VILLAGE of SUGAR GROVE
PLANNNING COMMISSION/ZONING BOARD of APPEALS
MINUTES of November 29, 2017 SPECIAL MEETING

1. **CALL TO ORDER:**
The meeting of the Sugar Grove Planning Commission / Zoning Board of Appeals (ZBA) was called to order at 7:10 p.m. by Chairman Ochsenschlager in the Village Hall Board Room.

2. **ROLL CALL:**
Planning Commission/ZBA members present:
Chairman Irv Ochsenschlager, Jim Eckert, John Guddendorf, Becky Sabo, Larry Jones, James White and Gregory Wilson
Absent: None

Also present: Walter Magdziarz, Community Development Director
Renee Hanlon, Planning & Zoning Administrator

3. **APPROVAL OF MINUTES:**
Motion was made by Commissioner Guddendorf to approve Minutes of the October 15, 2017 Meeting of the Planning Commission/Zoning Board of Appeals. The motion was seconded by Commissioner Sabo.
Motion passed by unanimous voice vote.

Motion was made by Commission Eckert to approve Minutes of the November 16, 2017 Special Meeting of the Planning Commission/Zoning Board of Appeals. The motion was seconded by Commissioner Jones.
Motion passed by unanimous voice vote.

4. **PUBLIC HEARING:**
Petition 17-022: Rezoning to M-1 Limited Manufacturing District with a Special Use for Mining, Reclamation, and Clean Construction Debris Processing.
Applicant: Heartland Recycling Sugar Grove CCDD, LLC

Chairman Ochsenschlager called the public hearing to order at 7:14p.m. The Chairman administered the oath to all in attendance who wished to speak. He then invited the applicant to the podium.

John Savage, Heartland Recycling, began his comments by explaining that this is a land reclamation project not a CCDD business operation. The end goal is to develop the property not to run a disposal business. He provided examples of properties that had undergone this same type of fill operation. He further explained that the southern portion of the Waubonsee Community College campus is built on land similarly reclaimed. He explained that using clean construction debris for fill is safer than ordinary fill operations because the fill materials are highly regulated by state agencies and, in this case, the Annexation Agreement with the Village will set additional site specific regulations. Next, Mr. Savage stated that Heartland Recycling has decided to amend their operations plan by eliminating concrete crushing and by not accepting asphalt as fill material at this location. He also acknowledged the neighbor's concerns about flooding in this area. He stated that Heartland Recycling is willing to participate in repairing existing field tiles to improve existing conditions of the area.

Commissioner White asked for clarification on the changes that Heartland will make to their operations plan and the change to the underlying zoning request from M-1 to A-1.

Mr. Savage responded that Heartland will not process concrete on the property; however, they will accept concrete block as clean construction debris. He explained that he is amenable to either underlying zoning designation as they recognize this is the first step in the zoning process and they understand that additional zoning action will be necessary before the reclaimed property can be developed.

James Leader, 43W555 Old Oaks Road, delivered a video presentation. He presented photographs of the Heartland Recycling facility in Aurora. Mr. Leader had previously presented the same photographs to the Planning Commission via his laptop computer. He continued his presentation with two (2) videos of truck noise and concrete crusher noise and dust at the Aurora facility. Mr. Leader concluded his remarks by stating that his nose and hands felt gritty when he left the Aurora facility and that he finds locating such a facility a couple of hundred yards from a school and his back door is awe inspiring.

Mr. Savage responded to the presentation by reiterating that the Sugar Grove site and the Aurora site are very different. He explained that the Sugar Grove site has berms around the property so that the fill operation will not be as visible from the street or adjacent property as the Aurora operation. He also reiterated that Heartland will not be operating concrete crushing equipment on this property making the video of the concrete crusher irrelevant.

Joe Szelag, 749 Ridgeview Lane, asked Mr. Savage if he lived near a landfill.

Mr. Savage responded in the negative.

Aaron Leuer, 219 St James Parkway, stated that he works across the street from the Ozinga concrete operation in Montgomery. He stated this in his experience concrete crushing creates massive amounts of dust. He continued by stating that truck traffic is a larger concern for him and that he has an asthmatic child who will attend Harter Middle School in a few years. He stated that any additional revenue from this operation will be offset by the need for an air filtration system installed at Harter Middle School. He concluded his comments by stating that no one wants to see this site developed and by asking the following questions:
Does the village have a plan for this property that this project will promote?
Are any school board members in the audience? The crowd responded that two (2) school board members were present.

Aaron Lawler, 1936 Cassidy Lane, stated that he is a school board member; however, he was speaking as a private citizen when he stated that this project is a bad idea.

Sakina Bajowala, 1715 Hannaford Drive, stated that she is a medical doctor with the Kaneland Asthma Center. She explained that she previously practiced in the City of Chicago and saw many children and elderly with respiratory problems due to traffic related air pollution. She stated that she believes the increase in diesel trucks created by this operation will have a negative impact on the air quality which will result in more children and elderly having respiratory problems. She explained that she hospitalized half as many patients here as she did when she practiced in Chicago. She believes the difference is explained by the cleaner air in Sugar Grove. If this project is allowed, it will diminish that air quality and result in more hospitalizations. She concluded by stating that she believes this a bad location due to the close proximity of the school and senior living facilities in Sugar Grove.

Tom Wascher, 4S064 Hazelcrest, stated that he believes this project will diminish property values in the immediate area and questioned how this project fits the Village Comprehensive Plan.

Dave Blankenship, 4S800 Sugar Grove Parkway, held up a copy of the November Daily Herald article which had been previously presented to the Planning Commissioners and asked that the Commissioners read the article.

Mike Coghlan, 1203 S 2nd Street, Dekalb, introduced himself as an attorney representing objectors to this petition. Mr Coghlan reiterated his complaint that due process is not being afforded to his clients. He further stated that evidence has been presented as to the potential health risks associated with this type of operation. He repeated his assessment that if the Commissioners recommend approval of this project, they will be liable for any damage incurred by any member of the public that is caused by this operation. He, again, pointed to the Rachel Barton case as an example of legal precedent. Mr. Coghlan presented written materials to the Commissioners which are attached.

Dave Blankenship addressed the audience and asked that they continue involvement in the public process through additional dates of public hearing.

Mary Kramer, 4S065 Hazelcrest Drive, stated that she has concerns about the traffic conflict between trucks, school buses, and young drivers going to the high school.

Amy Krause, 263 Capitol Drive, explained that she is concerned that the EPA is responsible for protecting the public, because that agency is loosening their regulations daily.

Stephen Halm, 737 Ridgeview Lane, questioned the petitioner about how they intend to protect area groundwater. He stated that he feared Sugar Grove could turn into another Flint, Michigan.

Tom Enno, Alpha Environmental, answered Mr. Halm's questions on behalf of Heartland Recycling. He explained that soil entering the site has to be certified that it contains no contaminates that exceed contaminate levels safe for drinking water. The tests cost $1,500 each and are taken seriously by Heartland Recycling. Once the dirt enters the Heartland site, Heartland does additional testing to insure that the dirt is clean. Lastly, he explained that the IEPA will conduct quarterly inspections of the site and will cite owners if they find violations. IEPA also has the authority to shut down operations that are in violation of standards. He further explained that IEPA also regulates noise and that this facility will be limited to a maximum noise level of 65 db at all property lines. He explained that noise level is similar to the noise level currently produced by traffic on Sugar Grove Parkway. He concluded by stating that it is his belief that this facility can and will be a good neighbor.

Mike Coghlan addressed the group to remind them that the promises made by Heartland are meaningless unless the Village Board includes them in the Annexation Agreement.

Aaron Lawler, 1936 Cassidy Lane, pointed out that the IEPA regulations referenced by Mr. Enno are the same regulations that resulted in the contamination of 4 out of 5 CCDD sites as reported in the previously referenced Daily Herald article.

Tom Enno responded to Mr. Lawler's comment by stating that he is involved with five (5) of the sites listed in the article and that upon further testing all five (5) were cleared of any violation.

Dolores Krick, 233 Caukins, asked Mr. Enno if he lives near a CCDD site. She also stated that she, like most of those in attendance, want to keep Sugar Grove clean.

Mr. Enno responded that he lives in Streamwood about two (2) miles from a quarry that began a fill operation in 1985.

Brandon Matthews, 4S916 Sugar Grove Parkway, stated that he had spoken at the previous hearing and did not want to be repetitive. He focused his comments on truck maintenance issues. He stated that as a mechanic for ComEd, he knows that trucks often have oil leaks which can cause groundwater contamination. He stated that one (1) gallon of oil making contact with groundwater has the potential of contaminating one (1) million gallons of water. He concluded by stating that he has great concern about trucks in bad condition entering the site and contaminating the site with leaking fluids.

Gloria Krecl, 815 Maple Street, stated concerns about the Village's capacity to oversee this operation.

Sandra Clutterbuck, address not provided, stated her concern over the drivers delivering materials to the site. She explained that there are regulations that drivers must adhere to and questioned who would be responsible for enforcing those regulations.

Tom Mepyans, 4 Winthrop New, explained that he drove for a roll off company for twenty (20) years. During that time, he drove trucks which were intentionally overloaded. He stated his concern that the trucks entering this site will be overloaded and will result in excessive wear and tear on village roadways.

Victoria Delmer, 4S501 Harter Road, stated that she has met with experts in the field since the previous hearing. She explained that she sees no benefit to this proposal and believes the property should be filled with materials which exist on the site. She took issue with Mr Savage's opening statement in which he stated that the purpose of the project was to reclaim the property not to operate a long term clean construction debris disposal site.

Ken Ireland, 43W439 Old Oak Road, took down the framed copy of the Village of Sugar Grove mission statement and read it aloud. He followed by asking the Planning Commissioners to uphold the mission statement.

Tiffany Musial, 175 Cobbler Court, asked the petitioner why they chose this site and if they had ever been turned down by other municipalities for similar proposals.

Mr. Savage replied that he had stated numerous times throughout these proceedings that they selected the site due to its close proximity to the tollway which makes the reclaimed site very marketable. He further answered that they had not requested similar zoning in any other municipality.

Robbin Kaifesh, 150 Park Avenue, asked why this property has to be developed. She also took issue with Mr. Enno's testimony, dismissing his statements about soil testing by stating that tests can be manipulated.

Jim Martin, 43W432 Old Oaks Road, asked the petitioner if Heartland Recycling gave the City of Aurora $1.25 million in order to operate their existing facility in Aurora.

Mr Savage responded that the property was owned by the City of Aurora and they purchased the property from the City.

Lisa Legorreta, 260 Chatsworth, stated that the changes Heartland Recycling has made to their operations plan almost changed her mind about the project. She stated that she remains concerned about the addition of diesel trucks in the area and the addition of airborne particulates they will contribute to the air. She concluded by explaining that she grew up in West Chicago where an industrial user contaminated the area so badly that it became a superfund cleanup site. She does not want that to happen to Sugar Grove.

Matty, no sir name nor address given, stated that she is an eighth grader at Harter Middle School. She explained that her teachers often open the windows and they often hold class outside during warm weather. She is concerned that the teachers will have to keep the windows closed and they will have to remain indoors if this project creates bad air quality and/or a lot of noise.

Walt Zimmer, 4S245 Wiltshire, stated that the property should remain as a natural area.

The audience erupted in sustained applause.

Robbin Kaifesh asked a series of questions about the annexation agreement.

Chairman Ochsenslager explained the zoning process and pointed out that it is a separate process from the annexation process.

Lisa Legaretta stated that she believes in offering a solution instead of only opposing the proposal. Her solution is to make this site a public recreation area.

Tom Mepyans stated that Sugar Grove has maintained a strict code for commercial development and that this project is not in keeping with the strict code the village has successfully maintained.

After repeatedly being asked if and how much Heartland Recycling will be contributing to the Village, Mr. Savage responded that Heartland Recycling is proposing to give two percent (2%) of their proceeds back to the Village. He estimates this will yield between 10,000 and 20,000 dollars of revenue for the Village annually.

Mr. Ireland stated that he and others in the audience are willing to increase their tax contribution by $1000 annually in order to offset the lost revenue if the Village Board will turned down this proposal.

Chairman Ochsenslager polled the Commissioners about closing the public hearing.

Mr Coghlan interjected that he needs a minimum of three (3) weeks to vet information that staff had provided to the Planning Commissioners immediately prior to the hearing. He intends to present contrary testimony to the Planning Commission.

Chairman Oschenslager agreed to a continuation of the public hearing until January 10, 2018, giving Mr Coghlan the time he requires to prepare his summary testimony. Given the number of people in attendance, Chairman Ochsenslager directed staff to find a larger venue for the next date of hearing.

Director Magdziarz announced that the meeting location will be posted on the Village website.

5. **NEW BUSINESS:**
None.

6. **OLD BUSINESS**
None.

7. **PLAN COMMISSIONER COMMENTS, PROJECTS UPDATES and MISCELLANEOUS INFORMATION**

Next meeting will be December 20, 2017.

8. **ADJOURNMENT**
Commissioner Wilson made a motion to adjourn the meeting at 9:10 p.m. Commissioner Sabo seconded the motion.
Motion unanimously passed by voice vote.

Respectfully submitted,
Renee Hanlon
Recording Secretary

THE LAW OFFICE
OF
MICHAEL P. COGHLAN, LLC

November 29, 2017

Village of Sugar Grove Board & Plan Commission
10 S. Municipal Drive
Sugar Grove, Illinois

Please see the attached courtesy copies of the Bystanders Report with Exhibits and other support documents relating to the Heartland Recycling Rezoning, Special Use and Request for Annexation on Harter Road.

All necessary information requested through the Freedom of Information Act has not yet been provided. There are due process issues that require the production of information in the possession of the Village of Sugar Grove.

The health and safety issues present a public policy, health and safety problem such that no amount of additional tax dollars will justify jeopardizing the health of nearby school children.

Thank you,

Michael P. Coghlan

Michael P. Coghlan

444 E. Hillcrest Drive, Suite 330 • DeKalb, IL 60115 • PH. 815-787-0800 • FX. 815-425-3859

Affidavit

For Heartland Recycling Rezoning, Special Use and Request for Annexation on Harter Road

November 29, 2017

Village of Sugar Grove Municipal Building, 10 S. Municipal Drive, Sugar Grove, IL 60554

Prepared by/Returned to:
Law Office of Michael P. Coghlan, LLC
444 E. Hillcrest Dr., Ste. 330
DeKalb, IL 60115

The undersigned, being duly sworn, deposes and says:

1. The Heartland construction debris project was brought to the Village Board's attention on July 14, 2017 in an email from Sugar Grove Development Director Walter Magdziarz. (see attached email RE: Development opportunity).
2. Mr. Magdziarz described the project briefly to the Board and addressed "several areas of concern" which were "readily apparent with Heartland's proposal." These areas of concern were addressed in relevant part:

   > "First, the proximity of middle school and the impact of truck traffic with school traffic (Harter is a County highway). Second, the impact of the mining and reclamation operations on adjacent residents (there are four). Lastly, the lack of proximity for sanitary sewer (water is on the opposite side of Harter Road)."

3. Mr. Magdziarz closed his assessment by stating that, "these areas of concern need to be addressed but are not deal killers."
4. In 2004 Mr. Magdziarz was an employee of Land Vision, Inc.
5. In 2004 Mr. Magziarz was the Town Planner for the Town of Cortland.
6. On December 13, 2004 the Town of Cortland adopted its Comprehensive Plan. (see attached Cortland Comprehensive Plan).

7. In Cortland's Comprehensive Plan it is stated that:

> "At some point in the future the population of Cortland will grow sufficiently to warrant construction of a new elementary school … The town should use the annexation agreement as a tool to obtain necessary school, park and other municipal improvements."

8. In 2005, Land Vision, Inc. published a map titled "Town of Cortland Current Development" showing two locations for a "New School Site". One such location was on the Northern side of Cortland near Barber Greene Road. The second location was on the Southern side of Cortland near Route 88 and not far from a Waste Management Landfill operation.

9. The new Cortland Elementary School was built at the second location, nearest to the Waste Management Landfill operation.

10. Cortland Elementary School was built in such close proximity to the Waste Management Landfill, that on one occasion both students and staff were evacuated not long after becoming operational.

11. Seventy people were hospitalized as a result of noxious fumes.

12. The blood work of some patients hospitalized for exposure to these fumes revealed indications of "an exposure of carbon monoxide." (please see attached articles "Cortland residents blame landfill for smell in complaints" and "UPDATE: Carbon Monoxide Found After Cortland Schools Evacuated").

Dated this 29th day of November, 2017.

Further Affiant sayeth not.

Michael P. Coghlan

Michael P. Coghlan

Sworn to and subscribed before me this 29th day of November, 2017.

Christian Copple

Notary Public

CHRISTIAN M COPPLE
Official Seal
Notary Public – State of Illinois
My Commission Expires Apr 24, 2021

ATTACHED EXHIBITS

Map: "*Town of Cortland – Current Development*" by Land Vision, Inc. dated November 8, 2005.

Report: "*Cortland Comprehensive Plan*" Original Adoption Date: December 13, 2004.

Article: "*The Siting of Cortland Elementary School*" by Max McIntyre of DeKalbCountyOnline dated January 21, 2013.

Article: "*UPDATE: Carbon Monoxide Found After Cortland School Evacuated*" by Christie Nicks of My Stateline dated January 16, 2014. (citing 17 ABC WTVO: Eyewitness News)

Article: "*Cortland residents blame landfill for smell in complaints*" by Andrea Azzo of Daily Chronicle dated October 15, 2014.

Email: RE: Development opportunity dated July 14, 2017.

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Thursday, August 31, 2017 2:41 PM
Subject: RE: Development opportunity

VB,

FYI – This project continues to move forward. The potential owners received the OK from KDOT to use the existing access for mining and reclamation activities. We anticipate a formal application to the Village in the next 2-3 weeks.

Brent

Virus-free. www.avast.com

On Fri, Jul 14, 2017 at 3:30 PM, Walter Magdziarz <wmagdziarz@sugargroveil.gov> wrote:

VB,

Brent and I met with the principals from Heartland Recycling about their interest in 40-some acres located at the NWC of Harter and Sugar Grove Parkway (map attached). Heartland Recycling is a subsidiary of Aurora CCDD and recycles construction material, specifically road construction material such as asphalt pavement, concrete, curbs and sidewalks.

As you may or may not know, the property on the north side of Harter Road is an old sand and gravel strip mine, and in the not too distant past had a concrete batch mixing plant located on it at Harter and IL 47. The property is zoned for mining and the batch plant in the County. The property is effectively screened from view from Harter and IL 47 by the soil stockpiles from the strip mining operation. There is a large pond on the property that will be filled. There are existing stockpiles of sand, gravel and pavement millings on the property Heartland would sell. Heartland also would like to continue mining some of the areas as the quality of the material is quite good. The mining would not be the dominant use of the property. The mining and reclamation operations would use the existing driveway on Harter Road situated 400 feet west of IL 47.

Heartland wants to reclaim the property and prepare it for commercial and industrial development in the future, probably 6 to 7 years from now. Currently sanitary sewer is nowhere near the property, making development in the near term economically unfeasible. They're betting that by the time the mining and reclamation process is complete sanitary sewer will be closer.

Given that the property has not been reclaimed, its present condition will be a hindrance to future development, regardless of the end land use. So, there may be a benefit to collaborate with Heartland to prepare the property for future development.

There are several areas of concern readily apparent with Heartland's proposal. First, the proximity of the middle school and the impact of truck traffic with school traffic (Harter is a County highway). Second, the impact of the mining and reclamation operations on adjacent residents (there are four). Lastly, the lack of proximity for sanitary sewer (water is on the opposite side of Harter Road). We're of the opinion these areas of concern need to be addressed but are not deal killers.

If the Village Board desires to proceed with Heartland there would be an annexation agreement spelling out expectations for the mining and reclamation operations, as well as the future development land uses and development standards, including utility expectations.

Heartland has a short due diligence period in their contract. If we should drop our interest in the proposal, we should advise them quickly. Please let Brent or me know whether we should pursue this.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9594

T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Cortland Comprehensive Plan

Robert K. Seyller, *Town President*

Cheryl Aldis, *Town Clerk*

Board of Trustees:

Chuck Lanning
Randy Reiter
Dan Milroy
Shawn McAllister
Mike Siewierski
Brad Stone

Planning Commission:

Diane Ledbetter, *Chairman*
Cheryl Aldis
Brad Lawson
Chad Bergeson
Jeff Hennessee

TOWN PLANNER:
Walter Magdziarz, AICP, CNU
Land Vision, Inc.

TOWN ENGINEER:
Tom Simmons, PE
Fehr-Graham Associates

TOWN ATTORNEY:
Parker Johnson
Ancel Glink Diamond Bush DiCianni & Krafthefer, PC

Original Adoption Date: December 13, 2004

Amended:

March 13, 2006, Uptown/Civic Center Sub-Area Plan (Ordinance No. 2006-53)
December 18, 2006, Downtown Cortland / "Main Street" Sub-Area Plan (Ordinance No. 2006-73)
February 26, 2007, Future Land Use Plan, conservation development practices (Ordinance No. 2007-07)

Preface

This Comprehensive Plan provides the framework for the Town of Cortland to build upon and to address all aspects of community development that may arise in the future. It is not the purpose of the Comprehensive Plan to predict the future; rather it is to provide a vision, or direction, for the community to move toward. For this reason, this document is intended to be dynamic and respond to changes that will occur in the community over time. In the process the Town has the ability to allocate resources and to determine priorities, usually in advance of need as opposed to reacting to unanticipated needs.

The Comprehensive Plan represents a destination the Town is expected to move towards over time. It is not a finish line to race towards.

The adoption of the Cortland Comprehensive Plan does not complete the process. In many respects, the planning process only begins with the adoption of the Comprehensive Plan. The Plan identifies many tasks the Town will need to undertake in the future to achieve the collective vision. In fact, there is much work ahead for the Town. But the Cortland Comprehensive Plan can help provide the direction and focus necessary to keep the Town moving toward its vision.

The intention of the community is not to limit or prohibit growth and new development, but to encourage it and allow it to flourish only if growth and development provides positive contributions to the quality of life in Cortland and the quality of municipal services provided by the Town.

Like many of its counterparts in DeKalb County, Cortland is beginning to experience tremendous development pressure. Already having adopted a Comprehensive Plan and experienced in implementing a plan, the Town is, perhaps, more prepared than other communities in the County to deal with the growth and development decisions that are facing the County and Cortland in particular. Nevertheless, the Town will be facing in the immediate and distant future unprecedented community development decisions.

The Cortland Vision

What will Cortland be like or become in the future?

Residents want Cortland to accommodate growth and development in order to make Cortland a vibrant, thriving community bound together by close neighborhood relationships among its people, and to provide an array of services and amenities for residents and visitors. Additionally, residents desire to maintain a community wherein individuals and families can be provided a safe and secure neighborhood; where there is diversity and respect; where children are provided opportunities for growth and development; and, where residents can be assured that the value of their property will be maintained.

The vision for Cortland includes providing all people with choices and options for housing, travel, recreation, cultural activities, and employment opportunities; and providing for their basic personal needs. Essential to this vision is a community that is visually attractive and appealing, and where interaction among residents is encouraged and is a daily routine.

Cortland will be a community where environmental stewardship is part of the culture and the land is considered a resource, not a commodity. The community places a high value on conservation of natural resources and applying "green building" principles to new construction and land development practices.

Residents want Cortland to be a place where there is an open exchange of information among its residents, business owners and government; where the local government is fiscally responsible, yet attends to the community's needs for expanding services and amenities; and, where they can be filled with pride about calling Cortland home.

Issues and Opportunities

The purpose of this element of the Comprehensive Plan is to state the shared vision of the community, identify major forces affecting the local government and its citizens, set goals and standards, and serve as a series of guiding principles and priorities to implement the vision.

Location

Cortland is located immediately east of the city of DeKalb and adjacent the DeKalb-Taylor Municipal Airport. The community is located near the Interstate 88 and Peace Road interchange and is easily accessible to Chicago and the Fox Valley suburbs to the east.

The Union Pacific Railroad (UP), formerly the Chicago & Northwestern Railroad, cuts across the community. The UP is a high speed mainline track from Chicago to points west and across the Mississippi River. Grain elevators in the central business district along the railroad are the last remnants of Cortland's roots as an agricultural market.

Cortland sits atop a flat plain overlooking the East Branch of the South Branch of the Kishwaukee River to the northeast. The topography is flat with little relief except near the named and unnamed drainage ways in the landscape. A high seasonable water table causes periodic saturation of the soils and an extensive agricultural drainage system drains the soil and makes it suitable for modern mechanized farming operations. The topography and soil characteristics make it suitable and productive for crop farming. Woodlands are scarce in the Cortland planning area and are concentrated along the Kishwaukee River.

The Town sits at the leading edge of a growth corridor extending westward from Aurora-Naperville along Interstate 88, as well as from the Fox River communities from Elgin to Aurora. Once considered remote, Cortland is increasingly being pulled into the expanding exurban area of the Chicago metropolitan area.

Existing Land Use

Cortland occupies a small amount of land. Development in Cortland is concentrated around the railroad crossing at Somonauk Road and north and south along Somonauk Road. Recent additions such as the Cortland Estates, Neucort Lakes and Heatherfield neighborhoods are separated from the community by farmland and other rural land uses.

Commercial land uses in Cortland are sparse. A cluster of commercial uses is located at the intersections of Somonauk Road and IL 38 and Loves Road and IL 38, and in the area of the railroad crossing on Somonauk Road. The "downtown" area also is where the Town Hall, library and post office are located.

Industrial land uses are located along IL 38 at Loves Road and a small area on Elm Street along the railroad. Industrial uses in Cortland tend to be small machine shop-type enterprises. A wood truss assembly plant and a concrete products plant are the largest industrial operations in Cortland, today. A commercial grain storage operation in the downtown continues to operate despite constraints posed by the small irregularly-shaped site.

At present, much of Cortland's land area is in agriculture land use. This is somewhat misleading because the existing agriculture land use is temporary and belies what the future land uses will be once the undeveloped parcels are developed. This is due to a number of recent annexations which have expanded the Town's boundaries in anticipation of future

development. The agriculture land also distorts the percentage of land use for residential land uses. If the agriculture land use is removed from the tally, residential land uses account for fifty-percent of the land area in Cortland (31% single-family, 19% multiple-family). Regardless whether agriculture is considered in the overall land use distribution, single-family land use accounts for 62% of all the residential land in Cortland.

Table 1. Existing Land Use Distribution, Town of Cortland

	Acres	Percent
AGRICULTURE	646	56%
CIVIC/INSTITUTIONAL	7	1%
COMMERCIAL	33	3%
INDUSTRIAL	47	4%
PARKS & OPEN SPACE	48	4%
SINGLE-FAMILY RESIDENTIAL	158	14%
MULTIPLE-FAMILY RESIDENTIAL	96	8%
UTILITY & RAILROAD	79	7%
VACANT	39	3%
Total		100%

DEMOGRAPHICS[1]

From 1970 to 2000 Cortland's population grew an average of three-percent per year (Table 2)[1]. During this time, DeKalb County's population grew an average of 0.80 percent annually. When examined in further detail Cortland's population grew by 1.5 percent from 1970 to 1980 but declined by more than 14% from 1980 to 1990. The Town's population experienced its greatest rate of growth in the following decade. Between 1990 and 2000 the population grew by more than 114%. The Town's current population is estimated to be 3,025 persons.

Table 2. Town Population 1970-2000.

	1970	1980	1990	2000
Population	1,138	1,155	963	2,066

Age group distribution (Table 3) is broken into six broad demographic categories: 0-4 years, 5-17 years, 18-24 years, 25-44 years, 45-64 years, and 65 years and older. A closer examination of this information reveals that the greatest rates of increase occurred in the 5-17 years (204%), 25-44 years (120%), and 0-4 years (117%) age groups. Even the 65+ age group showed a significant increase of 11% from 1990.

[1] All demographic data is obtained from the 1990 and 2000 US Census, Bureau of the Census

Table 3. Population Distribution by Age Groups (1990-2000)

	1990	2000
0-4 Years	86	187
5-17 Years	177	539
18-24 Years	73	149
25-44 Years	352	773
45-64 Years	173	305
65 + Years	102	113
Total	963	2,066

By examining the population distribution by age groups it is apparent the population of Cortland is getting younger. In fact the median age of the population in Cortland fell from 31.0 years of age in 1990 to 28.4 years in 2000.

According to US Census information, roughly one-third of the Cortland population in-migrated from other locations in DeKalb County in 1990 (Table 4). By 2000 only one-sixth of the Cortland population in-migrated from other locations in DeKalb County. The data reveals that by 2000 Cortland already had become a receiving city for the outward population migration from the Chicago suburbs. Transfers from other states and foreign countries remained unchanged during the period between 1990 and 2000.

Table 4. Population In-Migration (1990-2000)

Residence 5-years prior to Census:	**1990**	Percent of Population	**2000**	Percent of Population
Same house	**427**	49%	**972**	53%
Other house:				
In same county	**275**	31%	**301**	16%
In same state	**98**	11%	**382**	21%
In different state	**73**	8%	**159**	9%
Puerto Rico	**0**	0%	**0**	0%
Foreign Country	**5**	1%	**19**	1%
Elsewhere	**0**	0%	**0**	0%
Total Population	**878**		**1,833**	

Education attainment rose dramatically among adults 25-years of age or older between 1990 and 2000 (Table 5). The ratio of adults holding a college degree rose from 23% in 1990 to 29% in 2000.

Table 5. Education Attainment (1990-2000)

	1990	2000
Less than 9th Grade	42	44
Some High School, no diploma	88	110
High School, including equivalency	236	346
Some college, no degree	120	414
Associate degree	53	84
Bachelor's degree	67	187
Graduate or professional degree	25	81
Total Adults 25-years of age or older	631	1,212
Mean Education Attainment (years):	**12.54**	**13.75**

Household Income

The average median household income in Cortland rose from $36,858 in 1990 to $57,361 in 2000. The total number of households in 1990 was 353. The total number of households in 2000 was 686.

Housing Units

In 1990 there were 366 housing units in Cortland, of which 13 units (3.5%) were vacant. Of the 353 occupied housing units, 281 units were owner occupied and 72 units (20%) were renter occupied. By 2000 there were 723 housing units, of which 22 units (3.0%) were vacant. Of the 701 occupied housing units in Cortland in 2000, 501 units were owner occupied and 200 units (28.5%) were renter occupied. The sharp increase in the ratio of rental units is due, in large measure, to the addition of the Cortland Estates Apartment complex during this period.

Single-family dwellings are the predominant housing type in Cortland (Table 6). In 1990, single-family dwellings accounted for 291 (85.3%) of the total dwelling units in Cortland. In 2000, single-family dwellings amounted to 527 (75.3%) of the total dwelling in the Town. The drop in the ratio of single-family dwellings in 2000 can be attributed to the addition of the Cortland Estates Apartment complex and other multiple-family dwellings during this period.

Table 6. Occupied Housing Characteristics (1990-2000)

	1990	2000
1, Detached	278	496
1, Attached	13	31
2	42	43
3 or 4	5	27
5 to 9	0	81
10 to 19	0	13
20 to 49	0	0
50 or more	0	9
Mobile Home or Trailer	0	0
Other	3	0
Total Housing Units	**341**	**700**

The median value of a house in Cortland in 1990 was $79,800. Median house value rose to $134,000 in 2000.

Employment

The Cortland workforce, that is, the number of adults 16-years of age or older in Cortland, grew by more than 110% between 1990 and 2000. Changes in employment of the Cortland population mirrored changes occurring nationally during the same period. Table 7 compares the changes in workforce employment by industry. The only industry showing a decline in employment among the Cortland workforce is "Mining." Service industries registered huge changes in employment with "Entertainment and Recreation Services" growing by nearly 2,000% from 1990 to 2000. Large gains were felt in "Construction," "Public Administration," "Service," and "Agriculture, Forestry and Fisheries."

Table 7. Population Employment by Industry (1990-2000)

	1990	2000
Agriculture, Forestry, and Fisheries	10	20
Mining	5	4
Construction	38	114
Manufacturing	152	204
Transportation, Communication & Other Public Utilities	27	52
Wholesale Trade	25	48
Retail Trade	94	122
Finance, Insurance, and Real Estate	26	47
Service	116	379
Entertainment and Recreation Services	2	37
Public Administration	12	44
Total:	**507**	**1,071**

Shifts among occupations in the workforce also mirrored national trends. White-collar occupations among the Cortland workforce registered the largest gains between 1990 and 2000 (Table 8). "Professional, Specialty and Technical" and "Sales" occupations saw gains of 370% and 400%, respectively, during the period. "Farming, Forestry and Fisheries" and "Service Occupations" occupation categories experienced absolute declines in employment of the Cortland workforce.

Table 8. Population Employment by Occupation (1990-2000)

	1990	**2000**
Managerial Occupations	43	118
Professional Specialty & Technical Occupations	40	188
Sales Occupations	55	277
Service Occupations	155	154
Farming, Forestry, & Fishing Occupations	4	2
Precision Production, Craft & Repair Occupations	110	129
Operators, Fabricators & Laborers	100	203
Total	**507**	**1,071**

Public Participation

The purpose of this element of the Comprehensive Plan is to document the process for engaging the community in the development and preparation of the Comprehensive Plan.

