surface water

pollution and other results of industrial frac sand mining and transportation in "Coulee and River Country" areas of the County.

Highway 88 runs immediately adjacent to a trout stream. Ratings vary from Class 3 up to Class 1 at different points along the proposed haul route. In many places the valley is so narrow that it may be impossible to find suitable land to acquire if the road needs to be rerouted to handle high-volume truck traffic.

Highway 88 runs along several fragile wetlands and sedge meadows with a number of Wisconsin Rare Plant and Animal populations, again raising issues with relocating the road if required to handle high-volume truck traffic.

Requests with regard to issues of this type

- If these issues have been addressed by this application I request that updated versions of these documents be made a part of the information made available to the public prior to public hearings regarding the application
- If these issues have been addressed by this applicant I request that their responses and commitments be incorporated into any permit issued to, or agreement made with, the applicant
- If the applicant has not addressed these issues, I request that the application either be withdrawn or denied.
- If the application is resubmitted in the future, I request that the application include documentation as to how these issues will be addressed and that the application be made available at least 30 calendar days in advance of the first public hearing in order to allow sufficient time for the public to review and comment on the proposals.
- If the Board of Adjustments decides to approve the application in the absence of plans to address these issues, I request that immediately after that decision the Board verbally state for the record their justification for proceeding with that decision and that they publish a public written summary of that justification within 14 calendar days of their decision.

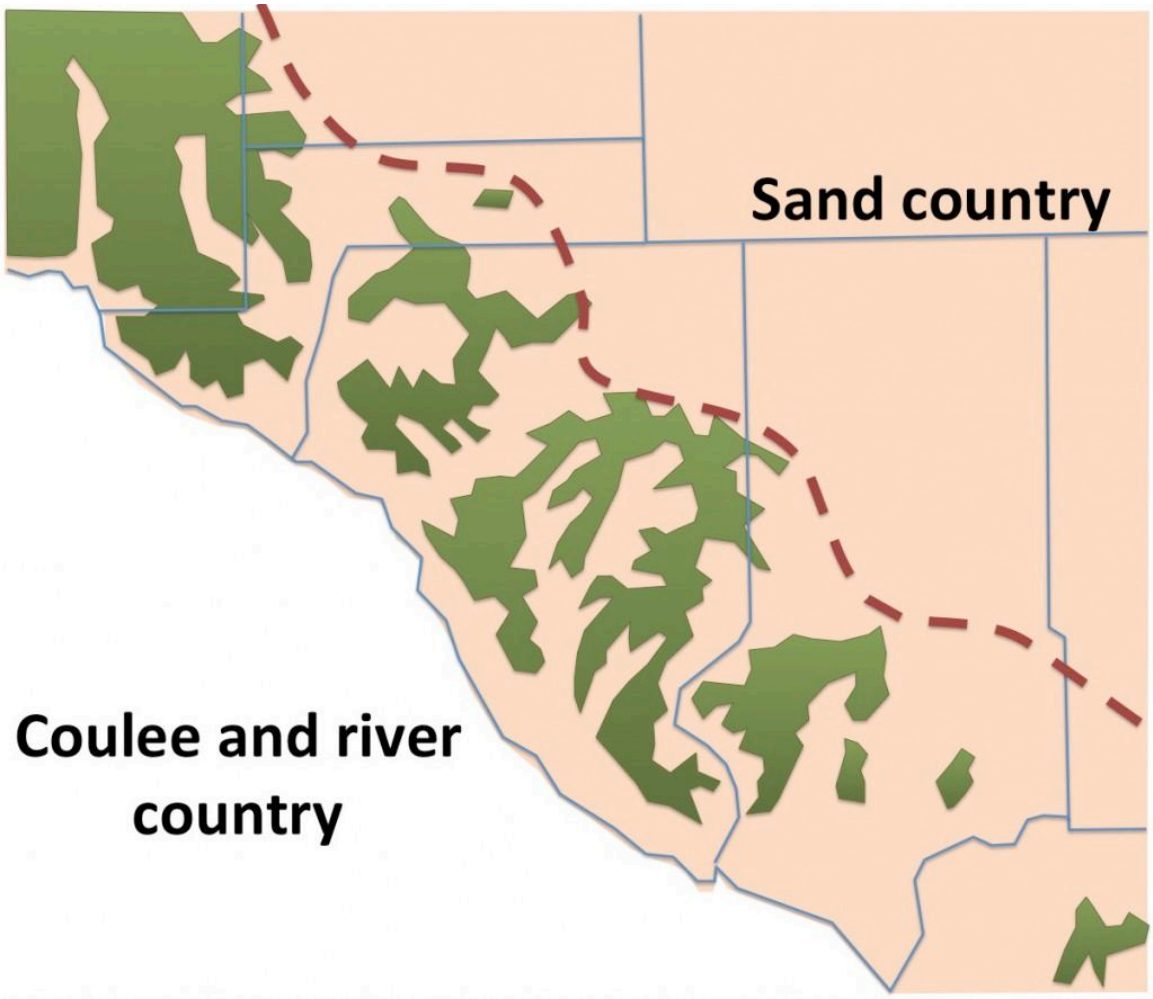
ATTACHMENT C – Regional land use

This a series of maps which attempts to describe the regional land-use issue that is created by mine permits that are granted without considering the impact of transportation modes and routes on the county through which they pass.