Image Preference Survey

An Image Preference Survey was conducted as one of the opportunities for public involvement in the process for preparing the Cortland Comprehensive Plan. This consensus building technique was used to draw out community values on various community development and growth issues, and to identify community preferences for design, appearance and relationships of various types of land development which may not exist in Cortland, today.

The purpose of the Image Preference Survey is to use images to establish a common terminology, an understanding about critical design issues, and to forge a consensus about choices affecting the future. The numerical scores assigned to the images are indications of core community values and are used to help focus the vision citizens have for the future of Cortland. From this vision are derived the principles, strategies and decisions to guide future growth and (re)development in Cortland. The most positive images, in effect, influence the recommendations of the Comprehensive Plan.

The Image Preference Survey was administered in June, 1996 to fourteen residents. In February 2004 an abbreviated version of the Image Preference Survey was administered to the Planning Commission and Board of Trustees as a follow-up to the original Survey and to verify that community preferences had not changed markedly from the original Survey.

Survey participants were shown approximately 120 images representing all types of land development found in Cortland and elsewhere in the region. These images were supplemented with images from other regions of the country to provide a greater breadth of choices to show a variety of alternatives and solutions used elsewhere for similar development types. The "appropriateness" of an image for Cortland was not a consideration in the selection of the images. The images were intended to cover the entire range of development applications and represented good and bad examples. Images in each category were shown in random order. The images were grouped into the following categories:

Commercial and Office	Accessory Apartment	Street and Alley
Landscape	Civic	Mixed Use
Parking	Industrial	Single-Family
Multiple-Family	Parks	

Participants were instructed to assign a numerical value to each image on a scale reflecting their level of approval or satisfaction of the image with -5 representing complete disapproval and +5 representing complete approval. Zero indicated a neutral response. In this Survey all positive scores are considered positive or desirable; all negative scores are considered negative or undesirable.

The range of values for similar or like images represents varying degrees of approval or disapproval of the various elements or features in the images. The differences in numerical values are relative and do not represent orders of magnitude. A +2.00 is three points from

complete approval or acceptance, but is two points better than no opinion. The difference between a score of +2.58 and a score of +2.69 or +2.12 among similar images is small enough to be negligible, but the comments and explanations provided by participants for the images is insightful and exposes community values. Survey participants who attended the *charrette* provided clarification or the reasons why an image was given a positive or negative score or why similar images received disparate scores.

After the scores were tabulated, the average scores were reviewed with Survey participants to determine why certain images received the scores they did, and to identify the specific features in the images that contributed or detracted from the score they were given. In this manner, Cortland residents could express their particular likes and dislikes about particular images and filter out images that may have inadvertently prejudiced the scores. For example, if an image was too dark and prevented viewers from understanding what was in the image or from forming an opinion or reaction, or the image contained some particularly attractive or beautiful floral display or architectural element that was an obvious prejudicial element, the group determined whether the image and score were valid and should be used in the findings.

Cortland residents are loyal to the community; however, this loyalty did not restrain participants from constructively criticizing certain images of development in Cortland. The highest scores in the Image Preference Survey were given to open space and well-landscaped images, pedestrian-scaled shopping areas and images of tree-lined mature neighborhoods. Even images that included no pedestrians but showed an otherwise inviting and pedestrian-friendly environment scored high, such as Image No. 8 (+1.23).

Images of unpaved areas, unscreened service alleys and outdoor storage areas, and unpaved parking lots such as Image No. 78 scored very low. Survey participants generally viewed unscreened service yards such as Image No. 151 (-2.79) negatively. Lack of landscaping or other screening measures, along with general lack of maintenance or visual interest, contributed to the low scores of these images.

Participants overwhelmingly favored landscaping across all of the categories. Also, images of development incorporating pedestrian friendly design, proportions, and amenities scored higher than those that did not. Favorable images were not limited to old or "historic" scenes. The use of land or buildings did not influence scores as much as the appearance of the pedestrian and/or public realm.

Generally, the Image Preference Survey found that Cortland residents prefer development that incorporates the following characteristics and attributes:

- Well-designed buildings, recognizable front doors or main entrances, and appropriate use of architectural detail and material color, and being able to recognize the use and purpose of the buildings
- Organization and order
- Pedestrian access, friendly environments
- Meaningful landscaping and well maintained and manicured landscaping
- Visual interest
- Screening cars from view or hiding parking lots altogether
- Designated pedestrian access across parking lots
- Buildings oriented toward the street, not to parking lots

- Site amenities using water
- Safety
- Proximity of houses to one another is important; don't like houses too close together
- Avoid garagescapes; garages need to be recessed or removed from the front of houses
- Front porches are highly desirable

COMMUNITY PLANNING *CHARRETTE*

Key to the public input and community involvement process was the Cortland Community Planning Charrette. The *charrette* was a highly focused, hands-on, collaborative, inclusive daylong event that transformed residents into planners and visionaries for Cortland. Fourteen residents participated in the *charrette*, all but two having no previous involvement with the local government. Prior to beginning their work in drafting their plans for Cortland participants reviewed selected images from the Image Preference Survey and were provided a primer on town planning principles and techniques. Each of the *charrette* teams presented their plans and recommendations to the group. The consultant took the *charrette* plans and prepared a "consensus plan" incorporating the common ideas and recommendations, as well as recommendations that provided interesting potential. The Consensus Plan was presented and reviewed by *charrette* participants and the Cortland Plan Commission at which point additional changes were recommended and incorporated in the Future Land Use Plan.

The intention of the community is not to limit or prohibit growth and new development, but to encourage it and allow it to flourish but only if growth and development provides positive contributions to the quality of life in the community and the quality of municipal services provided by the Town.

Change will be accepted in Cortland only if it contributes to these community **goals**:

- Physical expansion of Cortland is consistent with the Town's compact form;
- Growth and development cannot exceed the availability or capacity of municipal utilities and services;
- New neighborhood development reflects the current building relationships, scale, and uses;
- New development respects adjacent and surrounding agricultural operations and needs.
- Development and growth provide a positive contribution to the maintenance of Cortland's small town character, qualities and appearance;
- Growth and development create opportunities for new employment, shopping, recreation and community interaction in Cortland;
- New development allows Town government to efficiently and effectively provide basic infrastructure and services for the optimum level of public services for the health, safety and general welfare of all residents and does not harm or undermine the Town's financial health or creditworthiness; and,
- Growth and development contribute to the improvement of the quality of life in Cortland.

To achieve these goals, the following **policies** shall govern the physical change, development, and improvement of the Town and its neighborhoods.

1. Future neighborhoods shall be designed and developed with the pedestrian as the principal design determinant. Sidewalks shall be provided along all streets, tree banks—or parkways—separating sidewalks from streets shall be provided, and buildings shall be oriented toward the street and have pedestrian proportions and details, e.g. porches within conversation distance of the sidewalk, storefront windows adjacent the sidewalk.
2. A diversity of uses, building types and street types shall be provided on each block, in each neighborhood.
3. The influence of the motor vehicle shall be diminished by placing garages off alleys or setting garages back from the front building line of the house, placing parking lots behind commercial buildings, and designing streets to calm traffic.
4. An interconnected network of streets shall be established. Streets shall connect from neighborhood to neighborhood. Cul de sac and permanent dead-end streets shall be avoided. Block lengths

shall be kept to a reasonable distance to facilitate pedestrian circulation.

5. A park shall be provided within a five-minute walk of every residence in Cortland.
6. Mixed-use buildings shall be concentrated in a new Downtown and in neighborhood commercial areas.
7. Storm water management shall be provided in all new neighborhoods. Overland drainage ways shall remain in or near their natural state and alignment. Storm water management facilities shall be introduced in existing neighborhoods expeditiously and economically.
8. Native landscaping material shall be used wherever possible to reduce irrigation and maintenance costs, to add beauty to the landscape, contribute to storm water management, and reinforce the Town's rural character.
9. Leapfrog or strip forms of development shall be avoided. The Town should attempt to reduce or deflect development pressure on adjoining farmland by encouraging development of the Town in a compact, dense form, and allow for careful, purposeful expansion of the Town's boundaries, neighborhoods and municipal services.
10. Developers shall be required to contribute to park, school and municipal infrastructure improvement costs.
11. Development along IL 38, Somonauk Road, Barber Greene Road, Airport Road should contribute to the appearance of the community. Development along these highways shall establish and maintain a gateway character helping to distinguish Cortland from various other communities along these highways.
12. Alleys shall be encouraged in order to improve the appearance of the streetscape, especially along high-density residential and commercial streets and to provide access to parking.
13. An inventory of parcels at key locations for industrial development shall be set aside to provide the Town with local employment opportunities and diversification of the Town's tax base for the near-term and the long-term.
14. Adequate municipal utility capacity shall be maintained to accommodate non-residential users.
15. The Town considers the relationship between the Cortland Comprehensive Plan and the DeKalb County Unified Comprehensive Plan as integral to the achievement of the community vision and will support the DeKalb County Unified Comprehensive Plan and DeKalb County's efforts to implement its plan.
16. In order to maintain the efficiency of the countywide thoroughfare network, development of property along County

highways in the Cortland planning area shall conform to corridor access policies mutually adopted by the Town and County.

17. New neighborhood development shall be designed in accordance with conservation development principles, whereby a relatively low overall density is maintained on a given tract of land but development in concentrated in one or more locations and surrounded by open space that is used for farming, recreation, wastewater irrigation, or all of the above.

18. Residential and commercial buildings constructed in Cortland should reflect the Midwestern rural vernacular, e.g. Victorian, Italianate, gothic, Romanesque, Craftsman, and use outside building materials that are indigenous or traditional for agricultural and rural development, e.g. limestone, brick, wood, and metal.

Land Use and Natural Resources

The purpose of this element of the Comprehensive Plan is to translate the community vision into physical terms; provide a general pattern for the location, distribution, and characteristics of future land uses over the next generation; and serve as the element of the Comprehensive Plan upon which all other elements are based.

The Cortland Future Land Use Map is derived from the *charrette* plans prepared by residents during the preparation of the Comprehensive Plan. Generally, the *charrette* plans recommended a predominantly residential land use in Cortland in the future with two industrial "districts" established to provide local employment opportunities and to diversify the tax base. Commercial "districts" were identified in critical locations in the community.

Perhaps, the most significant recommendation to come out of the Cortland *charrette* was the community's preference for mixed-use residential neighborhoods and conservation development principles. While residents were not opposed to non-single-family building typologies in Cortland, they expressed a general disdain for large concentrations of any particular non-single-family building typology, e.g. two-family, multiple-family, apartment buildings. This preference mirrors the socially and civically acceptable practice of scattering isolated or small groups of non-single-family building typologies throughout Cortland neighborhoods. This, in part, explains the absence of "multiple-family" or "medium-" or "high-density residential" land use classifications on the Cortland Future Land Use Map.

Conservation development principles apply to all the land uses on the Cortland Future Land Use Map. Generally, the average density north of North Avenue is two dwelling units per acre; between North Avenue and Interstate 88 the average density is four dwelling units per acre. Higher net densities in the developed portions of property and tracts of land will result. Open space uses, farm land, recreation, conservation, wastewater irrigation, shall account for forty-percent to fifty-percent of the development site. The Cortland Community Design Guidelines and building typology ratios (below) shall be applied in all conservation development areas. **The maximum density will ultimately be determined by the amount of open space and building typology ratios provided on any given development parcel.**

The Cortland Future Land Use Map identifies eight basic land use categories: mixed residential, central business district, commercial, industrial, parks and open space, civic, and agriculture.

Agriculture. Despite the amount of territory designated for future neighborhood development, agriculture is the preferred use of land in much of the planning area. Cortland respects agribusiness and the livelihoods represented by the fertile farmland surrounding the community.

Mixed Residential. This land use classification designates the areas suitable for residential development in a manner that emulates the established neighborhoods of Cortland. In this land use all residential building typologies are permitted **but non-single-family detached building typologies or uses may not exceed the following maximum ratios: two-family: 12%; other attached single-family: 12%; and multiple-family: 8%.** Provisions for housing for the senior population are encouraged and are not limited by these ratios. The ratios are expressed as a maximum of the total number of dwelling units planned for any given tract of land having at least ten acres of land area. The location, scale and design of non-single-family

building typologies will be determined by the detailed land development standards to be adopted in the Cortland Zoning Ordinance.

Commercial. This land use designates the preferred locations for retail, food service, personal and business services, offices, and automotive related uses. Mixed-use buildings, i.e. buildings having retail or food services or offices on the ground floor and offices and/or residential dwelling units on upper floors, are encouraged in these designated areas.

Industrial. This land use classification designates the areas suitable for industrial uses, including manufacturing, assembly, warehouses and logistics operations.

Parks and Open Space. This land use designates the preferred locations for public parks and private open spaces for active and passive recreation. This land use applies to formal public squares, facilities for programmed recreational activities, linear trails along major thoroughfares and drainage ways, and to natural areas and conservation areas.

Central Business District. This land use designation applies to the existing downtown and also the "Main Street" commercial area on Somonauk Road at Pleasant Street. The distinction between this land use and the commercial land use is the central business district also provides a central location for civic functions such as the Town Hall, post office, library and is somewhat centrally located for the future expansion of Cortland.

Civic. This land use classification designated locations for existing and future civic uses, including government facilities, churches, schools, libraries, day care, post offices, police and fire headquarters and sub-stations, and other community buildings.

FUTURE LAND USE PLAN

Circulation and Transportation

The purpose of this element of the Comprehensive Plan is to consider all relevant modes of transportation and to establish the framework for the acquisition, protection, and preservation of existing and future rights-of-way.

The road network in Cortland is an expansion of Ezra Pound's original layout for the railroad. The road network around Cortland is primarily the rural section road system and circulation in and around Cortland is predicated on the automobile. The section road grid is disrupted by the UP Railroad, the DeKalb-Taylor Airport, Interstate 88, and the Kishwaukee River.

The growing emphasis on rail transportation in the Chicago metropolitan area and certain rail transportation initiatives by the Regional Transportation Authority's (RTA) commuter rail division, Metra, such as the extension of commuter rail service to Elburn six miles to the east and the STAR project which will provide a circumferential commuter rail route around the Chicago suburbs, will offer new commuter rail opportunities and options for Cortland residents in the future. At present, there are no plans to extend commuter rail service to Cortland or any other community in DeKalb County but Cortland should not conclude that such service will never be extended to the Town in the future.

In the meantime, the Town should use its position and authority to determine where future roads are located so that future additions to the community can be seamlessly woven together and reduce the overall impact on the road network.

IL 38 runs roughly parallel to the Union Pacific Railroad in the planning area and is the primary east-west arterial thoroughfare. It connects the Town with DeKalb and Rochelle on the west and Elburn, St. Charles and Wheaton on the east. The railroad is a divisive element in the Town's thoroughfare network disrupting the continuity of the network and concentrating traffic to a few grade crossings. The Town should protect the remaining railroad crossings from closure and plan for additional crossings because the railroad crossings (or lack, thereof) will alter traffic and land use patterns in the community.

The Illinois Department of Transportation (IDOT) is reviewing environmental and engineering information pertaining to the preparation of a feasibility report for the Prairie Parkway, a limited access highway connecting I-88 with I-80. A link between I-88 and I-90, and beyond, also is contemplated, but is not included in the current study. A centerline was recently recorded for the highway between I-88 and I-80 but could be moved westward into DeKalb County as a result of engineering, environmental or political considerations before the highway is designed and constructed.

At present, the corridor is situated between Plano and Yorkville to the south and is not projected to travel north of Interstate Route 88. Whether Cortland will experience any direct benefit or adverse impact from the new highway is difficult to predict at this time. What is certain is the highway would improve Cortland's accessibility in the region, thereby improving economic development prospects in the future.

An interchange on Interstate 88 at Hinckley Road is identified on the Future Land Use Plan Map. At the present time, a developer is negotiating with the Illinois Toll Highway Authority to construct an interchange at this location. Presently, the developer has permission to prepare preliminary engineering and design plans for the interchange. The Authority has made no commitments to fund the improvement.

Para-transit service is provided in Cortland by Voluntary Action Center.

Community Facilities

The purpose of this element of the Comprehensive Plan is to provide an inventory of community facilities and to ensure that public facilities are provided as needed.

At present, the following public facilities or uses are located in Cortland:

- Town Hall
- Fire station
- Public Works building
- Cortland Community Park, Hetchler Park, McPhillips Park, Welsh Park, and Suppeland Park
- Post Office
- Library
- Cortland Elementary School
- Water tower
- Township Highway Department yard and buildings
- Wastewater reclamation facility

The Town has a public water distribution system and a sanitary sewage collection system. The DeKalb Sanitary District treats the sanitary waste from Cortland. Public storm water management system and facilities are present in the community.

At some point in the future the population of Cortland will grow sufficiently to warrant construction of new elementary schools, parks and other municipal facilities. The Town should begin preparing for this eventuality by developing a capital improvement program to itemize the park and other municipal improvements the community is likely to need, along with budget estimates and dates the facilities may be provided. The Town should use the annexation agreement as a tool to obtain necessary school, park and other municipal improvements.

The Town should work with the United States Postal Service to retain the post office operations and functions in the downtown. The Post Office is the community "front porch" and this use should remain in the historical core or heart of the community and continue its social meeting place function in the center of the community. The Post Office, along with the Town Hall and Library, is one of downtown Cortland's "anchor tenants" and relocating it to an outlying location will be detrimental to the inherent functions of the downtown.

At present, the Town's water and wastewater systems have adequate capacity to accommodate existing development in Cortland. New growth will require expansion of these facilities and the Town will need to monitor the available capacity in each system in order to begin expansion of the facilities in advance of need.

The Town is constructing a state-of-the-art wastewater reclamation facility that will employ land application technologies for sanitary waste disposal. The facility is considered the cornerstone for the community's environmental ethic that permeates all aspects of community development.

Growth of the community will also place demands on the space needs for Town government, the library, and police and fire facilities. The present facilities are adequate for the present size of the community and for the near-term but will become inadequate as the community grows and expands. Growth will eventually require the addition of one or more new fire stations,

and the Comprehensive Plan identifies several locations to reserve or set aside for future facilities.

Telecommunications Infrastructure

Telephone, personal wireless communication devices, and the Internet are a few of the types of communication being revolutionized, today. The tools and technologies being developed and implemented today will have repercussions on the future and could materially affect quality of life and economic development in Cortland in the future. The purpose of this element of the Comprehensive Plan is to coordinate telecommunications initiatives in the region and encourage investment in the most advanced technologies.

The deregulation of the telecommunications industry and the providers of telecommunications services has shifted the burden of providing the latest in telecommunication technology and service on local governments.

Citizens are no longer guaranteed the latest advances in telecommunications service or facilities. Local governments will need to be vigilant about the services being provided in the community to be certain businesses and residents are being provided the very latest telecommunications technologies and to remain competitive in the economic development sphere.

Because Cortland, alone, does not possess the resources necessary to develop, attract, or retain the telecommunications infrastructure necessary to keep it competitive for economic development purposes, it should seek to partner with other communities in DeKalb County, or the IL 38 corridor, to ensure that the latest advances in telecommunications are provided in the Town and in DeKalb County.

Housing

The purpose of this element of the Cortland Comprehensive Plan is to document present and future needs for housing in Cortland, including, affordability, visitability, and other special housing needs; identify the barriers to housing in Cortland; assess the condition of the local housing stock; and, develop strategies, programs and other actions to address the needs for a range of housing options in Cortland.

Cortland's housing stock is primarily single-family in character. There are a few buildings designed or used for more than one family, but these are the exception in the Town. The housing inventory is generally in good condition, but a collection of dwellings in the original town are substandard with respect to their size or the facilities provided in them or the level of maintenance performed on the structures over the years. Ongoing building and property maintenance code enforcement will be needed in the Town to prevent the condition of the housing stock from deteriorating and materially affecting the appearance and value of all property in the Town.

The housing stock is varied: large and small, old and new. In addition to single-family homes, two-family, attached single-family, apartments, and other multiple-family building typologies are present in Cortland. Maintaining a diverse mix of housing, such as size, value, type (single-family, multiple-family, rental) as the community grows and develops will be one of the Town's biggest challenges in the future.

Owning a house remains the American dream. Whether it remains a dream or is attainable for many people depends upon local government practices, as much as job security and mortgage interest rates. Small decisions, such as the minimum lot size or whether or not to permit multiple-family or apartment development in a community, materially affect whether a community and its housing practices are exclusionary or not.

The demand for housing in the future is likely to be much different than the past fifty years. Today, the majority (76%) of homebuyers are non-traditional families, including single persons, single parents, empty-nesters, same-sex households, married couples with no children, and others, with single women representing the largest segment (26%) of the non-traditional house buyer. The type of house a single women wants (size, amenities, yard, garage, neighborhood environment) is undeniably different than the traditional nuclear family or the empty-nester wants. The increasing differentiation among the buyers in the market will continue to bring new and different housing choices to Cortland in the future.

The Cortland Comprehensive Plan emphasizes development of mixed-residential neighborhoods that provide a wide range of housing types in close proximity to each other to provide neighborhood stability and offer choices and options within the neighborhood. Mixed-residential neighborhoods are a key to Cortland's character and the quality of life in the community and replicating this neighborhood planning concept in new neighborhood development in Cortland is the focus of the Comprehensive Plan.

Economic Development

The purpose of this element of the Comprehensive Plan is to coordinate local economic development initiatives with those of the State of Illinois. An assessment of the community's strengths and weaknesses with respect to attracting and retaining business and industry is a focus of this element.

In its heyday, Cortland provided a vibrant market for residents in the Town and in the outlying farm country. But changes in business, technology and other social factors saw a long period of decline for the Town. Today, business, technology, and social factors continue to change and offer some economic hope for Cortland in the future.

In order for any new retail business development growth to occur in Cortland, the population will need to grow in order to support new businesses. To put this challenge in perspective, a rule of thumb in the commercial development profession is a community needs approximately six hundred homes to support a mini-mart or convenience store, and six thousand homes to support a small grocery store.

As it sits, today, Cortland barely has a sufficiently large population to support a limited range of basic commercial enterprises. Because Cortland sits near the IL 23 corridor in DeKalb (city) where most retailers are concentrated, the Town will be at a competitive disadvantage to attract significant amounts of retail development until its population increases enough to attract the attention of commercial developers and merchants.

In the meantime, the current businesses and services in Cortland will remain only as long as they are economically viable. Until Cortland accumulates a critical mass of population to support new business growth and development, it is unlikely there will be significant new business development in Cortland in the near term.

The prospects in the long-term are much more favorable. As the community grows and increases its population and begins to accumulate an inventory of commercial and industrial development sites Cortland will begin to see all manner and form of retail, food service, office and employment opportunities established in the community. The increase in variety and diversity of shopping, dining and employment opportunities in Cortland will provide a positive effect on quality of life concerns in the Town, as well as broaden the tax base.

Key to any economic development initiative in Cortland will be establishing and maintaining sufficient capacity in the municipal sewer collection system and sanitary waste treatment operation and water distribution system, and a cooperative, "can-do" business environment. Without this infrastructure, Cortland's economic development prospects will be exceedingly small and limited. The nature of the environment the Town government cultivates for business growth and development will bear directly on the success of economic development initiatives in the Town.

It has been suggested that Cortland begin forging relationships with surrounding farmers to develop a network of farms that could supply farmer's markets in Cortland in the future, or grow "fuel crops" for biofuel production. Incorporating agricultural products and farm production in an economic development strategy is consistent with Cortland's stewardship ethic.

Natural Resources

The purpose of this element of the Comprehensive Plan is to identify and define the natural resources in the community with respect to water, flora and fauna and to assess the relative importance of these resources to the community.

Given that Cortland is situated in the midst of an active farming landscape, the *land* is the natural resource in the community. The landscape in the planning area is flat and is well-drained, contributing to its suitability for farming activities.

While storm water is slow to drain and ponding is a common occurrence after storm events, there are no regulatory floodplains in the Cortland planning area, except along the Kishwaukee River and portions of the Union Ditch.

Woodlands are not present in the Cortland planning area.

The following endangered species have been documented in the Cortland planning area[2]:

- The Iowa Darter (State-threatened), in headwaters of East Branch of the South Branch of the Kishwaukee River.
- The Wooly Milkweed (State-threatened), a perennial plant found in dry prairie remnants
- Another aquatic species found in the Kishwaukee headwaters is the threatened Slippershell Mussel, *Alasmidonta viridis,* although the species remains undetected in Kishwaukee headwaters in DeKalb County.
- Other plants nearby, but outside the planning area include the Dog Violet, *Viola conspera* and Eastern Prairie Fringed Orchid, *Platanthera leucophaea* (Federal-endangered)

While the Kishwaukee River is one of the highest quality streams in Illinois, the East Branch of the South Branch of the Kishwaukee River is a channelized stream in much of Cortland's planning area. The Union-Pierce Drainage District has created several water projects over the years, including the Union Ditch No. 1 and Ditch No.2 that traverse Cortland's planning area. These streams are channelized in the farm fields to expedite drainage and to improve mechanical farming operations.

Where ever practical and feasible, native plantings should be used in open spaces, utility corridors, and selected road right-of-ways. Native plantings should also be encouraged on private property, not only to provide habitat for wildlife, but to reduce water consumption since native plantings are drought tolerant and often remain green during the worst periods of drought.

Best management practices (BMP's) should be applied to storm water management projects throughout the Cortland planning area to reduce long-term maintenance costs, decrease stormwater run-off, and improve water quality in downstream creeks and the East Branch of the South Branch of the Kishwaukee River.

---

[2] Source: Illinois Department of Natural Resources

Agriculture Preservation

The purpose of this element of the Comprehensive Plan is to identify the means and methods for protecting farmland in the community and developing markets for agricultural products.

Given the role of agriculture in DeKalb County—as well as Cortland's heritage—agriculture protection is an underlying component of the Cortland Comprehensive Plan. While agriculture is the dominant industry in the County, technology and economics have reduced the direct ties to agricultural production that once existed in Cortland. Nonetheless, agriculture remains a key force in the County's economy, a dominant feature on the landscape, and a defining feature of the communities in the County, including Cortland.

To this end, the Cortland Comprehensive Plan attempts to provide a framework with which the Town can aid or assist in the protection of farmland from premature development and the nuisances caused by development in Cortland. The areas of the Future Land Use Plan that identify agriculture land uses provide reasonable assurance that farming activities will remain there during the life of this Plan, at least for the next generation or so.

A key agriculture preservation strategy is to make farming economically viable in the face of development pressures. The way to keep farming viable is to develop markets for agricultural products. The Town supports research and technology used to develop new uses for agricultural products.

Community Design (Principles)

The purpose of this element of the Comprehensive Plan is to identify the key community design principles and strategies for achieving the community vision with respect to its physical form and appearance.

In many respects, the design principles that follow are a record of the physical form of Cortland and its neighborhoods, today. This is not a yearning for nostalgia, nor an exclusionary strategy. Instead, the design principles grew out of the Image Preference Survey and community planning *charrette* and reflect what citizens in Cortland accept and desire.

Principle One

Pedestrian scale shall be the common denominator in neighborhood development in Cortland in order to create a positive comfortable public realm and facilitate interaction among neighborhood residents.

Human Scale Proportions and Perceptions

The human scale is the relationship between the dimensions of the human body and the proportion of the spaces people use. The surface textures, activity patterns, colors, materials, lighting, and other details of the built environment underscore this.

Semi-Public and Private Spaces

"Good fences make good neighbors." While public life is essential to a community, a sense of privacy is also important. Semi-private areas, such as porches and front yards defined by short fences or shrubs, are encouraged to create a transition zone between the public domain of the street and the private domain of the house or shop.

Community Spaces

Every neighborhood needs places where people can meet. The sense of community is enhanced by the physical characteristics of common spaces. Community centers, cafes, plazas, and even kiosks are places where people can meet in formal or informal situations.

A Mix of Houses and People

A mix of housing types shall be distributed throughout Cortland neighborhoods. The sense of a safe, socially healthy, and visually interesting place is enhanced by the provision of a range of housing types and sizes to accommodate households of all ages and sizes. The location of various housing types within a neighborhood creates physical variation and contributes to the diversity of the population.

Facilitate Person-to-Person Interaction

Face-to-face interaction is a fundamental human need. Neighborhoods in Cortland must be designed with this need in mind. To reinforce the human scale, the design of a place should facilitate the creation of neighborhood bonds, and a sense of community while insuring individual privacy.

Walking and the Pedestrian

The walking distance between home and various neighborhood facilities must be a fundamental factor in design and layout. A movement network which supports and encourages pedestrian movement is a design element which creates a sense of place. The movement network must be designed to be attractive, safe and comfortable for pedestrians of all ages and levels of mobility.

Principle Two

Neighborhood development in Cortland must complement the natural features of the landscape and respect the natural and man-made environment.

Indigenous Vegetation

As part of the ecological renaissance, indigenous vegetation should be used to the fullest extent in the landscaping of development in Cortland and the restoration of the landscape in and around Cortland.

Manage Storm Water Responsibly

Storm water collection and management should rely less upon pipes and constructed basins and more upon overland drainage and natural landscape features and plants intended to convey, store and release storm water flows. The emphasis on infiltration rather than collection of storm water demands a conscientious effort from design to construction to reduce impervious surface, disturbances to soil structure, and preservation of natural hydrology and hydrologic conditions. The use of certain plants and restoration of landscape features, e.g. wetlands, contributes to more environmentally friendly storm water management systems and reduces the impact on adjoining farmland and Union Ditch and Kishwaukee River and their tributaries, and ultimately lower operating costs to the Town.

Manage the Interface Between Agriculture and Neighborhood Development

Agricultural activity around Cortland is a significant element of the landscape and the local economy. It is also the defining feature about Cortland. Agriculture represents livelihoods for many people in Cortland and the conflicts between agriculture and neighborhood development need attention.

Develop Land According to its Suitability

Development should occur only on land most suitable for development and be developed only to the degree that will cause the minimum negative environmental impact.

Walking and Bicycling

The ability to walk and bicycle to reach recreation, shopping, and job destinations in Cortland can significantly reduce the consumption of energy and pollution emissions. Walking and bicycling also allow for greater interaction with nature and neighbors, the observation of seasonal and daily changes, and an appreciation of such features as clean air and streets. Facilities and conditions to enable and enrich walking and bicycling opportunities in Cortland must be incorporated into neighborhood development plans.

Principle Three

Neighborhoods in Cortland, and all development within them, shall be designed along pedestrian dimensions and distances through compact form, layout, and streetscape characteristics.

Walking Scale Shall Define the Size and Function of a Neighborhood

Residents of Cortland's neighborhoods should be able to walk to the center of the community or to the center of their neighborhood. Neighborhood residents should not be dependent upon their automobiles for most of their daily trips. They should be able to walk from home to school, recreation, shopping, to places of employment, civic facilities, and, perhaps, in the future, transit opportunities that may exist in Cortland. A pedestrian neighborhood is defined by walking distances that are comfortable to the average person. For an adult, a five-minute walk (1/4 mile) is deemed to be the optimum walking distance between home and the core of the neighborhood, e.g. a park, square, civic building, or commercial area, and shall be the determining dimension for neighborhood size.

Locating Intensity of Uses

Community size is influenced by walking distances, but it need not be limited by them. The highest intensity of use (scale, floor area, density) must occur in the core of the Town or its neighborhoods. The highest densities should be found mixed into the core areas and immediately adjacent them. Density and intensity of use should decrease as one reaches the edges of individual neighborhoods and the primary development area of the Town. Open spaces, parks, very low density uses, large boulevards, or natural features should be used to separate neighborhoods.

Transit Linkages to Expand Pedestrianism

The provision of transit alternatives can significantly expand the pedestrian domain. Transit stops are important design elements of the core and can be very important places in the community and individual neighborhoods. Cortland neighborhoods and core areas shall be located and designed to accommodate transit services in the future.

A Network of Walkways

A network of interconnected pedestrian walkways is an essential basic design feature in a neighborhood. The pedestrian network must link and connect home with shopping, school, transit, recreation, and employment opportunities in the neighborhood and beyond. Sidewalks and off-street paths must be continuous, safe, and they must be clearly delineated and understandable.

Continuity

People are generally willing to walk greater distances if they are provided with a continuous and pleasurable experience. The placement of trees, the treatment of building facades and parking, the use of interesting pavement, fences, hedges, and architectural details all contribute to the pleasurable experience of walking through the neighborhood and shall be employed in all types of development in Cortland.

Sidewalk Width
The width of a sidewalk should be in direct proportion to the projected volume of users.

Security in the Pedestrian Realm
Sidewalks should be separated from traffic on the adjoining street. A parkway, or tree bank, between the street and sidewalk having trees planted at regular intervals to increase the sense of security for the pedestrian shall be provided in all neighborhoods regardless of the uses or street characteristics. On-street parking should be encouraged to calm traffic and significantly contribute to the security of the pedestrian.

Edges
The sidewalk edge away from the street should be treated as a boundary and help to define the pedestrian realm. In residential areas a low fence, wall or hedge can be used to define edges. In residential areas where building setbacks are shallow, the first floor of residences shall be elevated two to four feet above the sidewalk grade for the privacy of the inhabitants of the dwellings. In commercial areas, buildings should be brought up to the sidewalk with the first floor no more than six inches above the grade of the sidewalk.

Street Lighting and Street Furniture
Street lighting and other street furniture, e.g. benches, planters, trash receptacles, etc., can increase the positive experience of walking in Cortland neighborhoods. Street lighting and street furniture should complement the pedestrian realm. The use of lighting should vary with the land uses on property adjoining the sidewalk and the amount of pedestrian traffic. Benches should be provided throughout the Town, even in residential neighborhoods, to provide places to rest.

Signs
The pedestrian experience and visual appearance of Cortland can be enhanced by the quality of signs. Signs designed for the pedestrian can be smaller in area but need not be shorter in the amount of information contained on them.

Bicycle Paths
Bicycle paths, although not strictly pedestrian, have a critical role in complementing the pedestrian network. Most streets in Cortland can accommodate bicycle traffic. However, paths along major highways or the railroad connecting Cortland to points of interest in DeKalb (city) or more distant places such as Malta or Maple Park, or Hinckley, Genoa or the Fox River may be considered in the future.

Principle Four

Open spaces of all types and sizes for visual and aesthetic qualities, recreational, ecological, agricultural and economic functions shall be provided within, as well as on the periphery of, neighborhoods and the Town.

Rear Yards

Private open spaces are essential to the basic function of any household. A modest, yet private, landscaped rear yard is a necessary requirement for most housing types in Cortland. Yard sizes and layout will vary with housing types. Lots with small yards should be compensated by being located in close proximity to parks.

Front Yards

The space between the public sidewalk and the front of the dwelling is a transition space. Even the smallest front yard acts as a transition between the public street and the private dwelling. The front yard is a semi-public space and a contributing element to the neighborhood's open space network. Front yards should be defined by a low picket fence or hedge along the public sidewalk.

Public Spaces

Public open space within Cortland neighborhoods provides spaces for formal and informal gatherings, as well as passive recreation and is an essential element of the neighborhood and feature of the community. In Cortland, public open spaces should take on many forms and functions. Public open spaces must serve all age groups in Cortland and be integrated with the pedestrian network in the Town. Public open spaces must be physically accessible and visible to the public.

Active and Passive Recreation

Public open spaces in Cortland must include opportunities for passive and active recreation. Active recreation facilities should be sized commensurate with the expected population within the service area of the public open space.

Peripheral Spaces

Peripheral open spaces should define the edge of Cortland, or individual neighborhoods. Peripheral open spaces enhance the sense of place by making Cortland identifiable in the landscape: they create a sense of exit and entry. Open spaces on the periphery of Cortland can preserve environmentally sensitive lands or land used for agriculture.

The Parkway (Tree Bank)

Parkways are the open space that lies between the sidewalk and the street. When thought of as part of the Town's open space system, parkways extend internal and peripheral open spaces into the network of streets. Parkways serve to separate and define roadways and sidewalks and will vary in width depending upon the street type and the intensity of adjacent uses.

Principle Five

Cortland must have a central core or focus. Every neighborhood in Cortland must have a core or community focus.

THE CORE

The Core is the focal point for the community and each neighborhood. It provides potential places for employment, shopping, social activities, and is the place for people in the neighborhood or community to interact or congregate. Pedestrian presence is critical; it signals the vitality of the community or neighborhood.

The size of the Core will vary with the number of dwellings in the neighborhood and the elements found in the Core of one neighborhood will vary from those found in another neighborhood. The Core may contain commercial, residential, civic buildings, public open space of some type or function. It should be the activity center which unifies the community or neighborhood, and its character often becomes the image of the community or neighborhood as a whole.

The Core requires:

- A central and integrated location for equal access by foot, car or transit
- A balance of residential and non-residential uses
- Retail uses in proportion and scale to housing
- Employment space in proportion and scale to housing
- Civic and social facilities
- Specific design standards for streetscapes and facades
- Vertical elements that render it immediately identifiable in the landscape

Location

The Core should be designed to provide a central place such as a square, green, plaza, or a crossroad. The Core symbolizes the center of the community or neighborhood and, to the extent possible, is surrounded by the community or neighborhood. The Core must front onto a street or streets within the primary movement network. Where possible, buildings in the Core should define the space or spaces.

Balance

The Core must have an appropriate balance of housing to other uses such as retail and services, civic and social, offices and open space. The amount of retail and office space should be compatible with the number of housing units and potential users within the primary walking area. Civic and social spaces such as churches, libraries, post offices, community buildings, and schools are appropriate uses in the Core since these uses tend to be major focal points for community and neighborhood activity.

Design

In order to foster and enhance the purpose and function of the Core, essential design elements need to be included in the design and location of the Core. The Core should have buildings of a greater scale and at a higher density than the remainder of the neighborhood. Buildings in the Core should range from two- to four-stories in height. Generally, one-story buildings should be avoided. Buildings in the Core must be closely spaced and the street

level reserved for personal services and retail businesses. Mixed-use buildings with retail on the ground floor and offices or living units on the upper floors are the preferred building typology in the Core.

Parking must not be permitted in the front of buildings unless it is located on the street. Landscaped parking lots shall be placed behind buildings in the Core.

When retail uses are located in the Core, retail must front on a street providing pedestrian and vehicular access. Retail requires a seamless or continuous frontage of shop windows and entrances to maintain pedestrian interest. People must not be forced to pass in front of blank walls or parking lots as they walk between stores.

The Core should have a traditional Main Street appearance with architectural details such as large display windows, awnings, decorative street furniture, small projecting signs, transoms, and cornices. The Core should have a high point; it should be visible from a distance. This vertical landmark, such as a steeple, cupola, or bell tower, will serve as that focal point and should also form the visual termination of a street or the square at which the Core is located.

Principle Six

Streets create the form and scale of the community and must accommodate the pedestrian and the motor vehicle.

Streets Shall Create a Positive Community Image

The first impression we form about a community or a neighborhood is influenced greatly by the street. Streets are the foundation of the settlement pattern in Cortland and are the most important public spaces in Cortland neighborhoods. Their thoughtful design is crucial to the creation of a positive community image.

Streets Shall Form a Network

A dense network of interconnecting streets will influence pedestrian and vehicular circulation, provide a sense of knowing where you are, and more evenly distribute traffic. A network of streets provides order and legibility to the neighborhood. Every street shall be connected to at least two other streets. A dense network of interconnecting streets provides multiple alternative routes, eliminating traffic-jammed arterial streets.

A Hierarchy of Streets Shall be Established

The street network relies upon a hierarchy of streets. A variety of street widths shall be provided to accommodate various levels of traffic.

Alleys

The use of alleys in Cortland is encouraged to improve the visual appearance of the streetscape and to provide access to off-street parking. The use of alleys is strongly encouraged along streets having multiple-family residential and/or mixed-use buildings along their frontages.

Design Features

In order to provide a positive experience, streets in Cortland shall incorporate the following:

- Except for high volume roadways, the width of roadways is typically narrow to discourage high travel speed.
- Buildings front directly on streets
- On-street parking is encouraged to increase safety for pedestrians and to calm traffic.
- Street trees must be planted in the parkways (tree banks).
- Small curb radius must be used at intersections to slow traffic and reduce width of roadway at crosswalks.

Principle Seven

Variation within the design conformity creates the most visually positive communities.

VARIETY AND VARIATION SHALL BE USED IN NEIGHBORHOODS

Variations on basic patterns are necessary to discourage sameness and dullness. Individuality of each building may exist within a commonality of design in the neighborhood. There must be differences in building form, mass, façade treatment, and details.

Variation and variety can be achieved by applying any and all of these techniques:

- **Lot width.** Lot widths of different sizes encourage variation among building masses. Lots of different widths should be dispersed, but lot sizes generally increase from the center of the community to the edge.
- **Lot Depth.** Varying lot depth will affect the configuration of the block and the street network.
- **Blocks.** A variety of block lengths and configurations is recommended in Cortland neighborhoods.
- **Alleys.** Alleys are recommended especially for lots and blocks containing narrow single-family lots, attached single-family, multiple-family, mixed-use, and retail uses.
- **Build-to Lines.** A build-to line defines the proportions of the street by prescribing where the mass of a building must be located. Unlike a setback line which establishes the distance from which a structure must be located, the build-to line established a mandatory location for a structure relative to the street. Porches, balconies, bay windows, and other building projections would be permitted to encroach upon the build-to line to provide dimension and rhythm to the streetscape.
- **Build-up Lines.** Variety can be accomplished with building height, with taller buildings placed at points of interest and at corners. Roof lines and ridges can also vary with some ridges being perpendicular to the street and others parallel. The addition of porches, roof projections, chimneys, and garage placement also contribute to variety. A build-up line specifies a cornice height that defines the street proportion. Build-up lines should vary.
- **Non-residential Uses.** Variety and variation can be accomplished by the introduction of non-residential uses in the neighborhood. Civic and social uses can be located in the neighborhood in functional and serviceable locations and yet, provide visual variation. The development of the Core also adds to the variety and variation of a neighborhood or community.
- **Housing Types.** A variety of housing types within a neighborhood, a block, or along a street frontage contributes to variety and variation. Non-single-family structures should be dispersed throughout the neighborhood, not concentrated in one location or be of a large scale.

Principle Eight

A mix of land uses, housing, jobs, and incomes creates a more balanced community, reduces traffic and maintenance costs, and creates better fiscal balance for Cortland.

Mixed- and Multiple Uses

Mixed- and multiple uses are encouraged in Cortland neighborhoods. A mixture of compatible uses provides greater proximity for residents and creates opportunities for shopping, employment and interaction among neighborhood residents. Mixed- and multiple uses should be located in or very near the neighborhood core. Mixed-use refers to different uses located in the same building. Multiple uses refers to different uses located adjacent each other, typically in separate buildings.

Housing Above Retail

Housing above ground-level retail uses is strongly encouraged in core areas.

Housing Mix

Homogenous neighborhoods must be avoided. A mix of housing types and price ranges should be provided throughout the neighborhood to help achieve the desired visual quality and market, economic and social mix necessary to create the most desirable neighborhoods. Housing is not static. Small houses can grow into larger ones, garages can be added onto or expanded. Add-on opportunities in residential neighborhoods contribute to the variety, diversity and resilience of neighborhoods.

Attainable Housing

Neighborhoods must accommodate attainable housing for families of low and moderate incomes. Attainable housing must not be concentrated in one project, one area, or one neighborhood.

Land Use Boundaries

Land use boundaries should run at the rear of parcels rather than down the middle of the street. Both sides of a street should have matching land uses in order to create more harmonious streetscapes. Schools, parks and other civic buildings and uses would be exceptions to this rule.

Large Floor Area Uses

Large single purpose uses such as warehouse supermarkets, home improvement centers and discount department stores, should be located on the edges of neighborhoods along arterial highways or in industrial areas.

Principle Nine

Cortland is committed to maintaining its character and quality of place and the character and quality of place within its individual neighborhoods.

Property Maintenance Codes

The level of property maintenance on a given parcel will influence property values throughout the neighborhood. Consequently, prevention of visible deterioration of property in Cortland neighborhoods is imperative. Enforcement programs should be constant, consistent and equitable.

Preservation of Cortland's Heritage

Historic structures, neighborhoods and landscapes should be preserved and enhanced. Historic preservation contributes to the richness, diversity and visual interest of Cortland's neighborhoods and helps to differentiate neighborhoods from one another. Historic preservation efforts are compatible with neighborhood development and should be encouraged.

Maintain a Sense of Security

A fundamental human need is security. People must feel secure in their community. The greatest security is in knowing the people who live and work in the community. Neighborhood design and layout must promote personal interaction and neighborliness while assuring privacy.

Provide a High Level of Public Maintenance

The appearance of public buildings and land, the frequency and quality of maintenance of public roads and sidewalks, and the speed with which repairs to public facilities are made contribute mightily to the public's satisfaction with living in or visiting a community. The Town government should provide a consistently high level of maintenance on all of the public facilities for which it is responsible, and serve as the exemplar for property design and maintenance in Cortland.

Plan Implementation

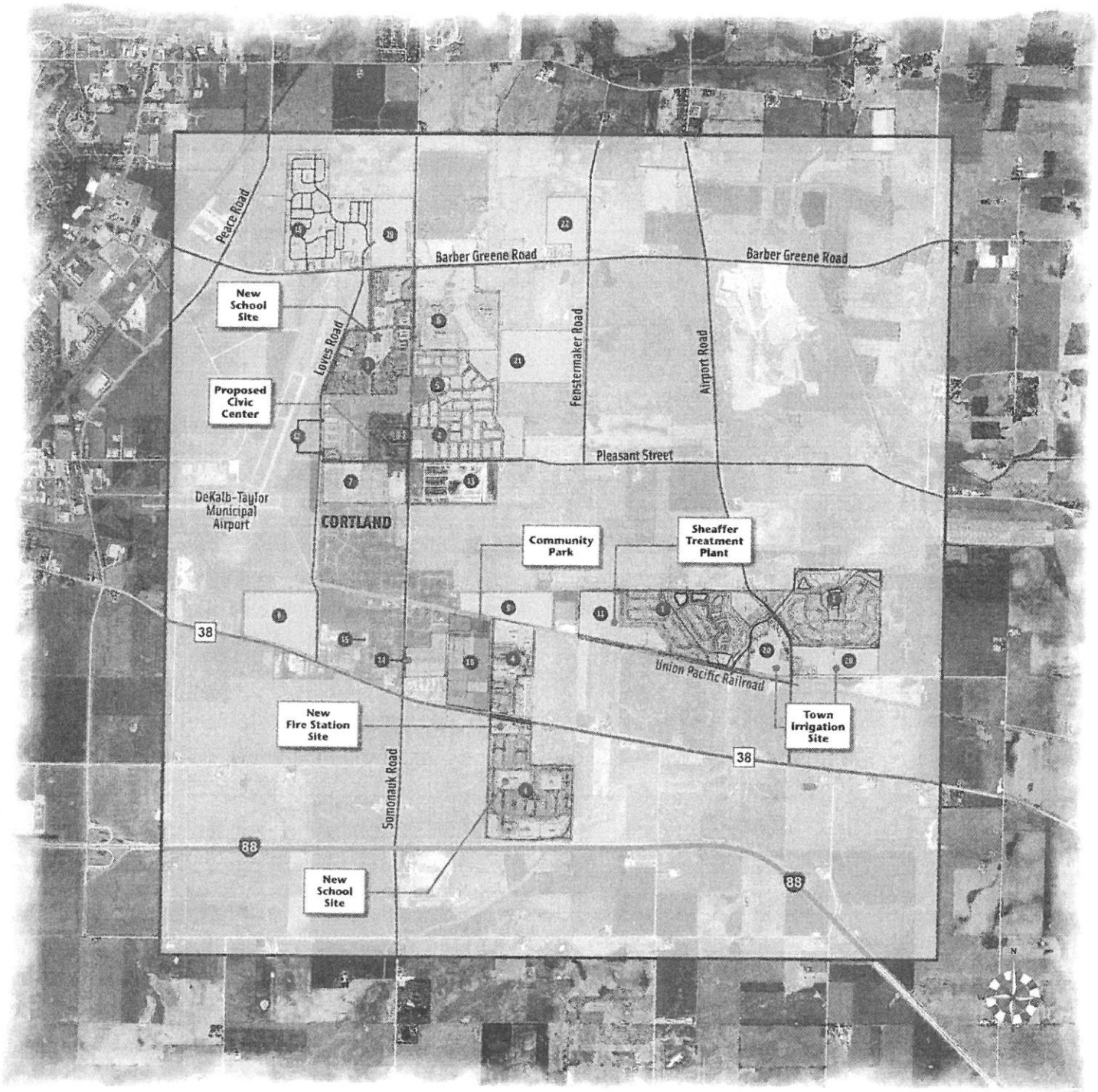
Adoption of the Comprehensive Plan is not the end of the planning process. Rather, it is the beginning of a long and continuous process of responding to the recommendations in the Plan as well as changing community needs and opportunities presented to the community. The purpose of this element is to identify specific actions the Town will need to accomplish in order to achieve the goals of the Cortland Comprehensive Plan.

The strategies for implementing the recommendations of the Cortland Comprehensive Plan can, at best, only be viewed as a set of directions or tasks. Additional study, analysis and community input will be required in order to implement recommendations related to many elements of the Comprehensive Plan, such as housing, economic development, and telecommunications infrastructure.

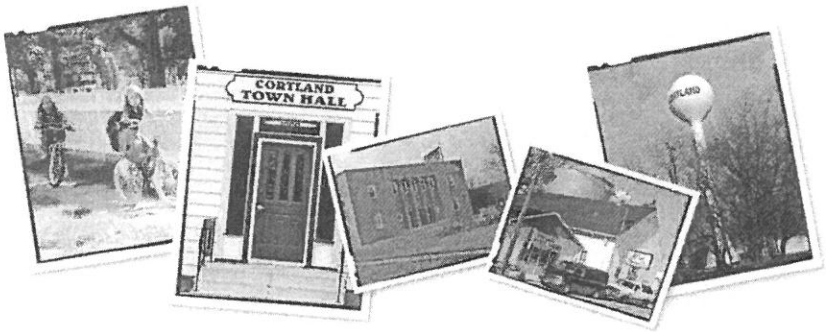
- **Establish a land use and boundary agreement with the City of DeKalb, and the Village of Maple Park.**
- **Adopt the Model Unified Development Ordinance (UDO), or amend the Town Zoning Ordinance and Subdivision Ordinance to match the community design principles in the Comprehensive Plan.**
- **Adopt and enforce property maintenance standards.**
- **Exhaust all means to remove the mobile home community at the gateway to the Town.**
- **Participate in regional economic development initiatives.**
- **Continue to monitor capacity of the Town water and wastewater systems.**
- **Prepare a New Downtown Master Plan for the new downtown.**
- **Prepare a revitalization plan for the current central business district.**
- **Support initiatives to extend commuter rail service to DeKalb and lobby for a station in Cortland.**
- **Develop a Thoroughfare Master Plan to identify strategic thoroughfare network improvements and funding sources and cost allocation.**
- **Develop a Water System Master Plan to identify key water system distribution improvements and the costs associated with the system.**
- **Develop a bike trial system to provide off-street trails to connect Cortland neighborhoods with various destinations and points of interest in Cortland and in adjacent communities.**
- **Incorporate best management practices into stormwater management regulations and land development regulations to reduce the amount of stormwater run-off and improve water quality.**

- **Initiate and maintain a dialogue with commuter rail transportation officials to include Cortland in future plans to bring commuter rail service to DeKalb County.**

Appendix



1. Anest
2. Amdur Addition
3. Nature's Crossing (Eagles Homes)
4. Olien – Perkins Addition
5. Schroeder Addition
6. Hartmann Addition
7. Cambridge Homes
8. Bohne Addition
9. Alds Addition
10. Schoenfeld Addition
11. Town Wastewater Facility
12. Coventry Townhomes (Grainger Construction)
13. Newport Lakes (Neumann Homes)
14. Robinson Farm (KLR LLC)
15. New Hope Park (Investforclosures, Inc.)
16. Cortland Estates
17. Heatherfield
18. Hudgins Property
19. Diehl Property
20. Herman Property
21. Fenstermaker Addition
22. Oakwest Development
23. Klemm-Bauer Addition



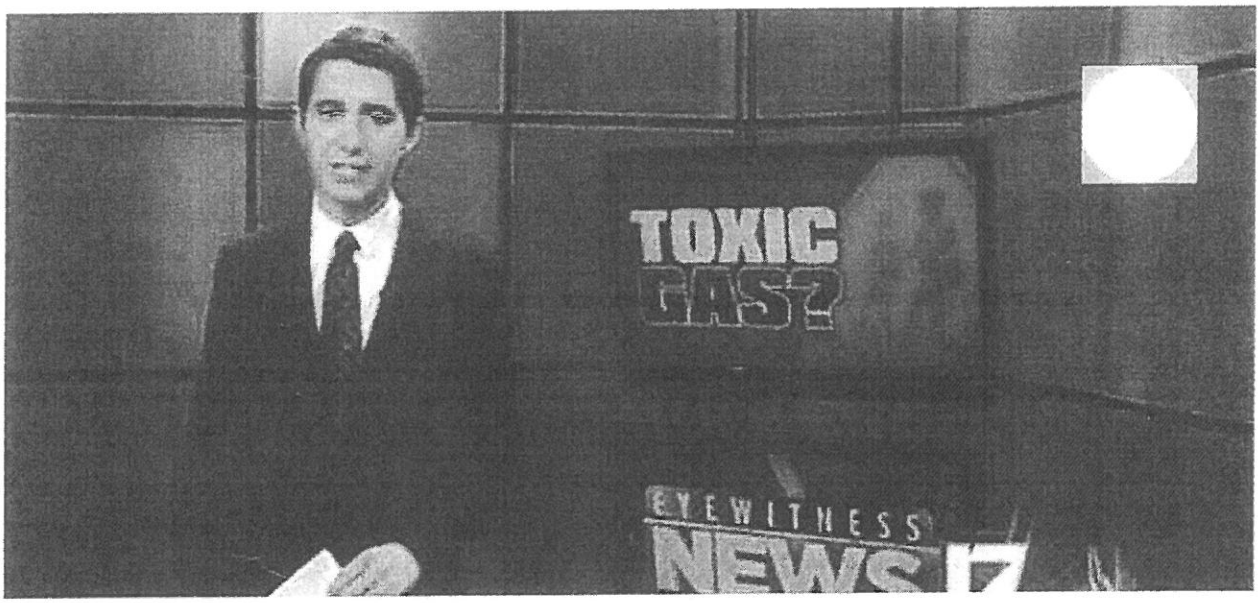
TOWN OF CORTLAND 1865

Town of Cortland • Current Development

Cortland, Illinois

UPDATE: Carbon Monoxide Found After Cortland School Evacuated

By: Christie Nicks



02:00 02:12 HD

Cortland, Illinois - UPDATE (01/16/14) -- The landfill that gassed out dozens of stateline elementary school children and staff says it'll pay up.

According to the DeKalb Daily Chronicle, Waste Management will cover the costs of the medical bills of the nearly 70 people hospitalized tuesday.

They were sickened after a strong odor from the landfill drifted to the school thanks to strong winds, and workers digging in year-old trash.

No one was seriously injured.

Our calls to Waste Management Thursday were not returned.

CORTLAND – Waste Management claims responsibility of high winds blowing gaseous odors from the local landfill to Cortland elementary school. But they say they are not responsible for the carbon monoxide detected in some of the patients. It was still breezy Wednesday afternoon at the DeKalb county landfill, but there was one noticeable difference: no nauseating odors. Lisa Disbrow is a spokesperson for the DeKalb Landfill. She says, "We are only completing this project during favorable conditions or when the school's not in session."

It was a different story Tuesday when several ambulances raced to Cortland elementary after dozens became sick. Waste Management says a third party company was digging through year old trash

Tuesday morning. That's when 40 mph wind gusts blew the newly exposed garbage smell towards Cortland Elementary. 71 students and faculty were taken to the hospital after inhaling the gas. Dr. Michael Kulisz is Kishwaukee Hospital's Chief Medical Officer and describes the scene: "The (patients') symptoms were pretty much the same: it was headaches and nausea."

DeKalb County Board member Mark Pietrowski Jr. is investigating what happened, "Some parents it's just a matter of what kind of assurances can we be given by local government and waste management that, you know, our kids are going to be safe."

Though they were all released on Tuesday, some of the patients' blood work came back with an unhealthy toxin in it. Kulisz says, "It ndicates an exposure of carbon monoxide."

Kulisz can't pinpoint if it was caused by the landfill. And waste management denies that they had anything to do with the elevated carbon monoxide levels. Disbrow explains, "Crews at the facility were actually wearing gas monitoring systems and the monitoring systems monitor for things like carbon monoxide. And those monitors did not go off."

The landfill is undergoing a controversial expansion and waste management says this incident won't affect that. The Illinois EPA is investigating.

Copyright 2017 Nexstar Broadcasting, Inc. All rights reserved. This material …

Cortland residents blame landfill for smell in complaints

By ANDREA AZZO - aazzo@shawmedia.com
Oct. 15, 2014

CORTLAND – A rotten-egg odor usually crawls up and burns Lisa Williams' nose when she is driving three of her children to Cortland Elementary School.

Sometimes she smells it again in the evenings, closer to 8 p.m. The odor can be so strong that Williams' 9-year-old son gets pounding headaches, while her asthmatic 8-year-old son increased his medication dosage this summer, Williams said.

Williams said the culprit can only be the DeKalb County landfill.

"It smells horrible, and we know the difference," she said. "That smell is very distinct."

Some Cortland residents have reported that the area near the landfill, 18370 Somonauk Road, Cortland, seems to smell worse since Waste Management began taking in more trash Aug. 1 in order to start the process sooner of saving money for the DeKalb County Jail expansion through a tipping fee. The county's landfill host community agreement with Waste Management allows an additional 500 tons of trash a day to be collected on top of its previous rate of about 300 tons a day.

Some residents have complained to the Illinois Environmental Protection Agency. Waste Management recently settled a lawsuit that the Illinois Attorney General's Office filed after about 60 students and staff at Cortland Elementary School were sickened Jan. 14 by a landfill odor when the odor infiltrated the school's ventilation system.

Illinois EPA Spokesperson Kim Biggs said her office has received nine complaints about the landfill since July. Locals may file a Citizen Pollution Complaint Form to alert authorities of the nature of the complaint and who complainants believe is responsible for an environmental pollution problem.

Although the complaints residents file through the Citizen Pollution Complaint Form identified the landfill as the source of the odor, there are other sources in the area that may be the cause of the odors, depending on the day and wind direction, Biggs said in an email.

The other sources odors could come from are a nearby wastewater treatment plant and cattle farm that are in the same vicinity as the landfill, Biggs said.

"Citizens are encouraged to notify our agency when excessive odors are noticed being emitted by the landfill or other sources," Biggs said in the email. "The agency will respond with inspection of the area and other necessary follow-up with potential sources."

In response to the Jan. 14 incident at Cortland Elementary, Waste Management is required to notify the Illinois EPA when excavation work is being conducted and must also postpone or stop working when the winds are out of the south, Biggs said.

Since Waste Management began accepting additional waste Aug. 1, landfill operations in managing trash disposal have not changed, Waste Management Spokesperson Lisa Disbrow said in an email. About 80 trucks carrying about 8 tons each of trash and other nonhazardous solid waste are received at the landfill every day. Crews working on expansion are on track to operate the landfill's first new cell in early 2015, Disbrow said.

"We continue to follow our odor control-operating plan, which includes monitoring the wind direction, speed and notification requirements for [trash] excavation activities," Disbrow said in the email.

Some parents have decided to pull their children out of District 428's Cortland Elementary and homeschooling them since the Jan. 14 incident. Cortland mother-of-four Katie Bryant teaches her three youngest sons – ages 9, 7 and 4 – while her oldest son attends DeKalb High School.

A total of about six or seven families pulled a total of 12 to 13 children out of Cortland Elementary after the Jan. 14 incident, Cortland principal Kimberly Lyle said.

Bryant has lived in her Cortland home for six years, and she said the odor is worse now than when she first moved from a Chicago suburb. When her 7-year-old son smells the odor outside, he immediately runs inside and closes all the windows to the home, Bryant said.

The smells hurt Bryant's nose and throat and makes her feel nauseous, she said.

"Nothing has changed," she said. "They're bringing in more garbage, and we're smelling it more and more."

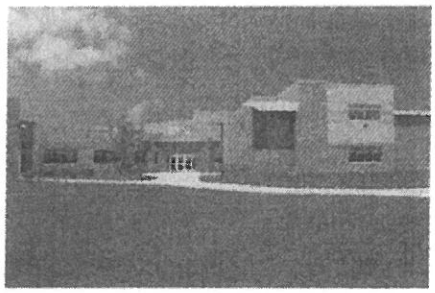
Copyright © 2017 Daily Chronicle. All rights reserved.

The Siting of Cortland Elementary School

By **Mac McIntyre** - January 21, 2013

Cortland Elementary School

How on earth did District 428 select a site that's less than 1/4 mile from a current landfill to build a then new Cortland Elementary School? Didn't they know about the mega-expansion plans proposed by Waste Management of Illinois?



Cortland Elementary School

Here's a "minutes-by-minutes" account of the siting of Cortland Elementary School. The following excerpts from public meeting minutes of the Town of Cortland Board of Trustees from November 13, 2007 through October 27, 2008 reveal a focused effort on the part of District 428 administrators to get the Town of Cortland's support for a $110 million referendum to build a new high school and a new elementary school. The minutes show a Town Board bargaining for the grade school to be built in Cortland as their condition to show that support.

The dates are linked to the actual minutes of the Cortland Town Board meetings. Rather than having to read through all the other topics of discussion contained in those minutes the relative excerpts can be viewed by clicking on the links below this post. Clearly from these

minutes there was no consideration given to potential hazards associated with landfills. In fact the landfill was never discussed in the dialogue between the Town of Cortland and District 428.

November 13, 2007 – Dist. 428 President Mike Verbic, Vice President Andy Small, and Asst Superintendent Andrea Gorla and Public Relations Director Russ Fletcher present plans for a two-phase construction referendum totalling $235 million and ask Cortland to join DeKalb and Malta in supporting the plan. To show support Cortland must raise its impact fees to match those of DeKalb and Malta. Trustee Chuck Lanning will only support the plan if the phase-one grade school is built in Cortland.

November 26, 2007 – Cortland Mayor Bob Seyller presents District 428's proposed agreement to build a new grade school in Cortland if the phase-one $110 million referendum is passed in the February 2008 election and if Cortland raises their impact fees. Dist. 428 President Mike Verbic informs the Town Board that if the agreement is not signed before December 3, 2007 the referendum will likely be reduced by $15 million and the grade school will not be built in Cortland. The agreement does not specify an exact location for the grade school. A motion to table the decision until December 10 was rescinded and a Special Meeting is quickly called.

November 29, 2007 – At a Special Meeting of the Cortland Town Board Mayor Bob Seyller and Trustees Stone, Siewierski, Suppeland, Milroy, McAllister and Lanning vote unanimously to approve the Intergovernmental Agreement with District 428 to increase their impact fees in exchange for a new elementary school if the referendum passed. Mike Verbic and then Superintendent Paul Beilfuss attend the meeting.

On **February 5, 2008** voters in DeKalb, Cortland and Malta approved a $110 million referendum by a 64% to 36% margin to build a new high school in DeKalb and a new elementary school in Cortland. In previous attempts that failed Cortland impact fees were thought to be a major factor in voter rejection of the referendums.

May 12, 2008 – During a public hearing on an annexation agreement with Montalbano Homes an amendment to add Exhibit "E" to add lot development standards for school land.

July 28, 2008 – A proposed intergovernmental agreement between the Town of Cortland and District 428 that provides for a new school to be built in the Chestnut Grove Subdivision

developed by Montalbano Homes is amended to call for construction to begin with three years. An agreement calling for increased development fees is tabled.

August 25, 2008 – A Special Use Permit is issued to District 428 to build a new school in the Chestnut Grove Subdivision in Cortland.

October 27, 2008 – The Town of Cortland provides District 428 President Mike Verbic and then Superintendent James Briscoe with a $239,679.82 from fees collected by the town from new development. The Intergovernmental Agreement called for Cortland to turn over those fees once the school district began construction of a school in Cortland.

How could the government entities in the know not apprise the school district of the landfill expansion plans?

Cortland Mayor Bob Seyller knew all about the landfill expansion plans. According to a **March 18, 2009 email** obtained through a FOIA request Seyller acknowledged he had attended most of the solid waste ad hoc committee meetings held in the four years prior. That committee discussed negotiations with Waste Management that resulted in the Host Fee Agreement for tipping fees to expand the landfill capacity to increase (daily) from 350 tons to 2,000 tons of garbage.

Attorney Derke Price explained to Cortland Town Board at an **April 13 2009 meeting** that a group of town citizens could appear at the siting application public hearing and show the differences in the contract that WMI had with Kendall County and what DeKalb County has agreed to because that contract is an embarrassment to the County and they will not like having it pointed out to them.

The County Board and administrators knew. County board members voiced disbelief that the school district would build a school on the current site so near the landfill. In response to a FOIA request for all email correspondence regarding the landfill expansion none were between the County and District 428.

As far back as **March 12 2005** then county board member Roger Steimel wrote a letter warning the public of DeKalb County becoming the garbage capital of Illinois. Steimel has steadfastly opposed the landfill application plans.

On **August 29, 2006** then county board member Steve Slack wondered how the County could ensure that the County is indeed the host in the even the Town of Cortland decided to annex the landfill. Then county administrator Ray Bockman told him the County couldn't block a municipal landfill.

According to **May 16, 2007 minutes** of the ad hoc solid waste committee then board member Vince Faivre thought that at 2,000 tons a day the committee was talking about a Mega Dump. He warned the community would not accept such a large expansion. At that meeting Waste Management's Lee Adelman asked the committee for direction on whether to go east and purchase property for an expansion or increase the height on the current site.