Our county is divided between the scenic, recreational "River and Coulee Country" in the southeastern 4/5ths of the county and the more industrial and agricultural "Sand Country" in the northeast.

Much of the concern about these mines arises from the impacts that are felt by property and business owners who live and work in the area when haul routes and rail transfer facilities are either passing through, or located in, Coulee Country.

Figure 1 -- Our county: Divided by incompatible land uses



The southeastern portion of Buffalo County is primarily scenic river and coulee country where the focus is on recreation and tourism. In the northeast are the rolling sand hills that actually extend across much of central Wisconsin up into the northwestern lakes region where the economic emphasis is more on agriculture and small industry.

Figure 2 – The implication of transforming Coulee Country into a transportation corridor

This map shows the proposed and approved haul routes from the sand mines in the county. **This** is why the Board of Adjustments needs to consider haul routes in addition to conditions immediately adjacent to the proposed mines. The implications for a very large proportion of the county are enormous and need to be considered when granting mine applications.

Questions that need to be answered include:

- What are the implications when multiple mines are approved that all use the same haul route? Who makes the determination "this mine is the last one we can approve without overloading the route?"

- How are the needs of the many (residents and people who work in Coulee

Country) balanced with the needs of the few (mine operators and the businesses that provide them services)?

- What happens when one of the destination rail-loading locations reaches capacity? Winona officials have already told local residents that the switching facility in Winona is at capacity and that they can't load any more trains there. Does the traffic all divert to Wabasha? What are the impacts on towns along those routes as traffic patterns change?

- What is the implication of locating processing facilities at the applicant location – doesn't this effectively "lock in" Highway 88 as the preferred haul route for sand out of that plant long after the actual mining at the site is completed? Loading Highway 88 with extra truck traffic for 5 years is quite a different thing than setting up a scenario what that route would be used for decades or even generations.

- When do "the many" get to participate in a process to try to arrive at a solution to this problem? Isn't the charter of the Board of Adjustments to look after "the public interest, the purpose and intent of this ordinance and substantial justice to all parties concerned"? How is this goal met by a pell-mell rush to approve a mine without taking the time to put the impacted parties together in an open, transparent way to try to work out a solution that is acceptable to all?

Figure 3 – The implication of transforming Coulee Country into a transportation HUB

This map shows how the stakes in this win/lose conversation get even higher if the Coulee Country moves from being a transportation corridor to being a transportation hub and processing center. Purchase agreements for land to build a rail spur and processing facility at the intersection of Wisconsin highways 88 and 35 are already being put in place. If that facility goes forward as planned we not only become the transit provider for local sand, but regional sand will start flowing into the county as well.

Again, a number of questions need to be asked and answered

- With "across the river" rail transfer facilities reaching capacity, what are the implications for communities along the Highway 35 corridor if Buffalo County becomes a rail-transfer option on the Wisconsin side of the

Mississippi? Will Buffalo County become a destination for sand mine operations in neighboring counties as well as mines located here?

- Again, what is the point at which it will be decided that the roads through towns like Alma, Fountain City and Nelson are at capacity? Who will make those decisions? How will they be decided? How will they be enforced? Will there be any way to limit traffic to a predetermined level if much of the transportation load is generated outside the county?

Requests with regard to regional land use issues

- Deny this application and request that two applications be submitted to replace it -- one application to address the mine, the other to address the proposed processing plant (which, if approved will create pressure to transport sand through "Coulee Country" for decades and perhaps generations to come).

- If the applications are resubmitted in the future, I request that prior to resubmitting the applications the mine operators actively engage all interested stakeholders in an open, transparent, good-faith effort to arrive at a solution to these issues that is at a minimum acceptable to all -- rather than continuing the "win/lose" dialog that characterizes the process to date.

- If the Board of Adjustments decides to approve the application, I request that immediately after that decision the Board verbally state for the record their reasons for proceeding with that decision in the absence of plans to address these regional land-use issues and that they publish a public written summary of that justification within 14 calendar days of that decision.