There were email exchanges between then county board member Riley Oncken and City of Sycamore elected officials regarding the landfill expansion. Oncken explained that as the county board representative for the 3rd district he had to make a difficult decision because his constituents were from both the Town of Cortland and part of Sycamore.

Sycamore alderman Pete Paulsen (2nd Ward) supported the expansion but he acknowledged Cortland residents probably wouldn't like it. Gregory Taylor (3rd) supported it, too, in part because Cortland never consulted with him before they approved all that explosive growth. Mayor Ken Mundy wondered if the expansion would be good for the county if it meant taking in garbage from outside of its borders. First ward alderman Alan Bauer wrote, "raise my taxes if you must but don't make the good people of Cortland live a sub-quality of life."

Cortland Mayor Bob Seyller replied to the Oncken email in bold letters: *Cortland Trustees, Please do not enter into an email dialog as it may become a violation of an open meetings act*. He then expressed his displeasure that the Host Fee Agreement left Cortland out

But there were no discussion of the potential repercussions of siting a new elementary school so near a leaking landfill slated for major expansion in those minutes or emails. On **March 11, 2010** Mike Verbic did address the county board with a public comment during the public hearing process to address his concerns after hearing some of the testimony presented.

> *Dear DeKalb County Board Members, I am writing on behalf of the Board of Education of Community Unit School District 428 regarding the proposed expansion of the DeKalb County landfill. We recently built the new Cortland Elementary School near the existing landfill. We were aware that the landfill would need to be expanded soon to accommodate the waste needs of DeKalb County. We were not aware of any consideration to grow the landfill to what is being proposed during the planning stages of our new school.*

Since completion of the school, our students, their families and staff have occasionally smelled the odors emitted from the landfill. Everyone thought that it was normal to notice the odors due to the proximity to the landfill. No one knew that the odor should have always been contained within the landfill site or many would have already complained.

According to a recent complaint filed with the Illinois Environmental Protection Agency dated December 16th, 2009, Violation Notice L-2009-01456, Clinton Landfill, Incorporated violated Section 9(a) of the Illinois Environmental Protection Act due to malodors being detected beyond the landfill boundary. Odors were detected over a mile north of the facility. The Clinton Landfill also violated 35 Ill. Adm. Code 811.311 (d) due to their landfill gas system having not been designed and operated to prevent malodors caused by the unit to be detected beyond the property boundary.

Both of these violations may be applicable in the case of our elementary school.

We are concerned regarding the health and safety of our students and staff at Cortland Elementary due to relevant data. Waste Management has indicated that the current site is leaking. According to the State of New York Department of Health, women living near solid waste landfills where gas is escaping have a four-fold increased chance of bladder cancer or leukemia. A 1990 study found in the American Journal of Epidemiology found an increased incidence of bladder cancers in northwestern Illinois where a landfill had contaminated a municipal water supply. An additional study found in the American Journal of Environmental Sciences titled "Toxicity Testing and the Effect of Landfill Leachate Regarding the Behavior of the Common Carp" observed behavioral changes for individual fish at different leachate concentrations. The observations included a decline in general activity, loss of balance, breathing difficulties, excessive mucosal secretion and gathering at the surface of the — for breathing. We urge you to conduct your own tests on the soils, water and air surrounding the existing site prior to your consideration for the expansion.

The landfill risks are only the beginning. We are also aware that truck traffic will significantly increase near Cortland Elementary. There is significant data for anyone to research on the internet which shows the direct correlation of carcinogens in the air and cancer cases.

Please consider the health and safety of those living or learning near your proposed expansion. We understand the financial gain potential for this expansion and the desperate need for these revenues in our county. We only ask that you do your due diligence in this matter by verifying the long-term safety of this proposal.

Best regards, Mike Verbic, President,
Board of Education District 428.

So how was the site location for Cortland Elementary School chosen? Short answer — with tunnel vision.

Mayor Seyller reply-all to Riley Oncken email

November 12, 2007 Cortland Town Board Meeting

November 26, 2007 Cortland Town Board Meeting

November 29, 2007 Cortland Town Board Meeting"

May 12, 2008 Cortland Town Board Meeting

July 28, 2008 Cortland Town Board Meeting

TABLE OF CONTENTS

Bystanders Report .....1 – 7

Exhibits

Written Statement of Joanna Livengood A-1

Citizen Scientists Tracking Chicago Air Quality by Michael Hawthorne, Chicago Tribune A-2

Two Killed in Crash Outside Waubonsee College by James Fuller, Daily Herald (4-15-10).....A-3

Illinois State Geological Survey Map showing potentially affected wells (11-15-17) B-1

Aerial Map of Harter/Route 47 Intersection before Middle School was built B-2

Map of Harter/Route 47 Intersection showing well locations before Middle School was constructed B-3

Land Use Opinion 2 by Kane-DuPage Soil and Water Conservation District C-1

Getting Up to Speed: Ground Water Contamination adapted from US EPA Seminar Publication, *Wellhead Protection: A Guide for Small Communities.* Chapter 3. EPA/625/R-93/002 .....C-2

AP Exclusive: 4 in 5 Illinois debris sites high in toxins by John O'Connor, Daily Herald (11-19-17) C-3

Illinois Wetlands by the Illinois Department of Natural Resources D-1

Ecological Compliance Assessment Tool (ECO CAT) Natural Resources Review Results.....D-2

Blanding's Turtle Facts by the Illinois Department of Natural Resources D-3

TABLE OF CONTENTS

Exhibits (continued)

Northern Long-Eared Bat Facts by the U.S. Fish & Wildlife Service D-4

Wilson's Phalarope Facts by Illinois Natural History Survey – University of Illinois D-5

Checklist of Illinois Endangered and Threatened Animals and Plants by the Illinois Endangered Species Protection Board D-6

Silica Sand Mining & Health by the Minnesota Department of Health (June, 2014) E-1

Silica Sand Mining & the Environment by the Minnesota Department of Health (June, 2014) E-2

Fast Facts on Frac Sand Mining: Silica Dust, Air Quality and Our Health by Midwest Environmental Advocates (4-7-14) E-3

Photos of Heartland Recycling's Aurora CCDD facility .....F-1 through F-10

Whipple v. Village of North Utica, 2017 IL App (3d) 150547 .....G-1

McComb v. State, 11 Ill. Ct. Cl. 580 (1941) G-2

Barton v. Chicago & N.W. Transportation Co., 325 Ill. App. 1005 (1st Dist. 2001) G-3

The Effect of State Regulations on Truck-Crash Fatalities, by Grant W. Neeley and Lilliard E. Richardson Jr. (8-9-08) H-1

TABLE OF CONTENTS

Exhibits (continued)

Draft Annexation Agreement between Heartland Recycling – Sugar Grove CCDD, LLC and the Village of Sugar Grove I-1

November 6, 2017 FOIA request documents J-1

November 15, 2017 FOIA request documents (not including documents produced) J-2

November 15, 2017 FOIA documents produced by the Village of Sugar Grove J-3

Freedom of Information Act excerpts (5 ILCS 140/1) J-4

Bystander's Report

For Heartland Recycling Rezoning, Special Use and Request for Annexation on Harter Road

November 29, 2017

Village of Sugar Grove Municipal Building, 10 S. Municipal Drive, Sugar Grove, IL 60554

Village Board, Plan Commission, and Village President Sean Michels I am Michael P. Coghlan, affiant, witness, and attorney representing objectors.

BYSTANDER'S REPORT

Illinois Supreme Court Rule 323 allows for the preparation of a report if "no verbatim transcript of the evidence of proceedings is obtainable". Under such circumstances, an "appellant may prepare a proposed report of proceedings from the best available sources, including recollection." Ill. Sup. Ct., R 323(c).

Joanna Livengood's statements issued in writing to the Village Board and Plan Commission laid out a wide array of concerns shared by local citizens and landowners. She stated:

> "Good evening. I'm Joanna Livengood and I live at 43W507 Old Oaks Rd in Sugar Grove. I live in a neighborhood that would be impacted by this proposed project, and I have a number of concerns that echo others remarks but I believe touch on some different aspects.
>
> **Location** - I wanted to learn more at Heartland Recycling, so I drove over to the Heartland Aurora facility last week to learn more about what it would be like to live near such a business. It was Tuesday, Nov. 7th around 3 pm. I drove south on Rt 25 and within ½ mile of the Heartland facility, the dust in the air became very noticeable -- conspicuously obvious. In all fairness, there appears to be another similar earthmoving-type facility just north of I-88 as well. Nevertheless, the dust continued along Rt. 25 through the I-88 underpass and on. I then turned east on Mettel Road, which was very dusty/dirty on the right side and covered with solid mud on the left side. The mud tracks went all the way from the exit of the Heartland Facility to Rt 25. I pulled into the facility entrance and saw huge mounds of dirt. Two large earth movers were working one pile and a dump truck was off to the right. The air was thick with dust and dirt. My husband and I then exited the facility and turned west toward Rt. 25. We were driving carefully down Mettel Road due to all the mud, because muddy roads can create significant driving hazards, just like ice. All of a sudden, a white pickup truck went speeding by us on the left (the dusty side) beeping his horn – on this 2-lane road (like Harter). This really startled me – and I realized I could have been in an accident just like that, due the muddy road and an impatient driver. We made it to Rt. 25 and turned left heading south. The natural vegetation hid the Heartland operations from view, but the dust followed us

for quite a way before the air cleared. Bottom line – this is an open air, very dusty/dirty, noisy business.

I also saw that the Heartland Recycling Aurora facility is located right next to I-88 and below grade from Interstate 88. It's in a predominately industrial area. The only housing is to the east a fair distance away. Frankly, if you are going to operate such a facility, this would be a good location. In contrast however, this proposal would site such a business right across the street from the Harter Middle School with 1100 students and next to existing homes and neighborhoods – which is the not the same -- and will create many problems for the Sugar Grove community.

Traffic safety is a big concern - Heartland's operating hours are 7 am to 4 pm – aligning with school hours – and it appears in the proposal that dump trucks hauling hours may run as late as 7 pm. Heartland will have 70-80 dump trucks entering and leaving the facility every day during operations – approximately every 10 minutes. Dirty and muddy roads are a fact of life for this business. Harter Road will become very muddy, which will create driving hazards year round on Harter road as you approach 47.

In addition, many of us remember the two Waubonsee students that were killed by a dump truck a few years ago as they turned left into the school. Putting a business with dump trucks at the same location with small children and harried parents trying to drop off and pick up their kids from school seems like a recipe for disaster.

Impacts to water is a big concern - Impacts to water, including people's wells and the local wetlands, is a big concern, and has been addressed by many local neighbors. Heartland intends to excavate sand and gravel to the depth of the water table and sell these materials. Mining and removal of native materials (like sand and gravel) is one thing, but replacing it with non-native material from uncertain origins, such as concrete and asphalt from roads and other construction, is quite another. This is almost a guarantee of leachates getting into the local water supply. Gravel and sand act as natural filters for water entering the aquifer. The fill material will contain contaminants, such as oil and grease, which will not be detected by volatile organic detectors used to wand trucks as described by Heartland's environmental engineer, and these contaminants will leach directly into the water. Heartland did not present any hydrology information nor have a hydrologist here tonight to discuss people's concerns. Heartland only talks about having monitoring wells around their site as required by IEPA, but monitoring wells do not protect our water, they just detect contamination after the fact and then it's too late. Heartland's proposal must absolutely be evaluated by an independent qualified hydrologist before being considered further.

Health impacts in the local vicinity due to generated air particulates is a concern – In addition, pulverizing concrete and other construction materials along with asphalt handling and dirt sieving creates a lot of suspended air particulates of all sizes. These air particulates will travel with the wind -- essentially creating a small biosphere of poor air quality every single working day for local neighbors.

which includes the school. For those that already suffer from asthma and other respiratory issues, this is a major health issue.

In addition, increased pollution from diesel dump truck traffic is also a concern. As was noted in a Chicago Tribune article last Sunday on monitoring pollution in the city, "Something as common as a CTA bus or city garbage truck passing by caused the amount of lung-damaging particulate matter in the air to temporarily jump off the charts." Dump trucks will be in and out 70-80 times a day -- where school children at Harter middle school will be exposed to such lung-damaging particulates many times a day.

Noise pollution is a concern – In terms of noise, the current environs are quiet, other than some road noise from Rt. 47. Noise from surface mining operations, construction material pulverization, earth movers, and dump truck traffic however will be very significant. Impacts from noise pollution are real. It's proven that unwanted noise creates psychological stress and can impact both people's behavior and health. Noise pollution can also have a detrimental effect on wildlife. Putting a mining excavation business by an existing school, houses, and known wetlands is not appropriate.

In addition, as a nearby neighbor, I was very disturbed by Mr. Savage's (Heartland's business owner/partner) statement to the Sugar Grove Board last week - saying that he had addressed school officials concerns about noise from the concrete pulverizing process by agreeing to not do this operation during the school year, but rather to conduct all concrete/ construction debris pulverizing during the 3 summer months. As a nearby neighbor, I was offended by this statement. The owner is clearly ok with subjecting the local community to significant noise and dust every working day all summer long -- exactly when people and children want to be outside enjoying themselves and want to have their windows open. So I want to go on the record that I find this proposal unacceptable.

Close - I know that Sugar Grove is interested in growing the village. However, putting a mining excavation, concrete crushing/ asphalt recycle facility across the street from a school and next to existing housing just doesn't make sense. Growth for growth's sake cannot be done at the sacrifice of the health and well-being of our children and local community. 1100 students attend Harter Middle School. Quality of life matters - including traffic safety, clean water and air, and freedom from noise pollution – it's one of the reasons why we live in Sugar Grove. Please do not take on the problems that this proposed project will present to the Village and local community for the next decade. I am confident that other development opportunities -- which are more appropriate for Sugar Grove will arise. Please hold out for a proposal that better fits this community, and vote no to this proposed project."

(*See* attached Exhibits A-1, A-2, and A-3).

In addition to Joanna Livengood's statements, the Village Board and Plan Commission have heard many citizens and land owners express their concerns and disapproval of Heartland's construction debris project.

On November 7th at 7:30pm the Village Board held a hearing and witnesses were allowed to present their testimony and concerns to the Board. John Savage spoke for Heartland Recycling and his statements were rebutted by multiple members of the community.

Bob Matthews, who was among the first to speak, described the potential of Heartland's proposed project to cause massive flood damage to both his and surrounding properties. The area surrounding the location of this proposed project is already inundated with water and floods regularly. Mr. Matthews also explained his concerns about possible contamination to his 160 feet well and the health hazards this could pose to him and his family, along with other persons using similarly situated wells. (*See* Exhibits B-1, B-2, and B-3). The project's goal to dump construction debris into an area already covered by water, regardless of whether it is done in compliance with the Illinois Environmental Protection Agency's standards, poses a threat to the health and safety of anyone who utilizes the local aquifer for their personal water supply. (*See* Exhibits C-1, C-2, and C-3).

Mike Paulus spoke next and explained his concerns about the wetland areas both surrounding and included in the subject properties Heartland wishes to mine gravel and dump construction debris into. The ecological effects of this project must be considered at this level by the Village Board and Plan Commission to ensure the protection of valuable ecological habitats and resources for a variety of local species. (*See* Exhibits D-1, D-2, D-3, D-4, D-5, and D-6). Local wildlife depends heavily on open spaces like the subject property and taking this from them without a plan in place would force local wildlife into our neighborhoods and communities. Mike also testified to the water tables and water run-off from the mining operation and construction debris dumping.

Mary Ann Rees spoke to the Board as well, stating the effects a sand a gravel mining operation would have on the air quality of the properties immediately adjacent to it. (*See* Exhibits E-1, E-2, and E-3). It was seen by the Board on November 7th and the Commission on November 15th that Mary uses an oxygen tank to supplement her breathing. Her concerns about the air quality included children living in the homes and residential areas surrounding the subject properties, as well as the children attending classes at the local middle school just across the street. Mary also described that her church owns land to the west of the subject properties and that plans are in place to construct a church and Sunday school on such land. She stated how Heartland's proposed construction debris project would disrupt the plans of her church and pose a respiratory risk to herself and anyone else nearby.

Lisa and James Leader spoke at the hearing before the board and testified to the respiratory health of their children and the local school children, as well as the increased flood hazards this would create for their home, located just North of the subject properties.

During the hearing other members of the community, including but not limited to Dave Blankenship and Dan Leuer, stepped forward to express similar concerns relating to noise, air contamination, water contamination, ecological effects, flooding, and effects on property values.

On November 15th, Heartland employees and representatives testified that the proposed project could increase truck traffic to 70 trucks per day, or approximately one truck per every five minutes during daytime hours, from April to November. Heartland testified as to machine crushing and the need to protect water wells from contamination. Heartland also testified that not all truck contents dumped on the site would be certified clean by the Illinois Environmental Protection Agency. Heartland acknowledged the possibility of contamination due to its operations on the site. Citizen witnesses also testified to deficiencies in the EPA inspection process. (*See* Exhibit C-3).

Tim Leuer testified under oath construction debris includes oil, gas, hydraulic fluid, rubber, and break pad dust, that will contaminate the water supply and create harmful airborne contaminants. Mr. Leuer testified that the risk of harm to school children and local residents is not justified by unnecessary additional funding to the schools.

Witnesses testified that the Heartland facility in Aurora could not be compared to the proposed Sugar Grove location, because the Sugar Grove schools and homes are much closer to the proposed construction debris operation. Homeowners, church members and school advocates opposed the Heartland annexation request, zoning, and mining operation.

Dave Blankenship testified the proposed construction debris project is just 200 feet from his home and would contaminate his household water supply. He also testified that flooding occurs now and would increase with the construction debris operation.

Lisa Leader testified that the values of adjacent properties would drop significantly due to the construction debris operation during the proposed 10-year period. She also testified that her children attend the nearby school and that she is very concerned about respiratory and permanent health problems which could result or become exacerbated by the construction debris project. Lisa and other witnesses testified that the depth of their wells was misrepresented by Heartland at the hearings and would be contaminated with toxic substances due to the construction debris operation.

Witnesses testified to deficient, defective, and misleading notifications of public hearings. Based on the experience of one objector with 30 years of experience in real-estate, the necessary environmental protection reports had not been completed or provided to the citizens. This real estate witness testified to a 30-foot slope and 50-foot pit on the subject property that would result in water contamination.

Objectors testified to the need for open space and preservation of wildlife.

Brandon Matthews of 4S916 Route 47 testified that his home is adjacent to the North boundary of the subject property and that his two-year-old well will be contaminated by the operation. He testified to the standing water problem which renders substantial portions of his property unfarmable. He invited Plan Commission members to his property so they could view the site of the proposed Heartland operation.

James Leader testified to photographs of the Heartland operation in Aurora, Illinois showing evidence of excessive and harmful airborne contaminants, noise, mud, and excessive truck traffic.

This evidence was shown in the photos and was presented to the Commission under oath. (*See* Exhibits F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, and F-10).

Mary Ann Rees testified that legal action may be taken by the residents and church members against Heartland for creating an unacceptable and hazardous condition. (*See* attached caselaw/Exhibits G-1, G-2, and G-3).

Witnesses testified that the additional truck traffic, combined with mud and other debris on top of the roadway would create driving hazards unless the Village votes against Heartlands proposals. (*See* Exhibit H-1).

A respiratory nurse named Lisa testified to the harmful and permanent impact of airborne contaminants to children due to a construction debris and concrete crushing operation. Lisa also testified that the additional 20,000 trucks per year would cause additional permanent respiratory problems to local children. She testified that such respiratory problems cannot be easily reversed and can result in brain damage from reduced oxygen intake. She testified that her children play in the parks nearby and that she often sees children playing sports in the properties nearby. She also stated that the operation would endanger Waubonsee Community College students in increased traffic risks and respiratory problems.

Heartland rebutted stating that they could move onto other projects due to the objections.

As the attorney for the citizens objecting to the proposed annexation and rezoning, I testified to the following.

1. That the partial annexation agreement available to the citizens was incomplete and therefore denied the citizens of due process and fair opportunity to respond to testimony, including surprise testimony for Heartland presented by two engineers. (*See* Exhibit I-1). Compounding the due process violations is the failure or refusal of Sugar Grove to provide an audio recording or transcript of the Heartland testimony. Heartland did not provide an advance copy or notice of the testimony of its two engineers. Employees and representatives of Heartland made many detailed representations verbally which were heard and considered by the Village Board and Plan Commission but were not subject to analysis by the citizens because of their failure or refusal to provide advance notice to the citizens. Further Sugar Grove did not facilitate the objector's PowerPoint presentations as promised.
2. The Village failed or refused to timely and fully respond to the citizens' Freedom of Information Act Request for information. (*See* Exhibits J-1, J-2, J-3, and J-4).
3. Heartland described meetings with public officials from the School District. As described by Heartland, the meetings were held in private and not subject to input from the public. The private meetings with the School District constituted a violation of due process for the citizens and blocked necessary information for school officials to make an informed decision to oppose the Heartland construction debris project. The School would have objected at the public hearing to protect the school children from respiratory illnesses and the increased danger of motor-vehicle collisions due to the increased truck traffic from the Heartland construction debris project.

4. Village staff communications to the Plan Commission and Village Board were not adequately provided to the citizens, thus depriving the citizens of due process and depriving the Trustees of the information needed to make an informed decision.
5. The Kane County Open Space issues from approximately 2004 create a strong precedent for open space rather than development at the intersection of Harter and Route 47.
6. Legal authority was provided regarding prospective nuisances and the public policy prohibiting the conscious disregard for a substantial and unjustifiable risk presented by the Heartland proposals.

There are already many traffic hazards at the intersection of Harter and Route 47. The attached article shows two killed in a crash outside of Waubonsee College. The driver of the car was entering the entrance to the school when his vehicle was struck from the side by a large truck. Ryan Sherrod and Brandon Utly both died in the crash. Based on the study conducted by the American Public Health Association, March 2009, when there is an increase in truck traffic, there is an increase in truck-related accidents and fatalities.

Witnesses testified that the Heartland plan would add approximately 20,000 trucks per year to traffic at the Harter and Route 47 intersection. Two educational facilities, one Middle School and one Community College are located in close proximity to the proposed project. Fatal truck crashes similar to the fatality shown in the attached article are more likely to occur unless the Village Board and Plan Commission vote no to the Heartland Annexation proposal and rezoning request.

Witnesses also testified that the Heartland concrete crushing operation would create excessive noise. Two schools, Waubonsee Community College and Kaneland Middle School are within close enough proximity to be disturbed by the noise caused by Heartland's concrete and rock crushing operation. Witnesses testified under oath that the additional truck traffic and dumping of construction debris will also create disruptive noise, which will not only upset local residents, but cause unnecessary distractions for students trying to learn in the classroom.

I certify the forgoing is true to the best of my knowledge:

Executed this 29th day of November, 2017.

Michael P Coghlan

Michael P. Coghlan

Sworn and subscribed before me this 29th day of November, 2017.

Christian Copple

Notary Public

CHRISTIAN M COPPLE
Official Seal
Notary Public – State of Illinois
My Commission Expires Apr 24, 2021

Remarks at the Sugar Grove Plan Commission Hearing

for Heartland Recycling Rezoning and Special Use

November 15, 2017

Village of Sugar Grove Municipal Building, 10 S. Municipal Drive, Sugar Grove, IL 60554

Joanna Livengood, 43W507 Old Oaks Rd, Sugar Grove

Good evening. I'm Joanna Livengood and I live at 43W507 Old Oaks Rd in Sugar Grove. I live in a neighborhood that would be impacted by this proposed project, and I have a number of concerns that echo others remarks but I believe touch on some different aspects.

Location -

I wanted to learn more at Heartland Recycling, so I drove over to the Heartland Aurora facility last week to learn more about what it would be like to live near such a business. It was Tuesday, Nov. 7th around 3 pm. I drove south on Rt 25 and within ½ mile of the Heartland facility, the dust in the air became very noticeable -- conspicuously obvious. In all fairness, there appears to be another similar earthmoving-type facility just north of I-88 as well. Nevertheless, the dust continued along Rt. 25 through the I-88 underpass and on. I then turned east on Mettel Road, which was very dusty/dirty on the right side and covered with solid mud on the left side. The mud tracks went all the way from the exit of the Heartland Facility to Rt 25. I pulled into the facility entrance and saw huge mounds of dirt. Two large earth movers were working one pile and a dump truck was off to the right. The air was thick with dust and dirt. My husband and I then exited the facility and turned west toward Rt. 25. We were driving carefully down Mettel Road due to all the mud, because muddy roads can create significant driving hazards, just like ice. All of a sudden, a white pickup truck went speeding by us on the left (the dusty side) beeping his horn – on this 2-lane road (like Harter). This really startled me – and I realized I could have been in an accident just like that, due the muddy road and an impatient driver. We made it to Rt. 25 and turned left heading south. The natural vegetation hid the Heartland operations from view, but the dust followed us for quite a way before the air cleared. Bottom line – this is an open air, very dusty/dirty, noisy business.

I also saw that the Heartland Recycling Aurora facility is located right next to I-88 and below grade from Interstate 88. It's in a predominately industrial area. The only housing is to the east a fair distance away. Frankly, if you are going to operate such a facility, this would be a good location. In contrast however, this proposal would site such a business right across the street from the Harter Middle School with 1100 students and next to existing homes and neighborhoods – which is the not the same -- and will create many problems for the Sugar Grove community.

EXHIBIT A-1

Traffic safety is a big concern - Heartland's operating hours are 7 am to 4 pm – aligning with school hours – and it appears in the proposal that dump trucks hauling hours may run as late as 7 pm. Heartland will have 70-80 dump trucks entering and leaving the facility every day during operations – approximately every 10 minutes. Dirty and muddy roads are a fact of life for this business. Harter Road will become very muddy, which will create driving hazards year round on Harter road as you approach 47.

In addition, many of us remember the two Waubonsee students that were killed by a dump truck a few years ago as they turned left into the school. Putting a business with dump trucks at the same location with small children and harried parents trying to drop off and pick up their kids from school seems like a recipe for disaster.

Impacts to water is a big concern - Impacts to water, including people's wells and the local wetlands, is a big concern, and has been addressed by many local neighbors. Heartland intends to excavate sand and gravel to the depth of the water table and sell these materials. Mining and removal of native materials (like sand and gravel) is one thing, but replacing it with non-native material from uncertain origins, such as concrete and asphalt from roads and other construction, is quite another. This is almost a guarantee of leachates getting into the local water supply. Gravel and sand act as natural filters for water entering the aquifer. The fill material will contain contaminants, such as oil and grease, which will not be detected by volatile organic detectors used to wand trucks as described by Heartland's environmental engineer, and these contaminants will leach directly into the water. Heartland did not present any hydrology information nor have a hydrologist here tonight to discuss people's concerns. Heartland only talks about having monitoring wells around their site as required by IEPA, but monitoring wells do not protect our water, they just detect contamination after the fact and then it's too late. Heartland's proposal must absolutely be evaluated by an independent qualified hydrologist before being considered further.

Health impacts in the local vicinity due to generated air particulates is a concern –

In addition, pulverizing concrete and other construction materials along with asphalt handling and dirt sieving creates a lot of suspended air particulates of all sizes. These air particulates will travel with the wind -- essentially creating a small biosphere of poor air quality every single working day for local neighbors, which includes the school. For those that already suffer from asthma and other respiratory issues, this is a major health issue.

In addition, increased pollution from diesel dump truck traffic is also a concern. As was noted in a Chicago Tribune article last Sunday on monitoring pollution in the city, "Something as common as a CTA bus or city garbage truck passing by caused the amount of lung-damaging particulate matter in the air to temporarily jump off the charts." [1] Dump trucks will be in and out 70-80 times a day – where school children at Harter middle school will be exposed to such lung-damaging particulates many times a day.

Noise pollution is a concern – In terms of noise, the current environs are quiet, other than some road noise from Rt. 47. Noise from surface mining operations, construction material pulverization, earth movers, and dump truck traffic however will be very significant. Impacts from noise pollution are real. It's proven that unwanted noise creates psychological stress and can impact both people's behavior and health. Noise pollution can also have a detrimental effect on wildlife. Putting a mining excavation business by an existing school, houses, and known wetlands is not appropriate.

In addition, as a nearby neighbor, I was very disturbed by Mr. Savage's (Heartland's business owner/partner) statement to the Sugar Grove Board last week - saying that he had addressed school officials concerns about noise from the concrete pulverizing process by agreeing to not do this operation during the school year, but rather to conduct all concrete/ construction debris pulverizing during the 3 summer months. As a nearby neighbor, I was offended by this statement. The owner is clearly ok with subjecting the local community to significant noise and dust every working day all summer long -- exactly when people and children want be be outside enjoying themselves and want to have their windows open. So I want to go on the record that I find this proposal unacceptable.

Close -

I know that Sugar Grove is interested in growing the village. However, putting a mining excavation, concrete crushing/ asphalt recycle facility across the street from a school and next to existing housing just doesn't make sense. Growth for growth's sake cannot be done at the sacrifice of the health and well-being of our children and local community. 1100 students attend Harter Middle School. Quality of life matters - including traffic safety, clean water and air, and freedom from noise pollution – it's one of the reasons why we live in Sugar Grove. Please do not take on the problems that this proposed project will present to the Village and local community for the next decade. I am confident that other development opportunities – which are more appropriate for Sugar Grove will arise. Please hold out for a proposal that better fits this community, and vote no to this proposed project.

---

[1] Hawthorne, Michael, "Citizen Scientists Tracking Chicago Air Quality", Chicago Tribune (print), 12 Nov. 2017, section 1, pp. 1,14.

Citizen scientists tracking Chicago air quality

Volunteers using new tech to help monitor pollution

Melissa Ruby wears portable air quality monitors on her walking route in the South Loop in October. (Brian Cassella/Tribune)

By Michael Hawthorne Chicago Tribune

EXHIBIT A-2

With an array of palm-sized devices strapped across her chest and connected wirelessly to her smartphone, Gail Merritt discovered the air in the South Loop might be a lot dirtier than expected.

Merritt and her group of volunteer pollution hunters had assumed the low-cost sensors they carried during daily walks would confirm their fast-growing neighborhood had relatively decent air quality, at least when compared with the gritty industrial corridors in other parts of Chicago.

Color-coded graphs that popped up on Merritt's screen during an unseasonably warm October afternoon told a more complicated story. Something as common as a CTA bus or city garbage truck passing by caused the amount of lung-damaging particulate matter in the air to temporarily jump off the charts.

Just as concerning were spikes of pollution that turned up when the group reviewed data from a different air monitor stationed for three weeks in Dearborn Park, a quiet, tree-lined square framed by high-rise condominiums.

The volunteers now are eagerly awaiting a review of their handiwork by scientists who oversaw air monitoring in the South Loop and three other Chicago neighborhoods during the past six months. Funded by the U.S. Environmental Protection Agency, the project is part of a broader nationwide effort to use rapidly developing technology to give people easy-to-access information about pollution they breathe during their daily routines.

"We came into this thinking we would be a control group they could use to compare to other neighborhoods with environmental justice issues," said Merritt, a management consultant who leads the Alliance for a Greener South Loop. "Given all of the vehicle and train traffic around us, it looks like we have our own pollution problems."

Breathing even small amounts of particulate matter, commonly known as soot, can inflame the lungs and trigger asthma attacks. Long-term exposure can cause heart disease, increase the risk of developing cancer and shave years off a person's life.

Unlike the thick clouds of pollution that choked cities during the past century, the soot particles that concern public health researchers today are so small that thousands could fit on the period at the end of this sentence.

Because the amount of vehicle exhaust and factory pollution can vary widely within neighborhoods and at during different times of day, the new wave of portable and stationary sensors can find pockets of dirty air that go unnoticed by authorities.

Intrigued by the potential of using personal technology to track the invisible-but-deadly pollution, the EPA began awarding scientific grants during the Obama administration to determine if relatively inexpensive sensors developed by tech startups and hobbyists could supplement a network of official monitors.

Regulators already measure soot at 17 sites in the Chicago area, and other monitors collect snapshots of data on smog, heavy metals and volatile chemicals to assess air quality across the region. But the bulky, expensive equipment isn't mobile and the testing is designed to give a glimpse of the entire region, not identify hot spots. The closest soot monitor to the South Loop is more than 5 miles away.

Nobody thinks the new technology is reliable enough yet to be used in court or a regulatory proceeding. Rather, researchers and career staff at the EPA see it as a tool for citizens to conduct their own experiments and draw attention to pollution problems that otherwise might not be addressed, especially as President Donald Trump pushes to dramatically cut funding for federal and state environmental programs.

In addition to Merritt's group, activists from Altgeld Gardens, Little Village and the East Side neighborhood are testing the reliability and ease of use of a half-dozen sensors, including devices small enough to fit on the straps of a backpack, one that looks like a throwback from the original "Star Trek" TV series and another the size of a 16-inch softball.

Meanwhile, Serap Erdal, a University of Illinois at Chicago researcher who advises the groups, is testing all the devices next to an EPA monitor in Northbrook to determine how close the readings are to the regulatory gold standard.

Before fanning out again to see if the low-cost devices can endure a Chicago winter, some of the volunteers gathered last month at the nonprofit Delta Institute to share what worked and what didn't during their summer and fall testing runs.

They reported the instructions and software for some of the devices were too confusing. One had a sensitive power button that would cause users to inadvertently turn the

devices off. Another was knocked offline by a spider web.

"Doing good, low-cost sensor work is deceptively challenging," said Scott Fruin, a University of Southern California researcher who studies air pollution but isn't involved in the Chicago project. "Many of the sensors are not up to the task."

Some of the volunteers chafed at filling out paperwork vital to helping their scientific advisers determine if spikes of pollution detected during their testing runs are meaningful or were merely the result of a sensor malfunction. Yet organizers said people of all ages are excited to keep going, driven by the idea they could someday figure out themselves if their suspicions about neighborhood air quality are valid.

Community leaders say the technology also gives them new opportunities to expand their networks and engage with neighbors reluctant to get involved.

"It really seems like we're entering a new renaissance in the environmental movement," said Sammy Corona, a volunteer with the Southeast Environmental Task Force who excitedly told the Delta Institute group about a recent conference that highlighted an elaborate network of air monitors in Southern California.

"When I got back," Corona said, "I realized we are still in the Dark Ages in Chicago."

The neighborhood experiments are just one example of how the nation's third-largest city is catching up.

Researchers at the Urban Center for Computation and Data, an initiative by the University of Chicago and Argonne National Laboratory, have developed equipment that is being posted on light poles around the city to provide granular details about air quality, traffic, sound volume and temperature.

After working out glitches with the electronics and redesigning protective enclosures for the devices, dubbed the Array of Things, the scientists are planning to have 500 monitors up and running by the end of next year.

Charlie Catlett, a data scientist who directs the project, said the goal is to provide researchers and the public with new kinds of data that can be used to improve quality of

life. The latest version of the monitors is designed to make it easier to add new technology as the field improves and expands.

Catlett's project echoes a long-running study by the New York City Department of Health. Former Mayor Michael Bloomberg's administration relied on borough-by-borough maps of data from pole-mounted sensors in an effort to stop landlords from using sooty fuel oil to heat apartment buildings and switch to cleaner-burning natural gas.

In 2010, the Tribune used a hand-held sensor to test air quality on Metra commuter trains and inside stations that more than a quarter of a million people pass through every weekday. The newspaper found spikes of noxious diesel soot inside passenger cars after the doors closed on outbound trains and locomotive exhaust was sucked into ventilation systems.

Metra responded by installing more effective filters that improved air quality inside the cars. But commuters still routinely complain about hazy clouds of diesel pollution inside Union Station and Ogilvie Transportation Center.

Another early adopter of personal air testing devices is the Environmental Law and Policy Center, a Chicago-based nonprofit that loaned sensors to students, neighborhood groups and others between May and October to measure soot in 35 of the city's 77 community areas.

The testing found high levels of soot along major thoroughfares and at clogged intersections throughout the city. Howard Learner, the group's executive director, said as more data is accumulated, it can nudge city officials and citizens to make changes.

For instance, CTA bus drivers could stop idling at busy transit stations or transportation engineers could tweak traffic signals to reduce backups when pollution hot spots are detected. People could rely on the maps to avoid dirty air while commuting or walking around the city.

"We already have reasonably verifiable data that can be collected by people engaged in their communities, and the equipment is only going to get better," said Learner, who co-chaired an EPA task force that last year urged the agency to boost its support for citizen

science. "By identifying problems in ways that weren't possible before, it opens up new opportunities for solutions."

mhawthorne@chicagotribune.com

Twitter @scribeguy

PREVIOUS ARTICLE Article 3 of 199 NEXT ARTICLE

Daily Herald

Kane County posted: 4/15/2010 12:01 AM

Two killed in crash outside Waubonsee college

Two people were killed in an accident on Route 47 near the entrance to Waubonsee Community College in Sugar Grove on Wednesday.
Laura Stoecker | Staff Photographer

James Fuller

From sports to medieval re-enactments, Ryan Sherrod had a wide array of interests and a wide array of friends who knew they could count on him, family members say.

"He was the kind of kid you need a hand he'd give it to you," his father Jim Sherrod said Wednesday night. "If you were a friend you were a close friend."

ADVERTISING

EXHIBIT
Blumberg No. 6208
A-3

The 18-year-old from North Aurora was on his way to a gaming club at Waubonsee Community College Wednesday afternoon when he and his best friend, Brandon Utley, 19, of North Aurora, died in a two-car crash.

Sherrod was driving a 2002 Chrysler south on Route 47 and began to turn into the north entrance of the school when they were struck on the passenger's side by a garbage truck about 1:50 p.m., according to Kane County sheriff's Lt. Pat Gengler. The Mack garbage truck owned by Allied Waste Services in Aurora was heading north on Route 47 and was unable to stop. There are no traffic control devices at the intersection.

Utley, the passenger of the Chrysler, was confirmed dead at the scene. Sherrod was pronounced dead at Provena Mercy Medical Center in Aurora, Gengler said.

Sherrod had just started taking automotive classes at Waubonsee, according to his father, and was excited about being in a gaming club at the school. Jim Sherrod said his son loved any kind of game - video games, board games and sports. He played soccer for three years at West Aurora High School, where he graduated in 2009, and also enjoyed baseball and football.

The teen took after his father, picking up a hobby of doing medieval reenactments in his spare time. As an 18-year-old, he had just been authorized to battle against adults.

"He enjoyed what life he had," Jim Sherrod said. "We're sad it went so early."

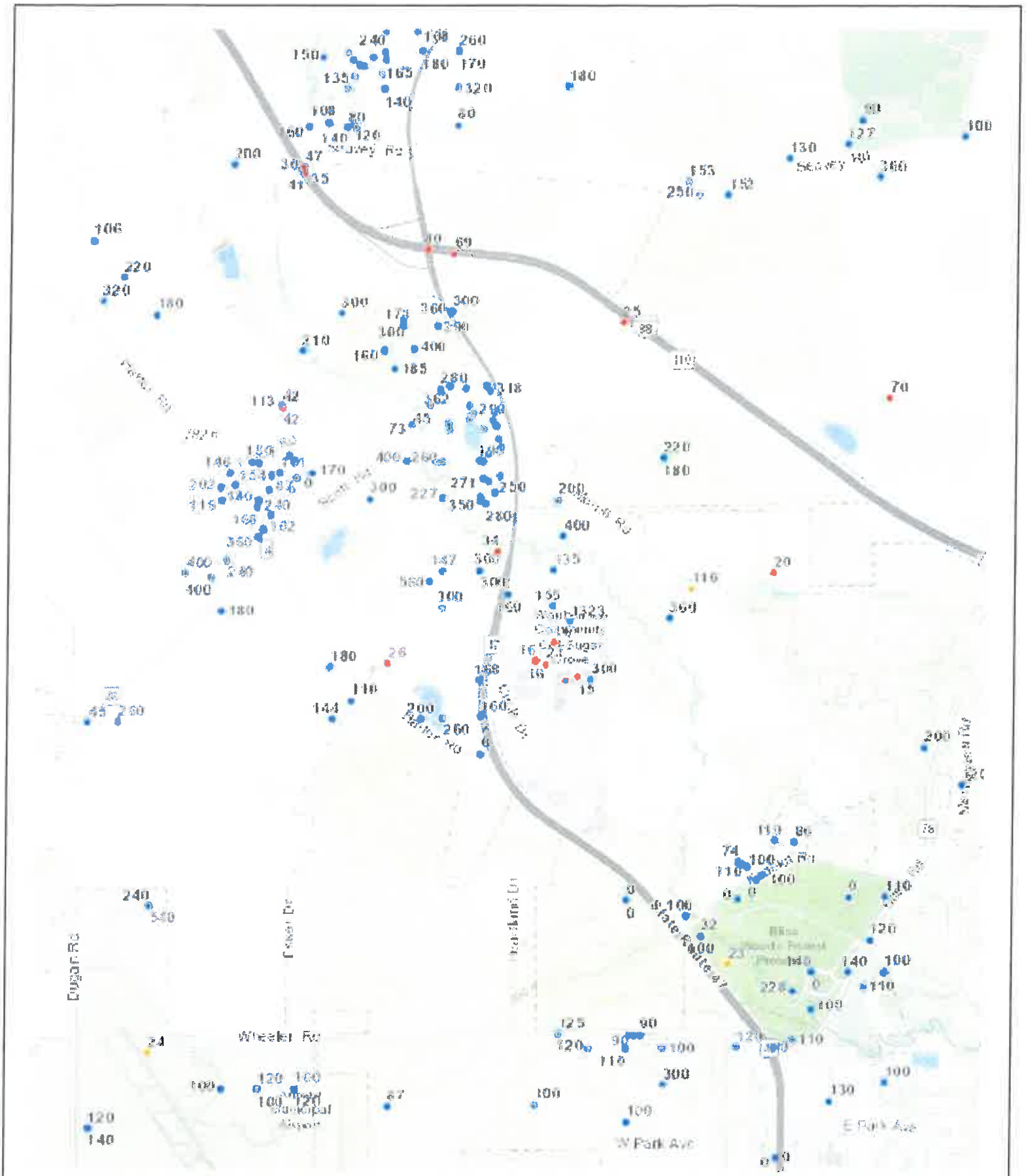
Sherrod was also known for helping others whether at a local food pantry, working at his grandmother's house or mowing neighbors' lawns.

Brandon Utley was one of those who could count on Sherrod and vice versa. The two grew up in the same neighborhood and were best friends, according to Jim Sherrod.

"Brandon was a good kid and liked games a lot too," Jim Sherrod said.

Police are continuing to investigate Wednesday's crash and have not issued any citations. Route 47 reopened at 5:50 p.m. Wednesday.

The driver of the garbage truck, William Gronka, 32, of Plainfield, was taken to Provena Mercy Medical Center with non-life-threatening injuries following the crash.

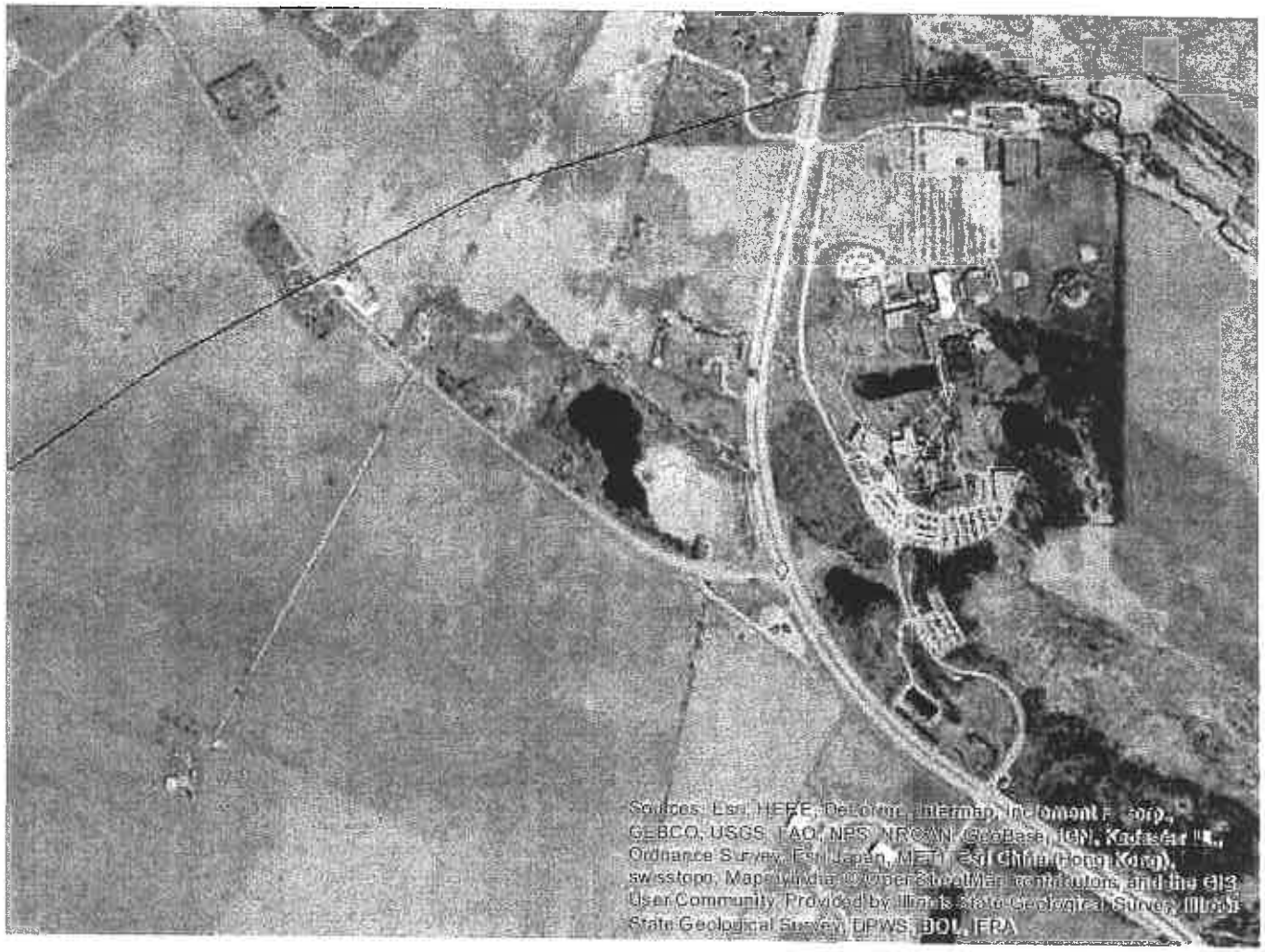


ILLINOIS STATE GEOLOGICAL SURVEY
PRAIRIE RESEARCH INSTITUTE

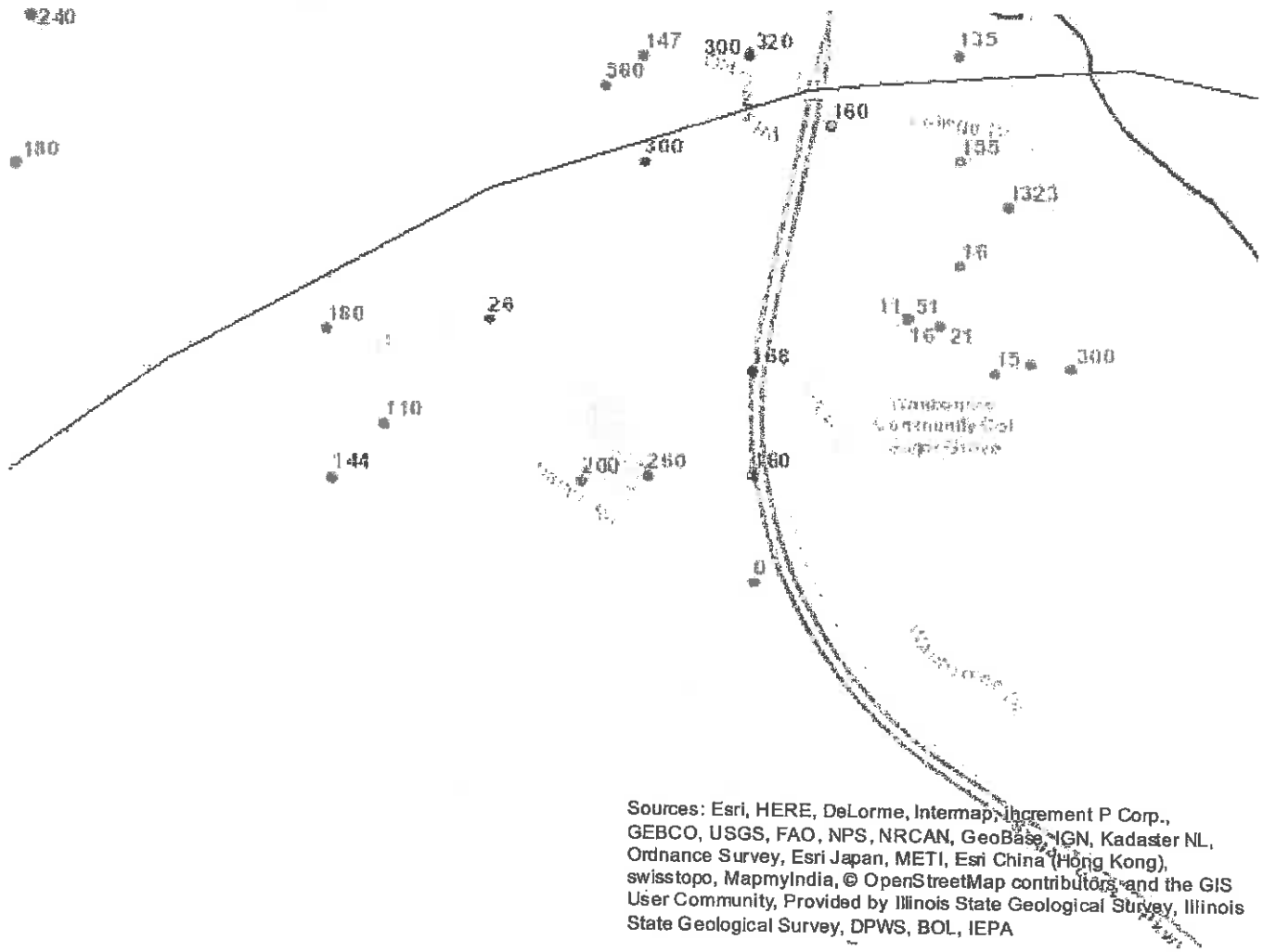
Affected Wells

Date: Nov 15, 2017

EXHIBIT
B-1



Blumberg No. 5208
EXHIBIT
B-2



Sources: Esri, HERE, DeLorme, Intermap, Increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Provided by Illinois State Geological Survey, Illinois State Geological Survey, DPWS, BOL, IEPA

Blumberg No. 6206

EXHIBIT

B-3

TABLE OF CONTENTS

PURPOSE AND INTENT 1
LAND COVER OF THE EARLY 1800'S 2
GREEN INFRASTRUCTURE PLAN 3
NWI WETLANDS 4
ADID WETLANDS 5
FLOODPLAIN 6
STREAMS AND WATERSHED MANAGEMENT 7
REGULATION INFORMATION 8
AQUIFER SENSITIVITY 9
TOPOGRAPHY AND DRAINAGE 10
STORMWATER 12
SOIL EROSION 12
BUILDING LIMITATIONS 14
HYDRIC SOILS 15
LESA PRIME FARMLAND 16
SOIL REPORT 18
CONTACT LIST 23

TABLE OF FIGURES

FIGURE 1: LAND COVER OF THE EARLY 1800'S 2
FIGURE 2: GREEN INFRASTRUCTURE MAP 3
FIGURE 3: NWI WETLANDS 4
FIGURE 4: ADID WETLANDS 5
FIGURE 5: FLOODPLAIN MAP 6
FIGURE 6: AQUIFER SENSITIVITY 9
FIGURE 7: MUNICIPALITIES 2FT CONTOURS 10
FIGURE 8: USGS TOPOGRAPHIC MAP 11
FIGURE 9: BUILDING LIMITATIONS 13
FIGURE 10: HYDRIC SOILS 14

PURPOSE AND INTENT

This report presents natural resource information to officials of the local governing body and other decision makers. Decisions concerning variations, amendments or relief of local zoning ordinance may reference this report. Also, decisions concerning the future of a proposed subdivision of vacant or agricultural lands, and the subsequent development of these lands because of these decisions may reference this report. This report is a requirement under the Soil and Water Conservation District Act contained in ILCS 70, 405/1 ET seq.

This report intends to present the most current natural resource information available in an understandable format. It contains a description of the present conditions and resources available and their potential impact on each other. This information comes from standardized data, on-site investigations and other information furnished by the petitioner.

Please read the entire report to coordinate and interrelate all natural resource factors considered. This report, when used properly, will provide the basis for good land use change decisions and proper development while protecting the natural resource base of the county.

The conclusion of this report in no way indicates the impossibility of a certain land use. However, it should alert the reader to possible problems that may occur if the capabilities of the land are ignored. Please direct technical questions about data supplied in this report to:

Kane-DuPage
Soil and Water Conservation District
2315 Dean Street, Suite 100
St. Charles, IL 60175

EXHIBIT
C-1
Blumberg No. 6208

LAND COVER IN THE EARLY 1800'S

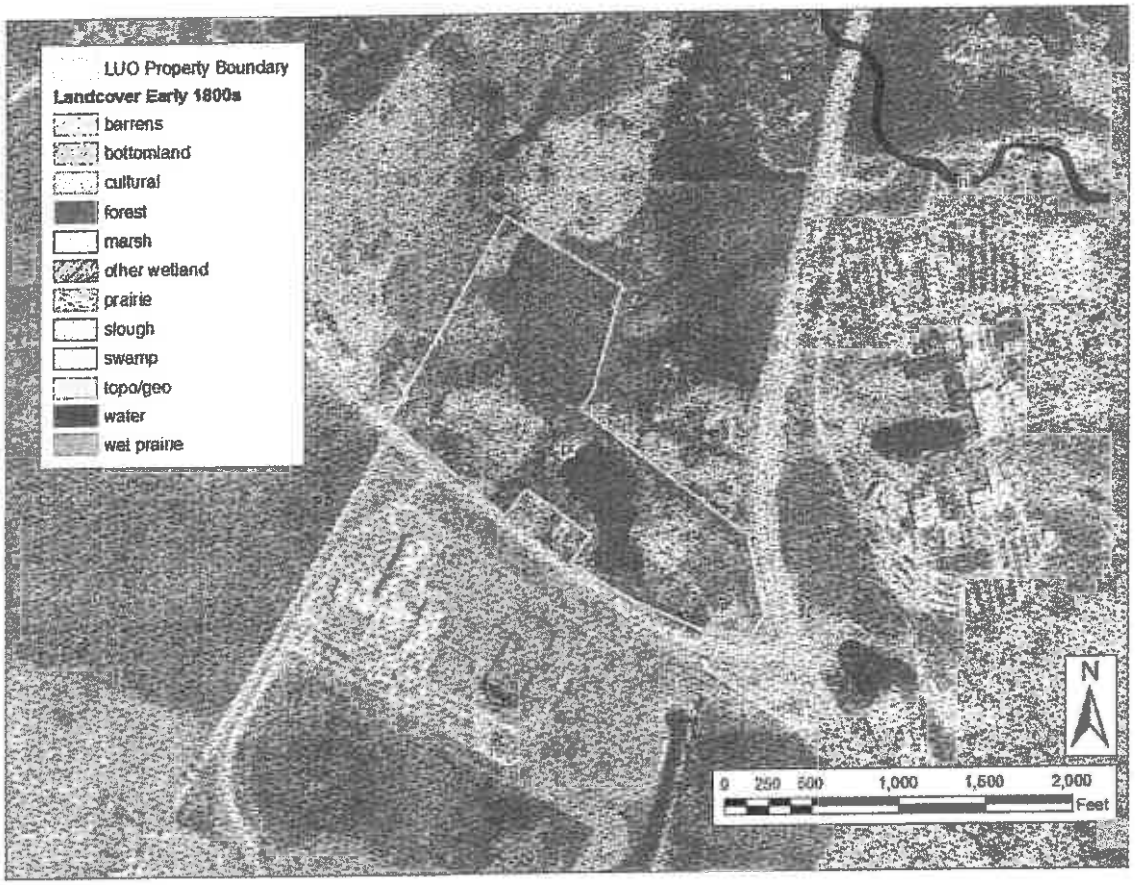


Figure 1: Land Cover in the Early 1800's

Illinois Department of Natural Resources, Illinois Natural History Survey, Land Cover of Illinois in the Early 1800s., Vector Digital Data, Version 6.0, August, 2003.

These surveys represent one of the earliest detailed maps for Illinois. The surveys began in 1804 and were largely completed by 1843. They predate our county land ownership maps and atlases. These plat maps and field notebooks contain a wealth of information about what the landscape was like before the flood of settlers came into the state.

The vast majority of the landscape of Illinois in the early 1800's consisted of two different natural resource areas. These two areas were prairie and forest. Prairie and woodland ecosystems are extremely valuable resources for many reasons. These areas:

- provide wildlife habitat and support biodiversity
- provide areas for recreational opportunities
- improve soil health and reduce soil loss
- improve air and water quality

Other designations include, cultural (or agricultural area), marsh, wet prairie, wetland, barrens and water. Please note that these designations are based on surveys taken in the early 1800's, and may not represent exact site conditions.

This site is located in an area surveyed as prairie on the land cover in the early 1800's map. The District recommends preserving as much as of the natural character of the site as possible during this land use change. It is also recommended that native plants be utilized for landscaping whenever possible. Removal of invasive species is also encouraged.

GREEN INFRASTRUCTURE

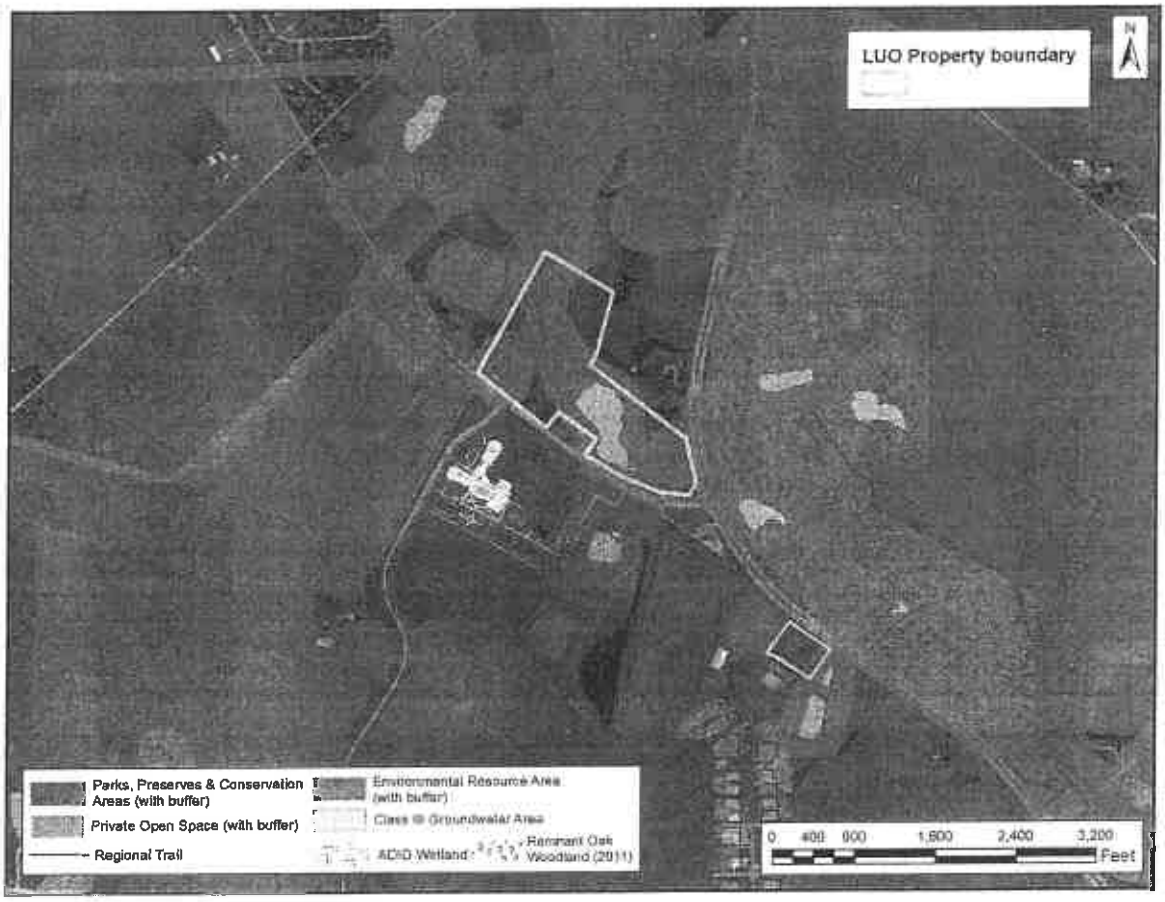


Figure 2: Kane County Green Infrastructure Plan

County of Kane. "Kane County 2040 Green Infrastructure Plan". Adopted December 10, 2013.

From the Kane County Green Infrastructure Plan, "Green infrastructure is an interconnected system of natural areas and open spaces including woodlands, wetlands, trails and parks, which are protected and managed for the ecological values and functions they provide to people and wildlife. The Kane County 2040 Green Infrastructure Plan includes analysis of existing natural resources in the County and recommendations for green infrastructure priorities and approaches. The ultimate goal of the Kane County 2040 Green infrastructure Plan is to lay the groundwork for green infrastructure planning and projects at the regional, community, neighborhood and site levels."

The benefits of green infrastructure include:

- Preservation of habitat and biodiversity
- Water and soil conservation
- Flood storage and protection
- Improved public health
- Encourage local food production
- Economic benefits
- Mitigation and adaptation for climate change

This site includes the following priority areas as designated on the Kane County 2040 Green Infrastructure Plan: Water, Wetlands, Remnant Oak Woodlands, Environmental Resource Area, Class III Groundwater Area.

NWI WETLANDS

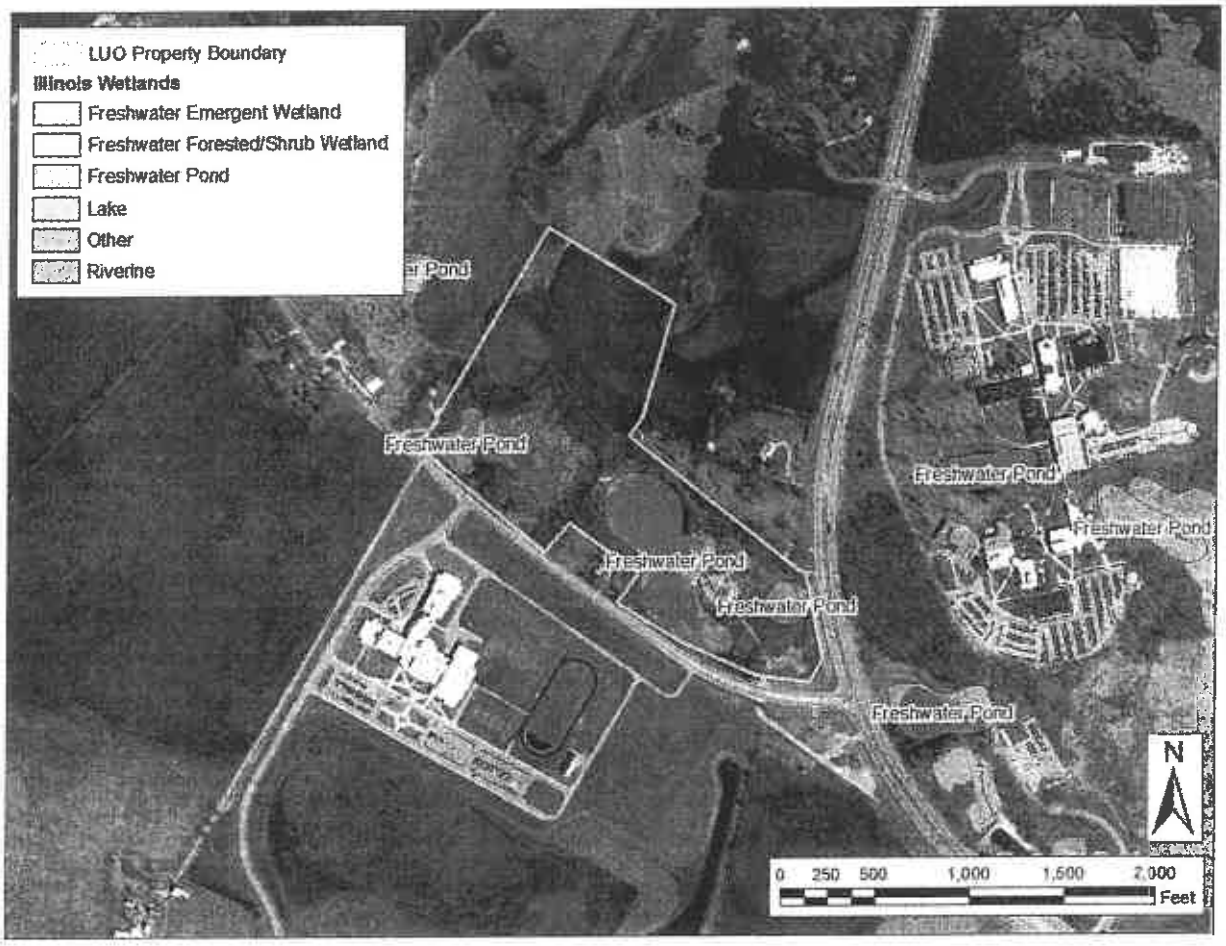


Figure 3: National Wetland Inventory Map

United States Department of the Interior, Fish and Wildlife Service, National Wetlands Inventory Photo Year 1983-1984, Digitized 1985-1986.

Wetlands are some of the most productive and diverse ecological systems on earth. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency define wetlands as follows, "Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." Some other common wetlands located in this part of Illinois are fens and wet meadows.

Wetlands function in many ways to benefit mankind. Some of their many functions and benefits include:

- Controlling flooding by offering a slow release of excess water downstream or through the soil.
- Cleansing water by filtering out sediment and pollutants.
- Functioning as rechargers of our valuable groundwater.
- Providing essential breeding, rearing, and feeding grounds for many species of wildlife.

The National Wetland Inventory Map identifies wetlands on to this site.

ADID WETLANDS

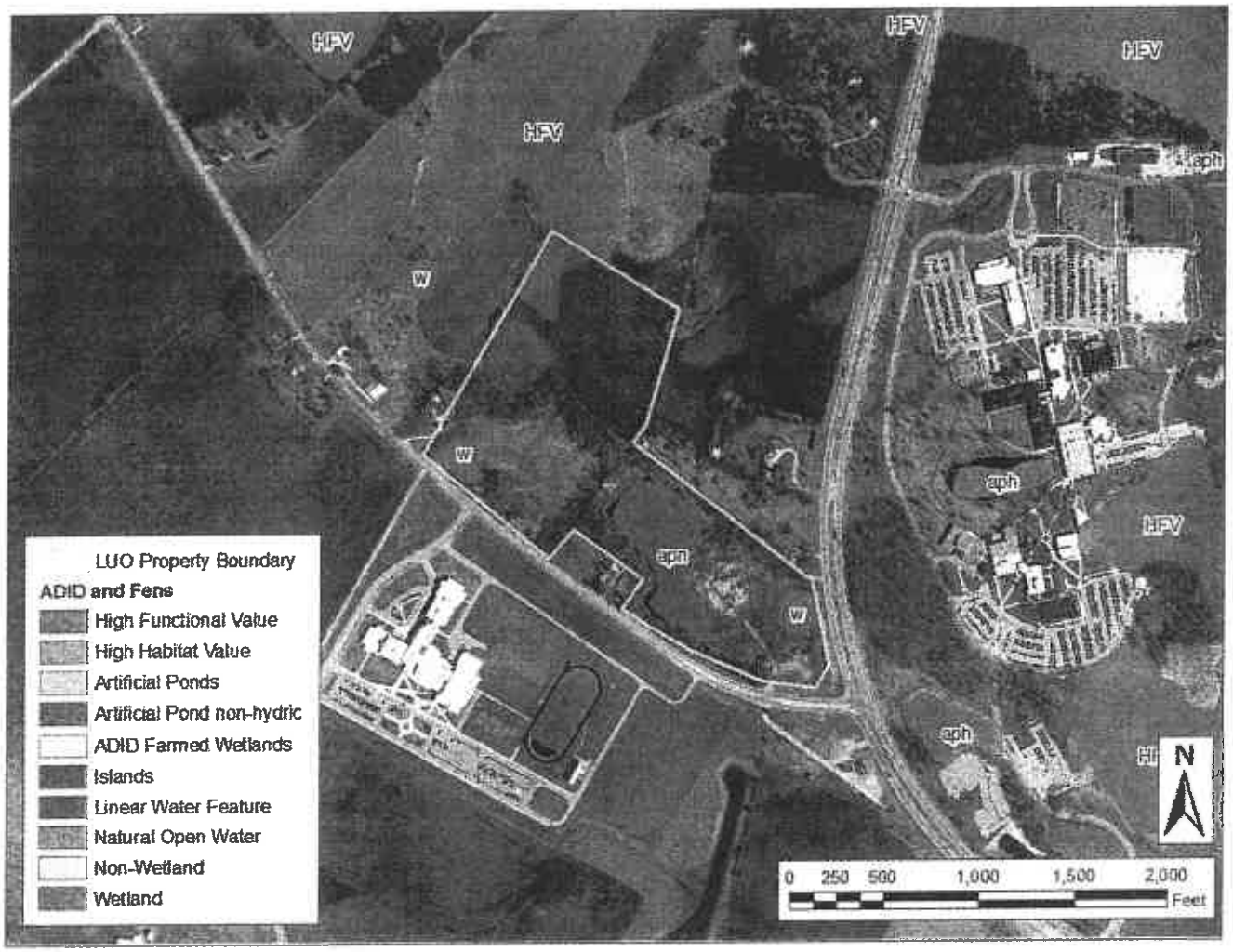


Figure 4: ADID Wetlands

Kane County's Wetlands and Streams Advanced Identification (ADID) Study completed in 2004.

Released in August of 2004, the Kane County Advanced Identification of Aquatic Resources (or ADID) study is a cooperative effort between federal, state, and local agencies to inventory, evaluate, and map high quality wetland and stream resources in the county. ADID studies are part of a U.S. Environmental Protection Agency program to provide improved awareness of the locations, functions, and values of wetlands and other waters of the United States. The primary purpose is to identify wetlands and streams unsuitable for dredging and filling because they are of particularly high quality. This information can be used by federal, state, and local governments to aid in zoning, permitting, and land acquisition decisions. In addition, the information can provide data to agencies, landowners, and private citizens interested in restoration, acquisition, or protection of aquatic sites and resources. For more detailed information regarding wetlands in Kane County, please refer to the full Kane County ADID study at : http://dewprojects.countyofkane.org/adid/index.htm

A review of the Kane County ADID map revealed that ADID wetlands were identified on this site. ADID wetlands #3118, 31181, 31182 and 3113 were mapped on this site. One of these wetlands has been designated as having a high functional value.

FLOODPLAIN

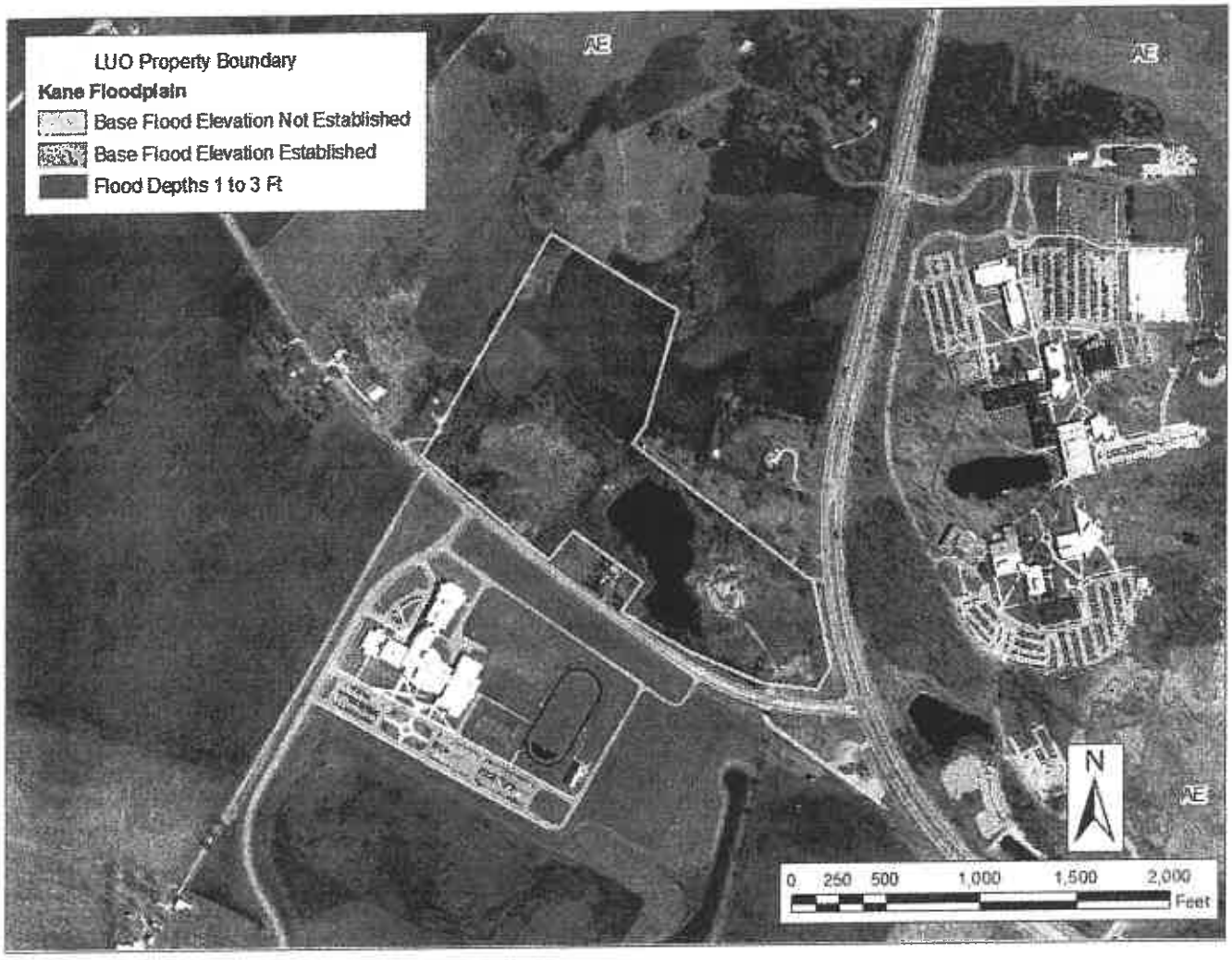


Figure 5: Floodplain Map

From FEMA's Floodplain Natural Resources and Functions Chapter 8, "Undeveloped floodplain land provides many natural resources and functions of considerable economic, social and environmental value. Nevertheless, these and other benefits are often overlooked when local land-use decisions are made. Floodplains often contain wetlands and other important ecological areas as part of a total functioning system that impacts directly on the quality of the local environment."

There are so many benefits of the floodplain that not all can be listed here, but the following is a general list of benefits and functions:

- natural flood storage and erosion control
- water quality maintenance
- groundwater recharge
- nutrient filtration
- biological productivity/wildlife habitat
- recreational opportunities/aesthetic value

According to the Flood Insurance Rate Map, no part of this site is within the boundaries of a 100-year floodplain. This development should not impede the beneficial functions of the floodplain. Please see 8 for information regarding floodplain regulations.

STREAMS AND WATERSHED MANAGEMENT

Rivers and Streams are necessary components of successfully functioning ecosystems. It is important to protect the beneficial functions and integrity of our local streams and rivers. Development near stream systems has the potential to increase flooding, especially in urban areas where there is a lot of impervious surface and a greater amount of stormwater runoff. Pollution is also an issue for stream systems in urban and rural areas. It is rare for any surface waters to be impacted by only one source of pollution. With few exceptions, every land-use activity is a potential source of nonpoint source water pollution (IEPA– Nonpoint Source Pollution).

The Illinois Environmental Protection Agency provides the following in regards to nonpoint source pollution, "Nonpoint source pollution (NPS) occurs when runoff from rain and snowmelt carries pollutants into waterways such as rivers, streams, lakes, wetlands, and even groundwater. Examples of or sources of NPS pollution in Illinois include runoff from farm fields, livestock facilities, construction sites, lawns and gardens, city streets and parking lots, surface coal mines, and forestry. The major sources of NPS pollution in Illinois are agriculture, urban runoff, and habitat modification."

Local watershed management planning is an important effort that involves citizens of a watershed in the protection of their local water resources. Water quality is a reflection of its watershed.

Common Watershed Goals:

- Protect and restore natural resources
- Improve water quality
- Reduce flood damage
- Enhance and restore stream health
- Guide new development to benefit watershed goals
- Preserve and develop green infrastructure
- Enhance education and stewardship

There are many subwatershed plans that have already been developed in Kane County. Please follow the link to the Kane County 2040 Green Infrastructure Plan. See page 108 for a list of local watershed plans.

http://countyofkane.org/FDER/Pages/development/planning.aspx

Nutrient management is of vital importance to the health of our rivers and streams. Nutrient load in our local streams and rivers has contributed to the Gulf of Mexico hypoxia, or a "dead zone" located where the Mississippi River meets the Gulf of Mexico. This dead zone has little to no biological activity. Yearly averages indicate the dead zone to be greater than 5,000 square miles in size. Illinois was required and has introduced a plan to reduce nutrient loss from point source pollution sources, such as wastewater treatment plants and industrial wastewater, as well as nonpoint pollution sources. Read Illinois's Plan for reducing nutrient loss here:

http://www.epa.illinois.gov/topics/water-quality/watershed-management/excess-nutrients/nutrient-loss-reduction-strategy/index

REGULATORY INFORMATION

The laws of the United States and the State of Illinois assign certain agencies specific and different regulatory roles to protect the waters within the State's boundaries. These roles, when considered together, include protection of navigation channels and harbors, protection against floodway encroachment, maintenance and enhancement of water quality, protection of fish and wildlife habitat As well as recreational resources. Unregulated use of waters within the State of Illinois could permanently destroy or alter the character of these valuable resources and adversely impact the public. Therefore, please contact the proper regulatory authorities when planning any work associated with Illinois waters so that proper consideration and approval can be obtained.

REGULATORY AGENCIES:

Wetland/U.S. Waters: U.S. Army Corps of Engineers, Chicago District, 111 North Canal Street, Chicago, IL 60606-7206. Phone: (312) 353-6400.

http://www.lrc.usace.army.mil/

Wetland/Isolated: Kane County Water Resources Division, 719 Batavia Avenue, Geneva, IL 60134. (630)232-3400.

http://www.countyofkane.org/FDER/Pages/environmentalResources/water.aspx

Floodplains: Illinois Department of Natural Resources\Office of Water Resources, 2050 W. Stearns Road, Bartlett, IL 60103. (847)608-3100.

https://www.dnr.illinois.gov/WaterResources/Pages/Permit%20Programs.aspx

Who Must Apply:

Wetland and/or Floodplain Permit: Anyone proposing to dredge, fill, riprap, or otherwise alter the banks or beds of, or construct, operate, or maintain any dock, pier, wharf, sluice, dam, piling, wall, fence, utility, floodplain or floodway subject to State or Federal regulatory jurisdiction should apply for agency approvals.

Construction Permit: Anyone disturbing an acre or more of land during proposed construction activities should apply for the NPDES General Construction Permit ILR10. Building and stormwater permits should also be obtained locally from municipal government and/or Kane County.

NPDES General Construction Permit ILR10: Illinois Environmental Protection Agency, Division of Water Pollution Control, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794. (217)782-0610.

http://www.epa.illinois.gov/topics/forms/water-permits/storm-water/construction/index

Coordination: We recommend early coordination with the regulatory agencies BEFORE finalizing work plans. This allows the agencies to recommend measures to mitigate/compensate for adverse impacts. Also, the agency can make possible environmental enhancement provisions early in the project planning stage. This could reduce time required to process necessary approvals. Please be advised that failure to coordinate with regulatory agencies could result in project shut down, fines and/or imprisonment.

AQUIFER SENSITIVITY

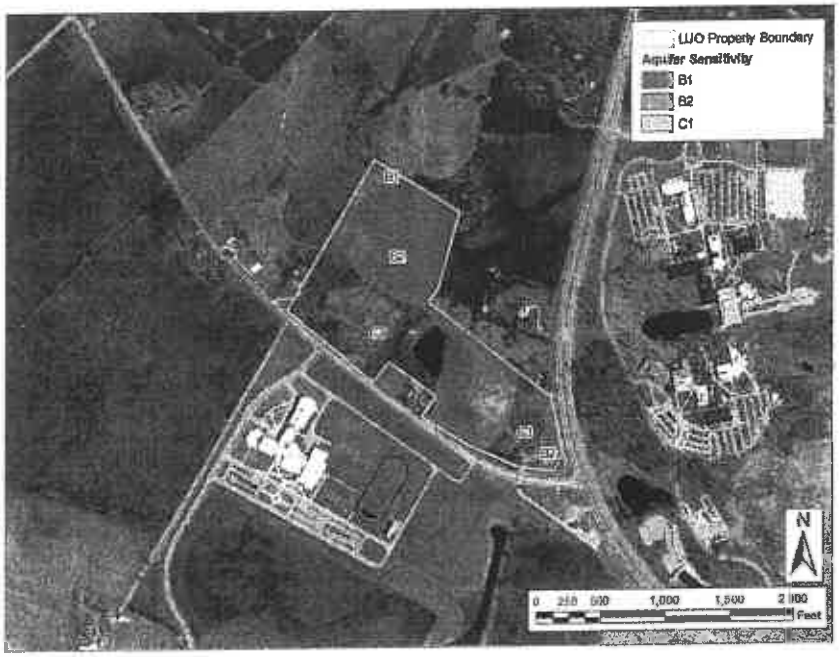


Figure 6: Aquifer Sensitivity Map

Dey, W.S., A.M. Davis, and B.B. Curry 2007, Aquifer Sensitivity to Contamination, Kane County, Illinois: Illinois State Geological Survey, Illinois County Geologic Map, ICGM Kane-AS

The map aquifer sensitivity to contamination (Dey et al 2007) is a representation of the potential vulnerability of aquifers in an area to contamination from sources of contaminants at or near the surface. The U.S. Environmental Protection Agency (1993) defines aquifer sensitivity/contamination potential as "a measure of the ease with which a contaminant applied on or near the land surface can migrate to an aquifer."

Aquifers function as a storage area for groundwater recharge, which makes them a reliable source of fresh water. Groundwater accounts for a considerable percentage of the drinking water in Kane County. The chart below shows the aquifer sensitivity classifications. This site is classified as having a moderately high potential for contamination.

A = High Potential, B = Moderately High Potential, C=Moderate Potential, D = Moderately Low Potential, E = Low Potential

A1	Aquifers are greater than 50ft thick and within 5ft of the surface	**C1**	Aquifers are greater than 50ft thick and between 20 and 50ft below the surface
A2	Aquifers are greater than 50ft thick and between 5 and 20ft below the surface	**C2**	Aquifers are between 20 and 50ft thick and between 20 and 50ft below the surface
A3	Aquifers are between 20 and 50ft thick and within 5ft of the surface	**C3**	Sand and gravel aquifers are between 5 and 20ft thick, or high-permeability bedrock aquifers are between 15 and 20ft thick, both between 20 and 50ft below the surface
A4	Aquifers are between 20 and 50ft thick and between 5 and 20ft below the surface	**D1**	Aquifers are greater than 50ft thick and between 20 and 50ft below the surface
B1	Sand and gravel aquifers are between 5 and 20ft thick, or high-permeability bedrock aquifers are between 15 and 20ft thick, both within 5ft of the surface	**D2**	Aquifers are between 20 and 50ft thick and between 50 and 100ft below the surface
B2	Sand and gravel aquifers are between 5 and 20ft thick, or high-permeability bedrock aquifers are between 15 and 20ft thick, both between 5 and 20ft below the surface	**D3**	Sand and gravel aquifers are between 5 and 20ft thick, or high-permeability bedrock aquifers are between 15 and 20ft thick, both between 50 and 100ft below the surface
E1	Sand and gravel or high-permeability bedrock aquifers are not present within 100 ft of the land surface		

TOPOGRAPHY AND DRAINAGE

Figure 7: Municipalities 2 Ft Contours

USGS Topographic maps and other topographic surveys give information on elevations, which are important to determine slopes, natural drainage directions, and watershed information. Elevations determine the area of impact of flooding. Slope information determines steepness and erosion potential of the site. Slope has the greatest impact in determining the erosion potential of a site during construction activities. Drainage directions determine where water leaves the property in question, possibly impacting surrounding natural resources.

It is important to consider drainage during any proposed construction onsite. Any areas where water leaves the site should be monitored for potential pollutants which could contaminate downstream waters.

The high point of this property is located in the western portion of the site at an elevation of 752 feet above mean sea level. The property generally drains to the east via overland, at the lowest elevation on the property at 704 feet above sea level.

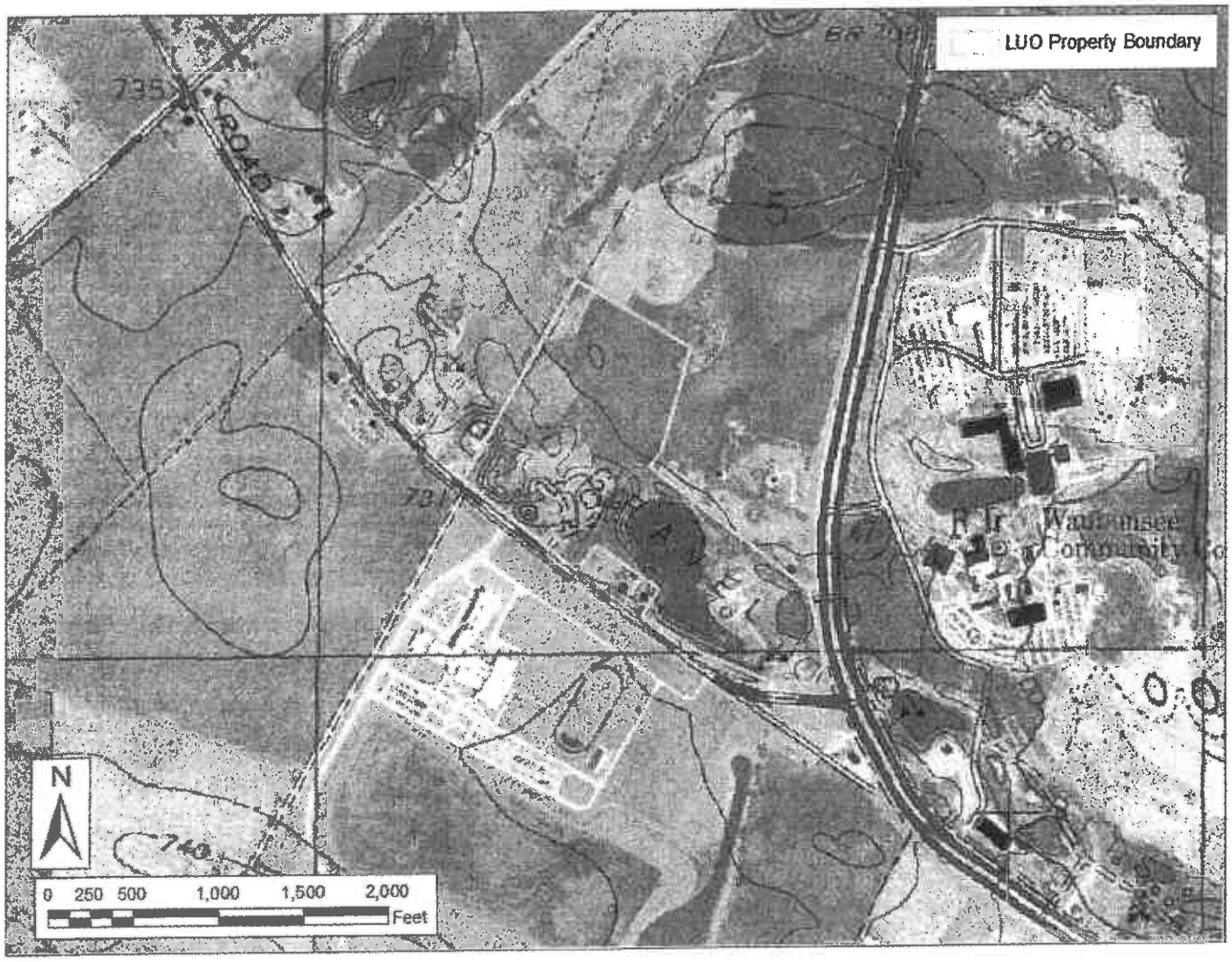


Figure 8: USGS Topographic Map

STORMWATER

Any proposed removal of vegetation, compaction of soil, and addition of impervious surfaces (rooftops, roadways, etc.) will greatly increase the amount of stormwater runoff generated on this site. The District recommends the use of onsite stormwater management strategies whenever possible. IEPA now recommends that stormwater pollution prevention plans include post-construction stormwater management which retains the greatest amount of post-development stormwater runoff practicable, given the site and project constraints. From the ILR10 permit for construction sites 1 acre or more, "Such practices include but are not limited to: stormwater detention structures (including wet ponds); stormwater retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices)."

Site assessment with soil testing should help to determine what stormwater management practices are best for your site. Insufficient stormwater management has the potential to cause or aggravate flooding conditions on surrounding properties, or elsewhere in the watershed. Please refer to the Kane County Stormwater Ordinance for stormwater requirements and minimum standards.

http://www.countyofkane.org/FDER/Pages/environmentalResources/waterResources/

SOIL EROSION

Development on this site should include the use of a soil erosion and sedimen-tation control plan. Due to the soil type and slope of the site, the District believes that the potential for soil erosion during and after any proposed construction could be **large**. Furthermore, the erosion and resulting sedimentation may become a primary nonpoint source of water pollution. Eroded soil during the construction phase can create unsafe conditions on roadways, degrade water quality, and destroy aquatic ecosystems lower in the watershed. Soil erosion also increases the risk of flooding due to choking culverts, ditches, and storm sewers, and by reducing the capacity of natural and man-made detention facilities.

Erosion and sedimentation control measures include: 1) staging the construction to minimize the amount of disturbed areas present at the same time, 2) maintaining or planting vegetative groundcover, and 3) keeping runoff velocities low.

Soil erosion and sedimentation control plans, including maintenance responsibilities, should be clearly communicated to all contractors working on the site. Special care must be taken to protect any wetlands, streams and other sensitive areas.

Please refer to the Illinois Urban Manual for erosion and sediment control information and technical guidance when creating erosion and sediment control plans. The practice standards and standard drawings from the Illinois Urban Manual represent the minimum standard in Illinois.

SOILS INFORMATION

IMPORTANCE OF SOILS INFORMATION

Soils information is taken from the Soil Survey of Kane County, Illinois, United States Department of Agriculture, Natural Resource Conservation Service. This information is important to all parties involved in determining the suitability of the proposed land use change.

SOIL MAP UNITS

The soil survey map of this area (Figure 1) indicates soil map units. Each soil map unit has limitations for a variety of land uses such as septic systems, and buildings site development, including dwellings with and without basements. All of the soils contain **very limiting** conditions for building site development. **See Soils Interpretations section and attached Soil Tables.**

The Soil Survey Geographic (SSURGO) data base was produced by the U.S. Department of Agriculture, Natural Resources Conservation Service and cooperating agencies for the Soil Survey of Kane County, Illinois. The soils were mapped at a scale of 1:12,000. The enlargement of these maps to scales greater than that at which they were originally mapped can cause misunderstanding of the detail of the mapping. If enlarged, maps do not show the small areas of contrasting soil that could have been shown at a larger scale. The depicted soil boundaries and interpretations derived from them do not eliminate the need of onsite sampling, testing, and detailed study of specific sites for intensive uses. Thus, this map and its interpretations are intended for planning purposes only.

LIST OF SOIL MAP UNITS

SOIL MAP UNIT	PERCENT OF PARCEL	ACRES
67A—Harpster	<1%	0.05
193B—Mayville	<1%	0.09
193C2—Mayville	<1%	0.08
210A—Lena	14%	6.85
369A—Waupecan	1%	0.31
662B—Barony	11%	5.57
802B—Orthents	61%	30.32
W—water	12%	6.10
Table 1: Soil Map Units	**Total**	**49.38**

All percentages and acreages are approximate.

We suggest that a geotechnical engineer conduct an on site investigation. This should determine, specifically, what soils type is present at a particular location, along with its associated limitations or potential for a particular use. It will also assist in determining which types of engineering procedures are necessary to account for the limitations of the soil on the site.

SOILS LIMITATIONS

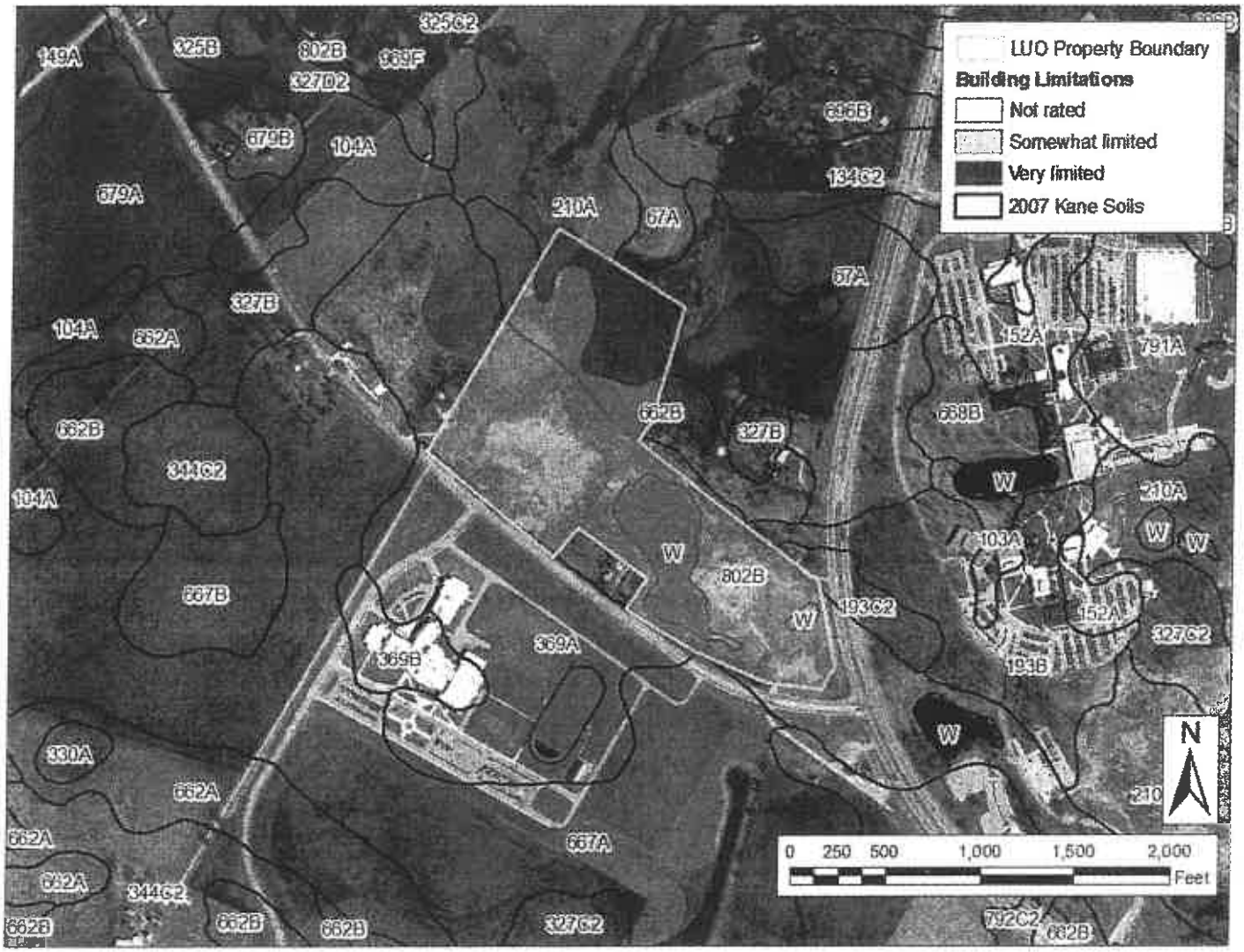


Figure 9: Soil Survey Map

The soil limitation ratings are used mainly for engineering designs of dwellings with or without basements, local streets and roads, small commercial buildings, septic tank absorption fields, and etc. The ratings of not limiting, somewhat limiting, and very limiting are based on national averages and are defined and used as follows:

Not Limiting (Slight) - This limitation rating indicates that the soil properties are generally favorable for the specified use and that any limitations are minor and easily overcome.

Somewhat Limiting (Moderate) - This rating indicates that the soil properties and site features are unfavorable for the specified use, but that the limitations can be overcome or minimized with special planning and design.

Very Limiting (Severe) - This indicates that one or more soil properties or site features are very unfavorable and difficult. A major increase in construction effort, special designs, or intensive maintenance is required. These costly measures may not be feasible for some soils that are rated as severe.

There are limitations for building site development on this site. A comprehensive soil assessment should be completed prior to any earth disturbing activities on this site.

HYDRIC SOILS

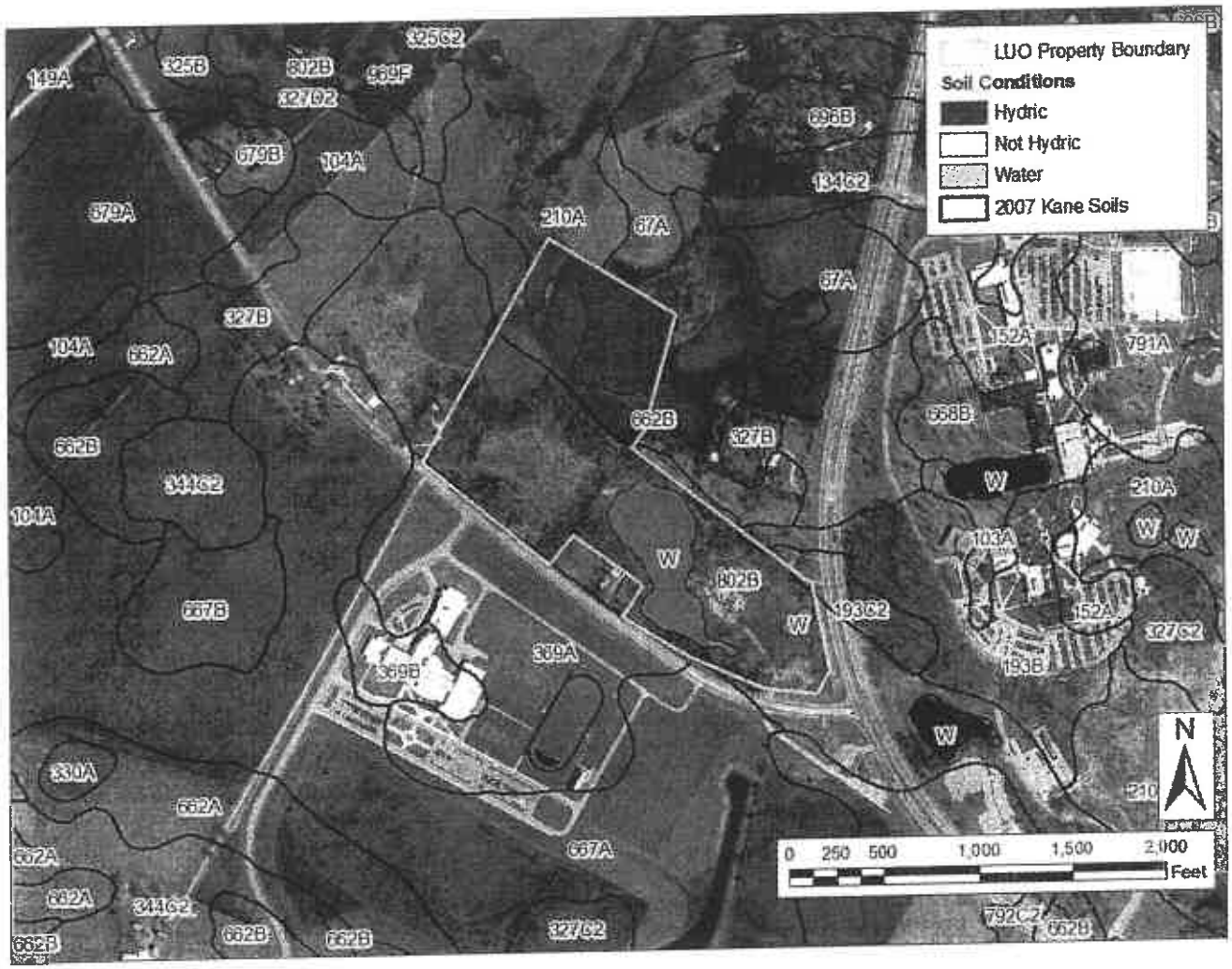


Figure 10: Hydric Soils

United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Kane County SSURGO soil layer certified in 2007. Hydric soils are shaded purple and soils with hydric inclusions are shaded yellow.

Hydric soils are defined by the National Technical Committee for Hydric Soils (NTCHS) as soils that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part. These soils, under natural conditions, are either saturated or inundated long enough during the growing season to support the growth and reproduction of hydrophytic vegetation.

Hydric inclusions are small areas, or inclusions, of nonhydric soils in the higher positions of the landform or map units dominantly made of nonhydric soils with inclusions of hydric soils in the low positions on the landform.

Hydric soils provide limitations for building site development due to their potential for ponding and poor drainage capacity. This often results in the need for improved drainage onsite prior to any proposed development. Any change to the natural drainage onsite has the potential to create flooding issues on and adjacent to the site. Hydric soils are often organic (peat or muck) and not suitable construction material. Hydric soils also may indicate wetlands onsite.

There are hydric soils on this site. A comprehensive soil assessment should be completed prior to any earth disturbing activities on this site.

LESA– PRIME FARMLAND

NOTE: The Kane County LESA System was revised and updated in 2004. Scores are reflected through a 33 point system used for the soils or Land Evaluation (LE) portion of the LESA Score.

Through the use of Kane County's Land Evaluation and Site Assessment System (LESA), a numerical value was determined for this site. The LESA System is designed to determine the quality of land for agricultural uses and to assess sites or land areas for their long term agricultural economic viability. In agricultural land evaluation, soils of a given area are rated ranging from the best to the worst suited for a stated agricultural use, i.e., cropland, forest land, or rangeland. A relative value is determined for each soil. The best soils are assigned a value of 33 and all others are assigned lower values. Therefore, the closer the relative value is to 33, the more valuable and more productive the site's soils are for agricultural purposes.

The land evaluation represents thirty-three percent of the total LESA score. It is based on data from the National Cooperative Soil Survey. The site assessment portion of a LESA represents sixty-seven percent of the LESA score. It is based on factors such as zoning and land use compatibility

The land evaluation for this site is 16.5, which-does not represent the upper percent level of agricultural productivity.

Our opinion is based on information from the following sources:

Illinois Department of Natural Resources, Illinois Natural History Survey, Land Cover of Illinois in the Early 1800s., Vector Digital Data, Version 6.0, August, 2003.

County of Kane. "Kane County 2040 Green Infrastructure Plan". Adopted December 10, 2013.

United States Department of the Interior, Fish and Wildlife Service, National Wetlands Inventory, Photo Year 1983-1984, Digitized 1985-1986.

Kane County's Wetlands and Streams Advanced Identification (ADID) Study completed in 2004.

Federal Emergency Management Agency, National Flood Insurance Program, Q3 Flood Data, Disc 6, 2011.

U.S. Geological Survey, Illinois Digital Orthophoto Quadrangles, 2006 photos, Published: Champaign, Illinois State Geological Survey, 2006.

Nonpoint Source Pollution– What's it All About?. Illinois Environmental Protection Agency. http://www.epa.illinois.gov/topics/water-quality/watershed-management/nonpoint-sources/what-is-nonpoint-source-pollution/index. 2015 Illinois EPA .

United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Kane County, IL SSURGO soil layer certified in 2007, and DuPage County, IL SSURGO soil layer certified in 2007 and accompanying interpretations.

Dey, W.S., A.M. Davis, and B.B. Curry, 2007, Aquifer Sensitivity to Contamination, Kane County, Illinois: Illinois State Geological Survey, Illinois County Geologic Map, ICGM Kane-AS.

An on-site investigation conducted by the SWCD Resource Assistant, Jennifer Shroder on October 12, 2017.

We respectfully submit this information in compliance with the Illinois Soil and Water Conservation Districts Act (ILCS 70, 405/1 et seq). The District Board reviews proposed developments. Jennifer Shroder, Resource Assistant, prepared this report.

cc: Heartland Recycling—Aurora CCDD, LLC
213 Mettel Road
Aurora, IL 60504

Map Unit Description

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions in this report, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

The Map Unit Description (Brief, Generated) report displays a generated description of the major soils that occur in a map unit. Descriptions of non-soil (miscellaneous areas) and minor map unit components are not included. This description is generated from the underlying soil attribute data.

Additional information about the map units described in this report is available in other Soil Data Mart reports, which give properties of the soils and the limitations, capabilities, and potentials for many uses. Also, the narratives that accompany the Soil Data Mart reports define some of the properties included in the map unit descriptions.

Map unit: 67A - Harpster silty clay loam, 0 to 2 percent slopes

Component: Harpster, drained (93%)

The Harpster, drained component makes up 93 percent of the map unit. Slopes are 0 to 2 percent. This component is on plains, depressions. The parent material consists of calcareous loess and/or glacial drift. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is poorly drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches (or restricted depth) is high. Shrink-swell potential is moderate. This soil is not flooded. It is frequently ponded. A seasonal zone of water saturation is at 6 inches during January, February, March, April, May. Organic matter content in the surface horizon is about 5 percent. Nonirrigated land capability classification is 2w. This soil meets hydric criteria. The calcium carbonate equivalent within 40 inches, typically, does not exceed 23 percent.

Map unit: 193B - Mayville silt loam, 2 to 5 percent slopes

Component: Mayville (90%)

The Mayville component makes up 90 percent of the map unit. Slopes are 2 to 5 percent. This component is on ground moraines on uplands. The parent material consists of loess over loamy till. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches (or restricted depth) is high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 26 inches during January, February, March, May, November, December. Organic matter content in the surface horizon is about 2 percent. Nonirrigated land capability classification is 2e. This soil does not meet hydric criteria. The calcium carbonate equivalent within 40 inches, typically, does not exceed 15 percent. There are no saline horizons within 30 inches of the soil surface.

Map unit: 193C2 - Mayville silt loam, 5 to 10 percent slopes, eroded

Component: Mayville (93%)

The Mayville component makes up 90 percent of the map unit. Slopes are 2 to 6 percent. This component is on ground moraines on uplands. The parent material consists of loess over loamy till. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches (or restricted depth) is high. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 26 inches during January, February, March, May, November, December. Organic matter content in the surface horizon is about 2 percent. Nonirrigated land capability classification is 2e. This soil does not meet hydric criteria. The calcium carbonate equivalent within 40 inches, typically, does not exceed 15 percent. There are no saline horizons within 30 inches of the soil surface.

Map unit: 210A - Lena muck, 0 to 2 percent slopes

Component: Lena (90%)

The Lena component makes up 90 percent of the map unit. Slopes are 0 to 2 percent. This component is on ground moraines. The parent material consists of herbaceous organic material. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is very poorly drained. Water movement in the most restrictive layer is high. Available water to a depth of 60 inches is very high. Shrink-swell potential is low. This soil is not flooded. It is frequently ponded. A seasonal zone of water saturation is at 6 inches during January, February, March, April, May, June, November, December. Organic matter content in the surface horizon is about 80 percent. Nonirrigated land capability classification is 3w. This soil meets hydric criteria. The calcium carbonate equivalent within 40 inches, typically, does not exceed 23 percent.

Map Unit Description

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions in this report, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

The Map Unit Description (Brief, Generated) report displays a generated description of the major soils that occur in a map unit. Descriptions of non-soil (miscellaneous areas) and minor map unit components are not included. This description is generated from the underlying soil attribute data.

Additional information about the map units described in this report is available in other Soil Data Mart reports, which give properties of the soils and the limitations, capabilities, and potentials for many uses. Also, the narratives that accompany the Soil Data Mart reports define some of the properties included in the map unit descriptions.

Map unit: 369A - Waupecan silt loam, 0 to 2 percent slopes

Component: Waupecan (90%)

The Waupecan component makes up 90 percent of the map unit. Slopes are 0 to 2 percent. This component is on outwash plains. The parent material consists of loess or other silty material and in the underlying loamy and gravelly outwash. Depth to a root restrictive layer, strongly contrasting textural stratification, is 40 to 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is high. Shrink-swell potential is moderate. This soil is not flooded. It is not ponded. There is no zone of water saturation within a depth of 72 inches. Organic matter content in the surface horizon

Map unit: 369A - Waupecan silt loam, 0 to 2 percent slopes

Component: Waupecan (90%)

is about 4 percent. Nonirrigated land capability classification is 1. This soil does not meet hydric criteria.

Map unit: 662B - Barony silt loam, 2 to 5 percent slopes

Component: Barony (92%)

The Barony component makes up 92 percent of the map unit. Slopes are 2 to 5 percent. This component is on outwash plains. The parent material consists of Loess or other silty material and in the underlying outwash. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is high. Shrink-swell potential is moderate. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 33 inches during February, March, April. Organic matter content in the surface horizon is about 3 percent. Nonirrigated land capability classification is 2e. This soil does not meet hydric criteria.

Map unit: 802B - Orthents, loamy, undulating

Component: Orthents, loamy (92%)

The Orthents, loamy component makes up 92 percent of the map unit. Slopes are 1 to 6 percent. This component is on leveled land. The parent material consists of earthy fill. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is high. Shrink-swell potential is moderate. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 51 inches during February, March, April. Organic matter content in the surface horizon is about 1 percent. Nonirrigated land capability classification is 2e. This soil does not meet hydric criteria.

Dwellings With Basements

Rating Options

Attribute Name: Dwellings With Basements

Dwellings are single-family houses of three stories or less. For dwellings with basements, the foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of about 7 feet.

The ratings for dwellings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility. Compressibility is inferred from the Unified classification of the soil. The properties that affect the ease and amount of excavation include depth to a water table, ponding, flooding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Map symbol	Map unit name	Rating	Component name and % composition Rating reasons
67A	Harpster silty clay loam, 0 to 2 percent slopes	Very limited	Harpster, drained 93% Ponding Depth to saturated zone Shrink-swell Drummer, drained 5% Ponding Depth to saturated zone Shrink-swell Elburn 2% Depth to saturated zone Shrink-swell
193B	Mayville silt loam, 2 to 5 percent slopes	Very limited	Mayville 90% Depth to saturated zone Elpaso, drained 10% Ponding Depth to saturated zone Shrink-swell
193C2	Mayville silt loam, 5 to 10 percent slopes, eroded	Very limited	Mayville 93% Depth to saturated zone Elpaso, drained 7% Ponding Depth to saturated zone Shrink-swell
210A	Lena muck, 0 to 2 percent slopes	Very limited	Lena 90% Ponding Subsidence Depth to saturated zone Organic matter content Harpster 3% Ponding Depth to saturated zone Shrink-swell Drummer 2% Ponding Depth to saturated zone Shrink-swell
369A	Waupecan silt loam, 0 to 2 percent slopes	Not limited	Waupecan 90%
662B	Barony silt loam, 2 to 5 percent slopes	Somewhat limited	Barony 92% Depth to saturated zone Shrink-swell
802B	Orthents, loamy, undulating	Somewhat limited	Orthents, loamy 92% Shrink-swell Depth to saturated zone

Dwellings Without Basements

Rating Options

Attribute Name: Dwellings Without Basements

Dwellings are single-family houses of three stories or less. For dwellings without basements, the foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of 2 feet or at the depth of maximum frost penetration, whichever is deeper.

The ratings for dwellings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility. Compressibility is inferred from the Unified classification of the soil. The properties that affect the ease and amount of excavation include depth to a water table, ponding, flooding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Map symbol	Map unit name	Rating	Component name and % composition Rating reasons
67A	Harpster silty clay loam, 0 to 2 percent slopes	Very limited	Harpster, drained 93% Ponding Depth to saturated zone Shrink-swell Drummer, drained 5% Ponding Depth to saturated zone Shrink-swell
193B	Mayville silt loam, 2 to 5 percent slopes	Somewhat limited	Mayville 90% Depth to saturated zone Shrink-swell
193C2	Mayville silt loam, 5 to 10 percent slopes, eroded	Somewhat limited	Mayville 93% Depth to saturated zone Shrink-swell
210A	Lena muck, 0 to 2 percent slopes	Very limited	Lena 90% Ponding Subsidence Depth to saturated zone Organic matter content Harpster 3% Ponding Depth to saturated zone Shrink-swell Drummer 2% Ponding Depth to saturated zone Shrink-swell
369A	Waupecan silt loam, 0 to 2 percent slopes	Somewhat limited	Waupecan 90% Shrink-swell
662B	Barony silt loam, 2 to 5 percent slopes	Somewhat limited	Barony 92% Shrink-swell
802B	Orthents, loamy, undulating	Somewhat limited	Orthents, loamy 92% Shrink-swell

Small Commercial Buildings

Rating Options

Attribute Name: Small Commercial Buildings

Small commercial buildings are structures that are less than three stories high and do not have basements. The foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of 2 feet or at the depth of maximum frost penetration, whichever is deeper. The ratings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility (which is inferred from the Unified classification of the soil). The properties that affect the ease and amount of excavation include flooding, depth to a water table, ponding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Map symbol	Map unit name	Rating	Component name and % composition Rating reasons
67A	Harpster silty clay loam, 0 to 2 percent slopes	Very limited	Harpster, drained 93% Ponding Depth to saturated zone Shrink-swell Drummer, drained 5% Ponding Depth to saturated zone Shrink-swell
193B	Mayville silt loam, 2 to 5 percent slopes	Somewhat limited	Mayville 90% Depth to saturated zone Shrink-swell Slope
193C2	Mayville silt loam, 5 to 10 percent slopes, eroded	Very limited	Mayville 93% Slope Depth to saturated zone Shrink-swell Elpaso, drained 7% Ponding Depth to saturated zone Shrink-swell
210A	Lena muck, 0 to 2 percent slopes	Very limited	Lena 90% Ponding Subsidence Depth to saturated zone Organic matter content Harpster 3% Ponding Depth to saturated zone Shrink-swell Drummer 2% Ponding Depth to saturated zone Shrink-swell
369A	Waupecan silt loam, 0 to 2 percent slopes	Somewhat limited	Waupecan 90% Shrink-swell
662B	Barony silt loam, 2 to 5 percent slopes	Somewhat limited	Barony 92% Shrink-swell
802B	Orthents, loamy, undulating	Somewhat limited	Orthents, loamy 92% Shrink-swell

CONTACTS

Federal Agencies

U. S. Army Corps of Engineers
Regulatory Branch
231 S LaSalle Street, Suite 1500
Chicago, Illinois 60604
(312)846-5330

http://www.usace.army.mil

U.S.D.A. Natural Resources Conservation Service
2315 Dean Street Suite 100
St. Charles, Illinois 60175
(630)584-7960 ext. 3

http://www.il.nrcs.usda.gov/

U.S. Fish & Wildlife Service
Chicago Illinois Field Office
230 South Dearborn Suite 2938
Chicago, IL 60604
(847)298-3250

http://www.fws.gov/

U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312)353-2000 or (800)621-8431

http://www.epa.gov/region5/
r5hotline@epa.gov

State Agencies

Illinois Department of Natural Resources
1 Natural Resources Way
Springfield, Illinois 62702-1271
(217)782-6302

http://dnr.state.il.us/

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217)782-3397

http://www.epa.state.il.us/

Illinois Department of Transportation
2300 South Dirksen Parkway
Schaumburg, Illinois 62764-0001

(217)782-7820/(800)452-4368

http://www.idot.illinois.gov/

Illinois Natural History Survey
1816 South Oak Street MC652
Champaign, Illinois 61820
(217)333-6880

http://www.inhs.uiuc.edu/

County Offices

Kane County
Government Center
719 South Batavia Ave.
Geneva, IL 60134
(630)232-3400

http://www.countyofkane.org/

Development Department
(630)232-3492

Department of Environmental Management
(630)208-5118

Forest Preserve District
1996 South Kirk Road, Suite 320
Geneva, IL 60134
(630)232-5980
forestpreserve.countyofkane.org

Health Department
1240 North Highland Avenue
Aurora, IL 60506
(630)208-3801

Getting Up to Speed

Ground Water Contamination

Ground water contamination is nearly always the result of human activity. In areas where population density is high and human use of the land is intensive, ground water is especially vulnerable. Virtually any activity whereby chemicals or wastes may be released to the environment, either intentionally or accidentally, has the potential to pollute ground water. When ground water becomes contaminated, it is difficult and expensive to clean up.

To begin to address pollution prevention or remediation, we must understand how surface waters and ground waters interrelate. Ground water and surface water are interconnected and can be fully understood and intelligently managed only when that fact is acknowledged. If there is a water supply well near a source of contamination, that well runs the risk of becoming contaminated. If there is a nearby river or stream, that water body may also become polluted by the ground water.

How Does Ground Water Become Contaminated?

Depending on its physical, chemical, and biological properties, a contaminant that has been released into the environment may move within an aquifer in the same manner that ground water moves. (Some contaminants, because of their physical or chemical properties, do not always follow ground water flow.) It is possible to predict, to some degree, the transport within an aquifer of those substances that move along with ground water flow. For example, both water and certain contaminants flow in the direction of the topography from recharge areas to discharge areas. Soils that are porous and permeable tend to transmit water and certain types of contaminants with relative ease to an aquifer below.

Just as ground water generally moves slowly, so do contaminants in ground water. Because of this slow movement, contaminants tend to remain concentrated in the form of a plume (see Figure 1) that flows along the same path as the ground water. The size and speed of the plume depend on the amount and type of contaminant, its solubility and density, and the velocity of the surrounding ground water.

Figure 1 Contaminant Plume

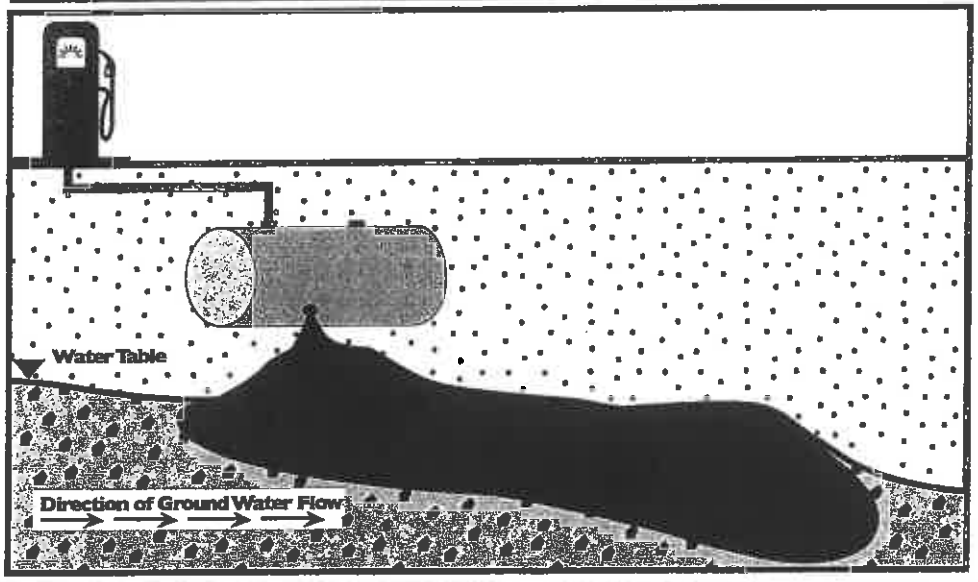


EXHIBIT C-2

Blumberg No. 5208

Ground water and contaminants can move rapidly through fractures in rocks. Fractured rock presents a unique problem in locating and controlling contaminants because the fractures are generally randomly spaced and do not follow the contours of the land surface or the hydraulic gradient. Contaminants can also move into the ground water system through macropores—root systems, animal burrows, abandoned wells, and other systems of holes and cracks that supply pathways for contaminants.

In areas surrounding pumping wells, the potential for contamination increases because water from the zone of contribution, a land area larger than the original recharge area, is drawn into the well and the surrounding aquifer. Some drinking water wells actually draw water from nearby streams, lakes, or rivers. Contaminants present in these surface waters can contribute contamination to the ground water system. Some wells rely on artificial recharge to increase the amount of water infiltrating an aquifer, often using water from storm runoff, irrigation, industrial processes, or treated sewage. In several cases, this practice has resulted in increased concentrations of nitrates, metals, microbes, or synthetic chemicals in the water.

Under certain conditions, pumping can also cause the ground water (and associated contaminants) from another aquifer to enter the one being pumped. This phenomenon is called interaquifer leakage. Thus, properly identifying and protecting the areas affected by well pumping is important to maintain ground water quality.

Generally, the greater the distance between a source of contamination and a ground water source, the more likely that natural processes will reduce the impacts of contamination. Processes such as oxidation, biological degradation (which sometimes renders contaminants less toxic), and adsorption (binding of materials to soil particles) may take place in the soil layers of the unsaturated zone and reduce the concentration of a contaminant before it reaches ground water. Even contaminants that reach ground water directly, without passing through the unsaturated zone, can become less concentrated by dilution (mixing) with the ground water. However, because ground water usually moves slowly, contaminants generally undergo less dilution than when in surface water.

Sources of Ground Water Contamination

Ground water can become contaminated from natural sources or numerous types of human activities. (See Tables 1 and 2 and Figure 1.) Residential, municipal, commercial, industrial, and agricultural activities can all affect ground water quality. Contaminants may reach ground water from activities on the land surface, such as releases or spills from stored industrial wastes; from sources below the land surface but above the water table, such as septic systems or leaking underground petroleum storage systems; from structures beneath the water table, such as wells; or from contaminated recharge water.

Natural Sources

Some substances found naturally in rocks or soils, such as iron, manganese, arsenic, chlorides, fluorides, sulfates, or radionuclides, can become dissolved in ground water. Other naturally occurring substances, such as decaying organic matter, can move in ground water as particles. Whether any of these substances appears in ground water depends on local conditions. Some substances may pose a health threat if consumed in excessive quantities; others may produce an undesirable odor, taste, or color. Ground water that contains unacceptable concentrations of these substances is not used for drinking water or other domestic water uses unless it is treated to remove these contaminants.

Septic Systems

One of the main causes of ground water contamination in the United States is the effluent (outflow) from septic tanks, cesspools, and privies.

Table 1 TYPICAL SOURCES OF POTENTIAL GROUND WATER CONTAMINATION BY LAND USE CATEGORY

Category	Contaminant Source	
Agriculture	Animal burial areas	Irrigation sites
	Animal feedlots	Manure spreading areas/pits
	Fertilizer storage/use	Pesticide storage/use
Commercial	Airports	Jewelry/metal plating
	Auto repair shops	Laundromats
	Boat yards	Medical institutions
	Construction areas	Paint shops
	Car washes	Photography establishments
	Cemeteries	Railroad tracks and yards
	Dry cleaners	Research laboratories
	Gas stations	Scrap and junkyards
	Golf courses	Storage tanks
Industrial	Asphalt plants	Petroleum production/storage
	Chemical manufacture/storage	Pipelines
	Electronics manufacture	Septage lagoons and sludge sites
	Electroplaters	Storage tanks
	Foundries/metal fabricators	Toxic and hazardous spills
	Machine/metalworking shops	Wells (operating/abandoned)
	Mining and mine drainage	Wood preserving facilities
Residential	Fuel oil	Septic systems, cesspools
	Furniture stripping/refinishing	Sewer lines
	Household hazardous products	Swimming pools (chemical storage)
	Household lawns	
Other	Hazardous waste landfills	Recycling/reduction facilities
	Municipal incinerators	Road deicing operations
	Municipal landfills	Road maintenance depots
	Municipal sewer lines	Storm water drains/basins
	Open burning sites	Transfer stations

Source: U.S. EPA, 1991a.

Approximately one-fourth of all homes in the United States rely on septic systems to dispose of their human wastes. Although each individual system releases a relatively small amount of waste into the ground, the large number and widespread use of these systems makes them a serious contamination source. Septic systems that are improperly sited, designed, constructed, or maintained can contaminate ground water with bacteria, viruses, nitrates, detergents, oils, and chemicals. Along with these contaminants are the commercially available septic system cleaners containing synthetic organic chemicals (such as 1,1,1-trichloroethane or methylene chloride). These cleaners can contaminate water supply wells and interfere with natural decomposition processes in septic systems.

Most, if not all, state and local regulations require specific separation distances between septic systems and drinking water wells. In addition, computer models have been developed to calculate suitable distances and densities.

Improper Disposal of Hazardous Waste

Hazardous waste should always be disposed of properly, that is to say, by a licensed hazardous waste handler or through municipal hazardous waste collection days. Many chemicals should not be disposed of in household septic systems, including oils (e.g., cooking, motor), lawn and garden chemicals, paints and paint thinners, disinfectants, medicines, photographic chemicals, and swimming pool chemicals. Similarly, many substances used in industrial processes should not be disposed of in drains at the workplace because they could contaminate a drinking water source. Companies should train employees in the proper use and disposal of all chemicals used on site. The many different types and the large quantities of chemicals used at industrial locations make proper disposal of wastes especially important for ground water protection.

Releases and Spills from Stored Chemicals and Petroleum Products

Underground and aboveground storage tanks are commonly used to store petroleum products and other chemical substances. For example, many homes have underground heating oil tanks. Many businesses and municipal highway departments also store gasoline, diesel fuel, fuel oil, or chemicals in on-site tanks. Industries use storage tanks to hold chemicals used in industrial processes or to store hazardous wastes for pickup by a licensed hauler. Approximately 4 million underground storage tanks exist in the United States and, over the years, the contents of many of these tanks have leaked and spilled into the environment.

If an underground storage tank develops a leak, which commonly occurs as the tank ages and corrodes, its contents can migrate through the soil and reach the ground water. Tanks that meet federal/state standards for new and upgraded systems are less likely to fail, but they are not foolproof. Abandoned underground tanks pose another problem because their location is often unknown. Aboveground storage tanks can also pose a threat to ground water if a spill or leak occurs and adequate barriers are not in place.

Improper chemical storage, sloppy materials handling, and poor-quality containers can be major threats to ground water. Tanker trucks and train cars pose another chemical storage hazard. Each year, approximately 16,000 chemical spills occur from trucks, trains, and storage tanks, often when materials are being transferred. At the site of an accidental spill, the chemicals are often diluted with water and then washed into the soil, increasing the possibility of ground water contamination.

Landfills

Solid waste is disposed of in thousands of municipal and industrial landfills throughout the country. Chemicals that should be disposed of in hazardous waste landfills sometimes end up in municipal landfills. In addition, the disposal of many household wastes is not regulated.

Once in the landfill, chemicals can leach into the ground water by means of precipitation and surface runoff. New landfills are required to have clay or synthetic liners and leachate (liquid from a landfill containing contaminants) collection systems to protect ground water. Most older landfills, however, do not have these safeguards. Older landfills were often sited over aquifers or close to surface waters and in permeable soils with shallow water tables, enhancing the potential for leachate to contaminate ground water. Closed landfills can continue to pose a ground water contamination threat if they are not capped with an impermeable material (such as clay) before closure to prevent the leaching of contaminants by precipitation.

Surface Impoundments

Surface impoundments are relatively shallow ponds or lagoons used by industries and municipalities to store, treat, and dispose of liquid wastes. As many as 180,000 surface impoundments exist in the United States. Like landfills, new surface impoundment facilities are required to have liners, but even these liners sometimes leak.

Table 2 **POTENTIAL HARMFUL COMPONENTS OF COMMON HOUSEHOLD PRODUCTS**

Product	Toxic or Hazardous Components
Antifreeze (gasoline or coolants systems)	Methanol, ethylene glycol
Automatic transmission fluid	Petroleum distillates, xylene
Battery acid (electrolyte)	Sulfuric acid
Degreasers for driveways and garages	Petroleum solvents, alcohols, glycol ether
Degreasers for engines and metal	Chlorinated hydrocarbons, toluene, phenols, dichloroperchloroethylene
Engine and radiator flushes	Petroleum solvents, ketones, butanol, glycol ether
Hydraulic fluid (brake fluid)	Hydrocarbons, fluorocarbons
Motor oils and waste oils	Hydrocarbons
Gasoline and jet fuel	Hydrocarbons
Diesel fuel, kerosene, #2 heating oil	Hydrocarbons
Grease, lubes	Hydrocarbons
Rustproofers	Phenols, heavy metals
Car wash detergents	Alkyl benzene sulfonates
Car waxes and polishes	Petroleum distillates, hydrocarbons
Asphalt and roofing tar	Hydrocarbons
Paints, varnishes, stains, dyes	Heavy metals, toluene
Paint and lacquer thinner	Acetone, benzene, toluene, butyl acetate, methyl ketones
Paint and varnish removers, deglossers	Methylene chloride, toluene, acetone, xylene, ethanol, benzene, methanol
Paint brush cleaners	Hydrocarbons, toluene, acetone, methanol, glycol ethers, methyl ethyl ketones
Floor and furniture strippers	Xylene
Metal polishes	Petroleum distillates, isopropanol, petroleum naphtha
Laundry soil and stain removers	Hydrocarbons, benzene, trichloroethylene, 1,1,1-trichloroethane
Other solvents	Acetone, benzene
Rock salt	Sodium concentration
Refrigerants	1,1,2-trichloro-1,2,2-trifluoroethane
Bug and tar removers	Xylene, petroleum distillates
Household cleansers, oven cleaners	Xylenols, glycol ethers, isopropanol
Drain cleaners	1,1,1-trichloroethane
Toilet cleaners	Xylene, sulfonates, chlorinated phenols
Cesspool cleaners	Tetrachloroethylene, dichlorobenzene, methylene chloride
Disinfectants	Cresol, xylenols
Pesticides (all types)	Naphthalene, phosphorus, xylene, chloroform, heavy metals, chlorinated hydrocarbons
Photochemicals	Phenols, sodium sulfite, cyanide, silver halide, potassium bromide
Printing ink	Heavy metals, phenol-formaldehyde
Wood preservatives (creosote)	Pentachlorophenols
Swimming pool chlorine	Sodium hypochlorite
Lye or caustic soda	Sodium hydroxide
Jewelry cleaners	Sodium cyanide

Source: "Natural Resources Facts: Household Hazardous Wastes," Fact Sheet No. 88-3, Department of Natural Science, University of Rhode Island, August 1988.

Sewers and Other Pipelines

Sewer pipes carrying wastes sometimes leak fluids into the surrounding soil and ground water. Sewage consists of organic matter, inorganic salts, heavy metals, bacteria, viruses, and nitrogen. Other pipelines carrying industrial chemicals and oil brine have also been known to leak, especially when the materials transported through the pipes are corrosive.

Pesticide and Fertilizer Use

Millions of tons of fertilizers and pesticides (e.g., herbicides, insecticides, rodenticides, fungicides, avicides) are used annually in the United States for crop production. In addition to farmers, homeowners, businesses (e.g., golf courses), utilities, and municipalities use these chemicals. A number of these pesticides and fertilizers (some highly toxic) have entered and contaminated ground water following normal, registered use. Some pesticides remain in soil and water for many months to many years. Another potential source of ground water contamination is animal wastes that percolate into the ground from farm feedlots. Feedlots should be properly sited and wastes should be removed at regular intervals.

Between 1985 and 1992, EPA's Office of Pesticides and Toxic Substances and Office of Water conducted a National Pesticide Survey to determine the number of drinking water wells nationwide that contain pesticides and nitrates and the concentration of these substances. The survey also analyzed the factors associated with contamination of drinking water wells by pesticides and nitrates. The survey, which included samples from more than 1,300 public community and rural domestic water supply wells, found that approximately 3.6 percent of the wells contained concentrations of nitrates above the federal maximum contaminant level, and that over half of the wells contained nitrates above the survey's minimum reporting limit for nitrate (0.15 mg/L).

The survey also reported that approximately 0.8 percent of the wells tested contained pesticides at levels higher than federal maximum contaminant levels or health advisory levels. Only 10 percent of the wells classified as rural were actually located on farms. There is a higher incidence of contamination by agricultural chemicals in farm wells used for drinking water.

After further analysis, EPA estimated that for the wells that contain pesticides, a significant percentage probably contain chemical concentrations that exceed the federal health-based limits (e.g., maximum contaminant levels or health advisory levels). Approximately 14.6 percent of the wells tested contained levels of one or more pesticides above the minimum reporting limit set in the survey. The most common pesticides found were atrazine and metabolites (breakdown products) of dimethyl tetrachloroterephthalate (DCPA, commonly known as Dacthal), which is used in many utility easement weed-control programs and for lawn care.

Drainage Wells

Drainage wells are used in wet areas to help drain water and transport it to deeper soils. These wells may contain agricultural chemicals and bacteria.

Injection Wells/Floor Drains

Injection wells are used to collect storm water runoff, collect spilled liquids, dispose of wastewater, and dispose of industrial, commercial, and utility wastes. These wells are regulated by the U.S. EPA's Underground Injection Control Program. In New England, these wells may not be used to inject hazardous wastes from industrial, commercial, and utility operations. The injection wells used in this region are typically shallow and include sumps and dry wells used to handle storm water.

Floor drains were historically used by businesses to handle spills. Today, if a business operates or handles waste fluids that drain to a septic system, dry well, or floor drain, it is required to submit information regarding its operation to the U.S. EPA or its state environmental protection agency. Disposal wells that pose threats to drinking water supplies are prohibited and must be closed, con-

nected to a public sewage system, or connected to a storage tank.

Improperly Constructed Wells

Problems associated with improperly constructed wells can result in ground water contamination when contaminated surface or ground water is introduced into the well.

Improperly Abandoned Wells

These wells can act as a conduit through which contaminants can reach an aquifer if the well casing has been removed, as is often done, or if the casing is corroded. In addition, some people use abandoned wells to dispose of wastes such as used motor oil. These wells may reach into an aquifer that serves drinking supply wells. Abandoned exploratory wells (e.g., for gas, oil, or coal) or test hole wells are usually uncovered and are also a potential conduit for contaminants.

Active Drinking Water Supply Wells

Poorly constructed wells can result in ground water contamination. Construction problems, such as faulty casings, inadequate covers, or lack of concrete pads, allow outside water and any accompanying contaminants to flow into the well. Sources of such contaminants can be surface runoff or wastes from farm animals or septic systems. Contaminated fill packed around a well can also degrade well water quality. Well construction problems are more likely to occur in older wells that were in place prior to the establishment of well construction standards and in domestic and livestock wells.

Poorly Constructed Irrigation Wells

These wells can allow contaminants to enter ground water. Often pesticides and fertilizers are applied in the immediate vicinity of wells on agricultural land.

Mining Activities

Active and abandoned mines can contribute to ground water contamination. Precipitation can leach soluble minerals from the mine wastes (known as spoils or tailings) into the ground water below. These wastes often contain metals, acid, minerals, and sulfides. Abandoned mines are often used as wells and waste pits, sometimes simultaneously. In addition, mines are sometimes pumped to keep them dry; the pumping can cause an upward migration of contaminated ground water, which may be intercepted by a well.

Effects of Ground Water Contamination

Contamination of ground water can result in poor drinking water quality, loss of water supply, degraded surface water systems, high cleanup costs, high costs for alternative water supplies, and/or potential health problems.

The consequences of contaminated ground water or degraded surface water are often serious. For example, estuaries that have been impacted by high nitrogen from ground water sources have lost critical shellfish habitats. In terms of water supply, in some instances, ground water contamination is so severe that the water supply must be abandoned as a source of drinking water. In other cases, the ground water can be cleaned up and used again, if the contamination is not too severe and if the municipality is willing to spend a good deal of money. Follow-up water quality monitoring is often required for many years.

Because ground water generally moves slowly, contamination often remains undetected for long periods of time. This makes cleanup of a contaminated water supply difficult, if not impossible. If a cleanup is undertaken, it can cost thousands to millions of dollars.

Once the contaminant source has been controlled or removed, the contaminated ground water can be treated in one of several ways:

- Containing the contaminant to prevent migration.
- Pumping the water, treating it, and returning it to the aquifer.

- Leaving the ground water in place and treating either the water or the contaminant.
- Allowing the contaminant to attenuate (reduce) naturally (with monitoring), following the implementation of an appropriate source control.

Selection of the appropriate remedial technology is based on site-specific factors and often takes into account cleanup goals based on potential risk that are protective of human health and the environment. The technology selected is one that will achieve those cleanup goals. Different technologies are effective for different types of contaminants, and several technologies are often combined to achieve effective treatment. The effectiveness of treatment depends in part on local hydrogeological conditions, which must be evaluated prior to selecting a treatment option.

Given the difficulty and high costs of cleaning up a contaminated aquifer, some communities choose to abandon existing wells and use other water sources, if available. Using alternative supplies is probably more expensive than obtaining drinking water from the original source. A temporary and expensive solution is to purchase bottled water, but it is not a realistic long-term solution for a community's drinking water supply problem. A community might decide to install new wells in a different area of the aquifer. In this case, appropriate siting and monitoring of the new wells are critical to ensure that contaminants do not move into the new water supplies.

Potential Health Problems

A number of microorganisms and thousands of synthetic chemicals have the potential to contaminate ground water. Drinking water containing bacteria and viruses can result in illnesses such as hepatitis, cholera, or giardiasis. Methemoglobinemia or "blue baby syndrome," an illness affecting infants, can be caused by drinking water that is high in nitrates. Benzene, a component of gasoline, is a known human carcinogen. The serious health effects of lead are well known—learning disabilities in children; nerve, kidney, and liver problems; and pregnancy risks. Concentrations in drinking water of these and other substances are regulated by federal and state laws. Hundreds of other chemicals, however, are not yet regulated, and many of their health effects are unknown or not well understood. Preventing contaminants from reaching the ground water is the best way to reduce the health risks associated with poor drinking water quality.

Regulations to Protect Ground Water

Several federal laws help protect ground water quality. The Safe Drinking Water Act (SDWA) established three drinking water source protection programs: the Wellhead Protection Program, Sole Source Aquifer Program, and the Source Water Assessment Program. It also called for regulation of the use of underground injection wells for waste disposal and provided EPA and the states with the authority to ensure that drinking water supplied by public water systems meets minimum health standards. The Clean Water Act regulates ground water that is shown to have a connection with surface water. It sets standards for allowable pollutant discharges to surface water. The Resource Conservation and Recovery Act (RCRA) regulates treatment, storage, and disposal of hazardous and nonhazardous wastes. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) authorizes the government to clean up contamination or sources of potential contamination from hazardous waste sites or chemical spills, including those that threaten drinking water supplies. CERCLA includes a "community right-to-know" provision. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates pesticide use. The Toxic Substances Control Act (TSCA) regulates manufactured chemicals.

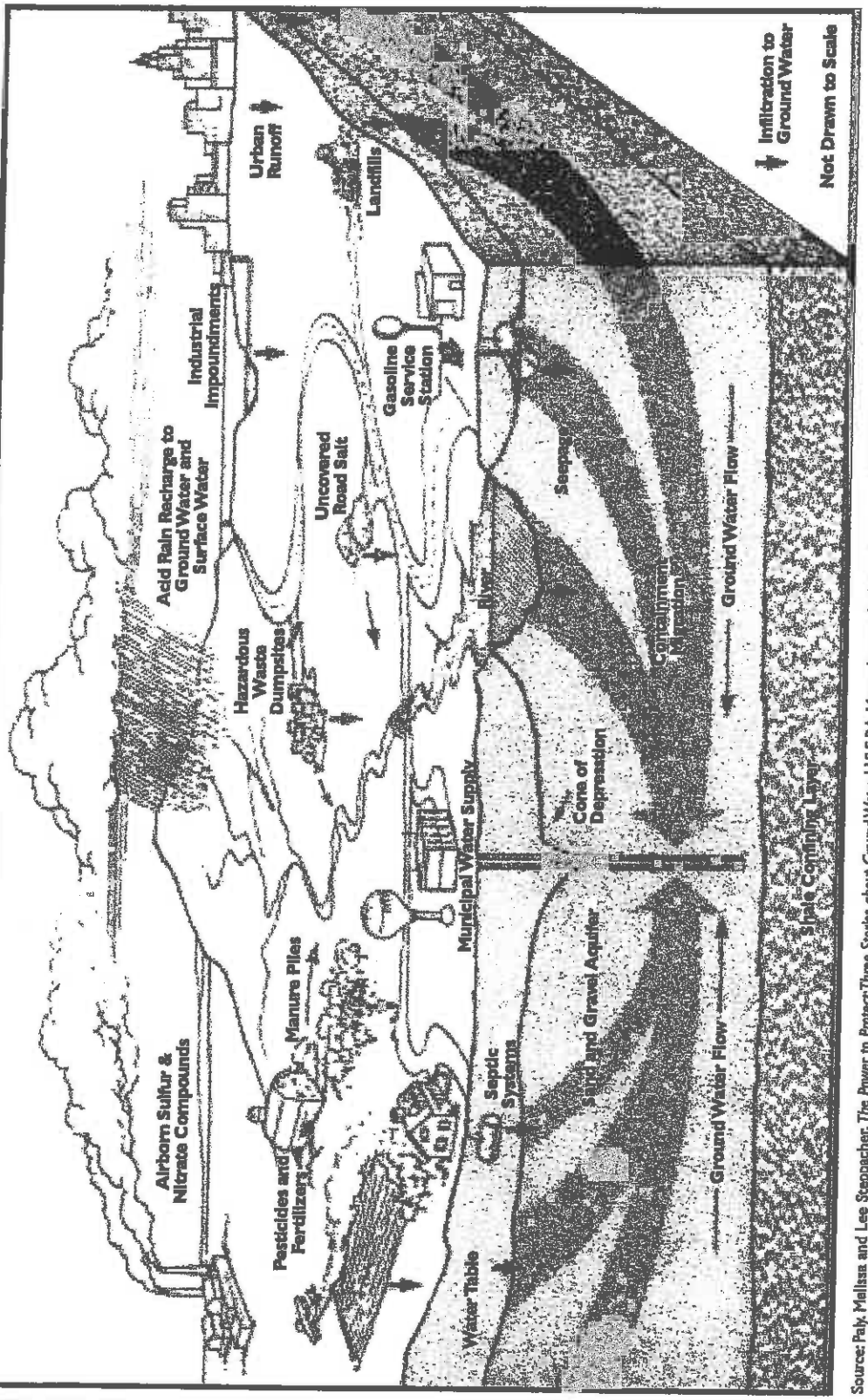
KEY TERMS

- **Clean Water Act**
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund)**
- **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**
- **Interaquifer Leakage**
- **Plume**
- **Resource Conservation and Recovery Act (RCRA)**
- **Safe Drinking Water Act**
- **Toxic Substances Control Act (TSCA)**
- **Zone of Contribution**

"Getting Up to Speed" for section C, "Ground Water Contamination" is adapted from US EPA Seminar Publication. *Wellhead Protection: A Guide for Small Communities*. Chapter 3. EPA/625/R-93/002.

Figure 2

SOME POTENTIAL SOURCES OF GROUND WATER CONTAMINATION



Source: Raly, Melissa and Lee Steppacher. *The Power to Protect:Three Stories about Ground Water.* U.S.E.P.A. Massachusetts Audubon Society and NEIWPCC.

Daily Herald

NBC fires 'Today' show host Matt Lauer for 'inappropriate sexual behavior'

News updated: 11/19/2017 4:06 PM

AP Exclusive: 4 in 5 Illinois debris sites high in toxins

By JOHN O'CONNOR
AP Political Writer

SPRINGFIELD -- Four in five Illinois quarries that backfill with concrete and other demolition waste show higher-than-acceptable levels of toxins, according to state sampling results obtained by The Associated Press.

Illinois Environmental Protection Agency testing last spring produced levels exceeding allowable limits of arsenic, lead, mercury, atrazine and other heavy metals and pesticides as well as volatile organic compounds that can cause health hazards, according to violation notices disclosed to the AP under the Illinois Freedom of Information Act.

Among 92 quarries and other excavation sites licensed to take what state law calls "clean construction and demolition debris," or CCDD, the agency notified 74 of violations.

Quarry owners and industry representatives complain that IEPA conducted a basic test, which revealed naturally occurring metals such as aluminum and manganese. IEPA counters the levels found exceeded what's allowed by law.

ADVERTISING

inRead invented by Teads

EXHIBIT
C-3

Environmentalists are seizing on the results, seeking to require groundwater monitoring around the sites, which are "reclaimed" by depositing demolition debris such as concrete, brick, asphalt and uncontaminated soil. Rock quarries often sit directly atop groundwater supplies. Advocates for tougher standards point out that toxic material that goes in will likely have direct contact with an aquifer.

"It confirms my worst fears," said Rep. Margo McDermed, from limestone-rich Will County, home to a dozen CCDD sites. The Republican's monitoring-well legislation stalled last spring.

"The protocols that were created to monitor the so-called clean construction debris in the quarries were completely inadequate," McDermed said. "We never felt they were sufficient to protect people and their drinking water, and unfortunately, we were correct."

Regulators are meeting with representatives of each of the impacted sites, IEPA spokeswoman Kim Biggs said. What happens, she said, "will vary site by site," but could include more sampling, confirmation testing or soil removal.

Critics say the industry is self-regulated, with debris haulers and quarry owners deciding whether waste to be dumped is contaminated. Trade representatives counter licensed professionals test soil on the demolition site for contaminants, taking into consideration the land-use history. Then the load is inspected visually and with a chemical odor-detecting wand at the dump site. Suspicious loads may be rejected.

The idea behind the CCDDs is to divert "clean" debris from sanitary landfills -- premium, more-costly space because of tougher environmental standards designed to discourage toxins from migrating to groundwater. Dumping the same load at a landfill costs at least five times more, not counting increased trucking expenses because there are far fewer landfills, said Dan Eichholz, executive director of the industry group, the Illinois Association of Aggregate Producers.

Prompted by discussion of McDermed's legislation, IEPA sampled deposits from the 92 sites in April and May, testing them for 190 heavy metals, pesticides, volatile and semi-volatile organic compounds. Samples most often showed levels exceeding what's allowable for aluminum, iron, selenium, chromium, and manganese. Excessive levels of arsenic were found in six cases and mercury in three. In a handful of cases, one or more of seven semi-volatile organic compounds was too high, all but one a known or suspected carcinogen.

Eichholz maintains that Illinois has the nation's most stringent regulations for dumping demolition debris. He said that without follow-up testing to assess how likely a chemical is to seep through the soil to groundwater, the tests revealed only traces of naturally occurring metals.

"What they found were materials similar to what you would expect to find if you tested clean soil from backyards all around Illinois," he said. "More important is what they did not find. They did not find constituents in concentrations that pose a risk to human health or the environment."

Aluminum, chromium and iron registered as too high in the sample taken at Chicago Street CCDD in Will County, about 45 miles (72 kilometers) southwest of Chicago. The spent quarry now recycles concrete and asphalt for re-use in addition to backfilling with clean debris.

Manager Bud Boyer said he noted during a meeting last week with IEPA regulators that follow-up toxin assessments were not done. He said they agreed when he suggested thorough testing of samples from his site would show there's no threat.

In at least one case, existing requirements already proved cost-prohibitive. Aluminum, chromium, iron and selenium were excessive in samples taken from Buckhart Sand and Gravel in Mechanicsburg, 17 miles (27 kilometers) east of Springfield. Co-owner Barney Flatt said the site hasn't taken any backfill for about two years because haulers found the testing too expensive.

"It's not worth it at all," Flatt said. "All we do now is take concrete and crush it for recycling."

Related Articles

AP Exclusive: 4 in 5 Illinois debris sites high in toxins
Nov 19, 2017

Topics in this Article

Illinois, IEPA, Associated Press, Information Act, Margo McDermed, Will county, Chicago street, Dan Eichholz, Barney Flatt, Kim Biggs, Illinois Association of Aggregate Producers, Bud Boyer, Environmental Protection Agency, Springfield, Chicago, Republican

Illinois Wetlands

EXHIBIT
D-1

- Silicosis also causes severe cough and weakness. It hinders the body's ability to fight infections, leaving the patient vulnerable to other illnesses that can cause chest pains and respiratory failure.

-

Risk factors and potential effects of silicosis include susceptibilities to bronchitis, chronic obstructive pulmonary disorder, lung cancer, and tuberculosis, according to the Occupational Safety and Health Administration.

- Symptoms of silicosis may not manifest themselves for fifteen to twenty years after silica dust exposure. The negative public health effects of frac sand mining in Wisconsin will not be fully understood for decades.

- In Wisconsin, 75 people have died of silicosis between 1996 and 2005, according to the National Institute for Occupational Safety and Health. Most victims were mining and manufacturing workers, but this demographic could change as more citizens are exposed to higher levels of silica dust and if the state requires more air quality monitoring and scientists study the data.

How do people come in contact with silica dust in the air?

- Fugitive dust is an emission created when silica dust blows off of mine sites and off of the backs of trucks. Although efforts can be taken to reduce the amount of fugitive silica dust that enters the air, such fugitive dust is still likely to enter the lungs of families who live near frac sand mines.

- Near frac sand mining in Auburn, Wisconsin, citizens have found layers of silica dust on their belongings. They have also been particularly concerned about the health of children who attend a school located only a quarter of a mile away from a loading station.

- People who are exposed to silica dust can be at risk for silicosis *even if the dust is not visible to the eye*. If the dust is visible, the risk is almost definite.

- One of the only ways to prevent silicosis from worsening is to avoid sources of silica dust. This will be nearly impossible for families whose lands are increasingly surrounded by frac sand mines that emit silica dust. Such families may not have the resources to move elsewhere.

Is the government regulating frac sand mining and protecting our air?

- Citizens petitioned the Wisconsin DNR in 2011 to adopt and enforce an air quality standard of 3 micrograms of silica per cubic meter of air, the standard adopted by

California. The DNR denied the petition, even though the DNR conducted a study that documented the health risks of silica dust and concluded that it meets the definition of a known carcinogenic hazardous air pollutant.

- By contrast, Minnesota governmental health, environment, transportation, agriculture agencies collaborated to develop and issue model air quality standards to guide government and industry planning. The Minnesota Environmental Quality Board published an in-depth toolkit to assist local governments in planning for and regulating frac sand mining activity on March 19, 2014. More information on frac sand mining in Minnesota can be found on the Minnesota Pollution Control Agency's silica sand mining page.

Other resources

Centers for Disease Control and Prevention, National Institute of Occupational Safety and Health – Workplace Safety and Health Topic: Silica

Environmental Protection Agency, Office of Air and Radiation – Basics on air quality and particle pollution

University of Wisconsin – Eau Claire, Watershed Institute for Collaborative Environmental Studies – Health effects of particulate matter and silica exposure

/ tagged: air, frac sand, frac

Share:

MIDWEST ENVIRONMENTAL ADVOCATES
Madison
612 W Main Street, Suite 302
Madison, WI 53703
P 608.251.5047 / F 608.268.0205 / Email

COMMUNITY OF WISCONSIN

Keep up with the action /

ABOUT US
Our Story
Annual Reports
Staff
Board
Law Clerks
Jobs and Volunteers

ISSUES & ACTIONS
Issues
Actions

CITIZEN VOICES MATTER
Overview
Protecting Public Natural Resources
Defending Our Water
Frac Sand Mining
Open-pit Iron Mining
Champions of Change

RESOURCES

NEWS & EVENTS
News
Events

PETITION FOR CORRECTIVE ACTION

© 2017 Midwest Environmental Advocates. All rights reserved.

REPTILES
10 Endangered, 8 Threatened

Endangered

Turtles

Apalone mutica	Smooth Softshell
Clemmys guttata	Spotted Turtle
Emydoidea blandingii	Blanding's Turtle
Kinosternon flavescens	Yellow Mud Turtle
Macrochelys temminckii	Alligator Snapping Turtle
Pseudemys concinna	River Cooter

Snakes

Masticophis flagellum	Coachwhip
Nerodia fasciata	Southern Watersnake
Pantherophis emoryi	Great Plains Rat Snake
Sistrurus catenatus	Eastern Massasauga

Threatened

Turtles

Terrepene ornata	Ornate Box Turtle

Snakes

Clonophis kirtlandi	Kirtland's Snake
Crotalus horridus	Timber Rattlesnake
Heterodon nasicus	Plains Hog-Nosed Snake
Nerodia cyclopion	Mississippi Green Watersnake
Tantilla gracilis	Flathead Snake
Thamnophis sauritus	Eastern Ribbonsnake
Tropidoclonion lineatum	Lined Snake

BIRDS
24 Endangered, 7 Threatened

Endangered

Asio flammeus	Short-eared Owl
Bartramia longicauda	Upland Sandpiper
Botaurus lentiginosus	American Bittern
Buteo swainsoni	Swainson's Hawk
*Charadrius melodus***	Piping Plover
Chlidonias niger	Black Tern
Circus cyaneus	Northern Harrier
Egretta caerulea	Little Blue Heron
Egretta thula	Snowy Egret
Gallinula galeata	Common Gallinule
Lanius ludovicianus	Loggerhead Shrike
Laterallus jamaicensis	Black Rail
Limnothlypis swainsonii	Swainson's Warbler
Nyctanassa violacea	Yellow-crowned Night-Heron
Nycticorax nycticorax	Black-crowned Night-Heron
Pandion haliaetus	Osprey
Phalaropus tricolor	Wilson's Phalarope
Rallus elegans	King Rail
Sterna forsteri	Forster's Tern
Sterna hirundo	Common Tern
*Sternula antillarum***	Least Tern
Thryomanes bewickii	Bewick's Wren
Tympanuchus cupido	Greater Prairie-Chicken
Xanthocephalus xanthocephalus	Yellow-headed Blackbird

Threatened

*Calidris canutus rufa**	Rufa Red Knot
Caprimulgus carolinensis	Chuck-will's-widow
Coccyzus erythropthalmus	Black-billed Cuckoo
Dendroica cerulea	Cerulean Warbler
Ictinia mississippiensis	Mississippi Kite
Ixobrychus exilis	Least Bittern
Tyto alba	Barn Owl

MAMMALS
5 Endangered, 4 Threatened

Endangered

Corynorhinus rafinesquii	Rafinesque's Big-eared Bat
Myotis austroriparius	Southeastern Myotis
*Myotis grisescens***	Gray Bat
*Myotis sodalis***	Indiana Bat
Neotoma floridana	Eastern Wood Rat

Threatened

*Canis lupus***	Gray/Timber Wolf
Myotis leibii	Eastern Small-footed Bat
*Myotis septentrionalis**	Northern Long-eared Bat
Poliocitellus franklinii	Franklin's Ground Squirrel

INVERTEBRATES
44 Endangered, 10 Threatened

Endangered

Snails

*Discus macclintocki***	Iowa Pleistocene Snail
Fontigens antroecetes	Hydrobiid Cave Snail
Leptoxis praerosa	Onyx Rocksnail
Lithasia obovata	Shawnee Rocksnail

Mussels

*Cumberlandia monodonta***	Spectaclecase
*Cyprogenia stegaria***	Fanshell
Elliptio crassidens	Elephant-ear
*Epioblasma torulosa rangiana***	Northern Riffleshell
*Epioblasma triquetra***	Snuffbox
Fusconia ebena	Ebonyshell
*Lampsilis abrupta***	Pink Mucket
Lampsilis fasciola	Wavy-rayed Lampmussel
*Lampsilis higginsii***	Higgins Eye
*Leptodea leptodon***	Scaleshell
*Plethobasus cooperianus***	Orangefoot Pimpleback
*Plethobasus cyphyus***	Sheepnose
*Pleurobema clava***	Clubshell
Pleurobema cordatum	Ohio Pigtoe
*Potamilus capax***	Fat Pocketbook
Ptychobranchus fasciolaris	Kidneyshell
*Quadrula cylindrica***	Rabbitsfoot
Simpsonaias ambigua	Salamander Mussel
Toxolasma lividus	Purple Lilliput
Villosa iris	Rainbow

Crustaceans

Caecidotea lesliei	Isopod
Crangonyx anomalus	Anomalous Spring Amphipod
Crangonyx packardi	Packard's Cave Amphipod
*Gammarus acherondytes***	Illinois Cave Amphipod
Orconectes indianensis	Indiana Crayfish
Orconectes kentuckiensis	Kentucky Crayfish
Orconectes lancifer	Shrimp Crayfish
Orconectes placidus	Bigclaw Crayfish
Stygobromus iowae	Iowa Amphipod

INVERTEBRATES

Endangered (continued)

Scorpions

Centruroides vittatus	Common Striped Scorpion

Dragonflies

*Somatochlora hineana***	Hine's Emerald Dragonfly

Springtails

Pygmarrhopalites madonnensis	Madonna Cave Springtail

Stoneflies

Diploperla robusta	Robust Springfly
Prostoia completa	Central Forestfly

Leafhoppers

Athysanella incongrua	Leafhopper

Butterflies and Moths

Calephelis muticum	Swamp Metalmark
Hesperia metea	Cobweb Skipper
Hesperia ottoe	Ottoe Skipper
Incisalia polios	Hoary Elfin
*Lycaeides melissa samuelis***	Karner Blue Butterfly

Threatened

Mussels

Alasmidonta viridis	Slippershell
Cyclonaias tuberculata	Purple Wartyback
Ellipsaria lineolata	Butterfly
Elliptio dilatata	Spike
Ligumia recta	Black Sandshell
Villosa lienosa	Little Spectaclecase

Dragonflies

Nannothemis bella	Elfin Skimmer

Leafhoppers

Aflexia rubranura	Redveined Prairie Leafhopper

INVERTEBRATES

Threatened (continued)

Butterflies

Papaipema eryngii	Eryngium Stem Borer
Speyeria idalia	Regal Fritillary

PLANTS
251 Endangered, 73 Threatened

Endangered

Adoxa moschatellina	Moschatel
Alnus incana subsp. *rugosa*	Speckled Alder
Amelanchier sanguinea	Shadbush
Amorpha nitens	Smooth False Indigo
Andromeda glaucophylla	Bog Rosemary
Arctostaphylos uva-ursi	Bearberry
Artemisia dracunculus	Dragon Wormwood
Asclepias lanuginosa	Wooly Milkweed
*Asclepias meadii**	Mead's Milkweed
Asclepias ovalifolia	Oval Milkweed
Asclepias stenophylla	Narrow-leaved Green Milkweed
Asplenium bradleyi	Bradley's Spleenwort
Asplenium resiliens	Black Spleenwort
Astragalus crassicarpus var. *trichocalyx*	Large Ground Plum
Astragalus distortus	Bent Milk Vetch
Astragalus tennesseensis	Tennessee Milk Vetch
Baptisia tinctoria	Yellow Wild Indigo
Bartonia paniculata	Screwstem
Beckmannia syzigachne	American Slough Grass
Berchemia scandens	Supple-Jack
Betula alleghaniensis	Yellow Birch
Botrychium biternatum	Southern Grape Fern
Botrychium campestre	Prairie Moonwort
Botrychium matricariifolium	Daisyleaf Grape Fern
Botrychium multifidum	Northern Grape Fern
Botrychium simplex	Dwarf Grape Fern
Bouteloua gracilis	Blue Grama
Bumelia lanuginosa	Wooly Buckthorn
Calamagrostis insperata	Hollow Reed Grass
Calla palustris	Water Arum
Calopogon oklahomensis	Oklahoma Grass Pink Orchid
Calopogon tuberosus	Grass Pink Orchid
Camassia angusta	Wild Hyacinth
Cardamine pratensis var. *palustris*	Cuckoo Flower
Carex alata	Winged Sedge
Carex arkansana	Arkansas Sedge
Carex brunnescens	Brownish Sedge
Carex canescens var. *disjuncta*	Silvery Sedge
Carex chordorrhiza	Cordroot Sedge
Carex crawfordii	Crawford's Sedge

Endangered (continued)

Carex cumulata	Sedge
Carex decomposita	Cypress-knee Sedge
Carex diandra	Sedge
Carex disperma	Shortleaf Sedge
Carex echinata	Sedge
Carex formosa	Sedge
Carex garberi	Elk Sedge
Carex gigantea	Large Sedge
Carex heliophila	Plains Sedge
Carex intumescens	Swollen Sedge
Carex nigromarginata	Black-edged Sedge
Carex oligosperma	Few-seeded Sedge
Carex physorhyncha	Bellow's Beak Sedge
Carex plantaginea	Plaintain-leaved Sedge
Carex reniformis	Reniform Sedge
Carex trisperma	Three-seeded Sedge
Carex tuckermanii	Tuckerman's Sedge
Carya pallida	Pale Hickory
Castilleja sessiliflora	Downy Yellow Painted Cup
Ceanothus herbaceus	Redroot
Chamaelirium luteum	Fairy Wand
Chamaesyce polygonifolia	Seaside Spurge
Chimaphila maculata	Spotted Wintergreen
Chimaphila umbellata	Pipsissewa
Cimicifuga americana	American Bugbane
Cimicifuga racemosa	False Bugbane
Cimicifuga rubifolia	Black Cohosh
Circaea alpina	Small Enchanter's Nightshade
Cladrastis lutea	Yellowwood
Clematis crispa	Blue Jasmine
Clematis occidentalis	Mountain Clematis
Clematis viorna	Leatherflower
Collinsia violacea	Violet Collinsia
Comptonia peregrina	Sweetfern
Conioselinum chinense	Hemlock Parsley
Corallorhiza maculata	Spotted Coral-root Orchid
Cornus canadensis	Bunchberry
Corydalis aurea	Golden Corydalis
Corydalis halei	Hale's Corydalis
Corydalis sempervirens	Pink Corydalis

Endangered (continued)

Corylus cornuta	Beaked Hazelnut
Cynosciadium digitatum	Cynosciadium
Cypripedium acaule	Moccasin Flower
Cypripedium parviflorum	Small Yellow Lady's Slipper
Cypripedium reginae	Showy Lady's Slipper
Cystopteris laurentiana	Laurentian Fragile Fern
*Dalea foliosa***	Leafy Prairie Clover
Dennstaedtia punctilobula	Hay-scented Fern
Deschampsia flexuosa	Hairgrass
Dichanthelium boreale	Northern Panic Grass
Dichanthelium joori	Panic Grass
Dichanthelium portoricense	Hemlock Panic Grass
Dichanthelium ravenelii	Ravenel's Panic Grass
Dichanthelium yadkinense	Panic Grass
Draba cuneifolia	Whitlow Grass
Drosera rotundifolia	Round-leaved Sundew
Dryopteris celsa	Log Fern
Echinodorus tenellus	Small Burhead
Eleocharis olivacea	Capitate Spikerush
Eleocharis pauciflora	Few-flowered Spikerush
Elymus trachycaulus	Bearded Wheat Grass
Equisetum scirpoides	Dwarf Scouring Rush
Equisetum sylvaticum	Woodland Horsetail
Eriophorum virginicum	Rusty Cotton Grass
Eryngium prostratum	Eryngo
Eupatorium hyssopifolium	Hyssop-leaved Thoroughwort
Euphorbia spathulata	Spurge
Fimbristylis vahlii	Vahl's Fimbry
Galactia mohlenbrockii	Boykin's Dioclea
Galium virgatum	Dwarf Bedstraw
Geranium bicknellii	Northern Cranesbill
Glyceria arkansana	Arkansas Mannagrass
Gratiola quartermaniae	Hedge Hyssop
Gymnocarpium dryopteris	Oak Fern
Gymnocarpium robertianum	Scented Oak Fern
Hackelia deflexa var. *americana*	Stickseed
Halesia carolina	Silverbell Tree
Helianthus giganteus	Tall Sunflower
Heliotropium tenellum	Slender Heliotrope
Heteranthera reniformis	Mud Plantain
Hexalectris spicata	Crested Coralroot Orchid

Endangered (continued)

Hudsonia tomentosa	False Heather
Hydrolea uniflora	One-flowered Hydrolea
Hypericum adpressum	Shore St. John's Wort
Hypericum kalmianum	Kalm's St. John's Wort
Iliamna remota	Kankakee Mallow
Iresine rhizomatosa	Bloodleaf
Isoetes butleri	Butler's Quillwort
*Isotria medeoloides**	Small Whorled Pogonia
Isotria verticillata	Whorled Pogonia
Juncus vaseyi	Vasey's Rush
Juniperus horizontalis	Trailing Juniper
Justicia ovata	Water Willow
Lechea intermedia	Savanna Pinweed
*Lespedeza leptostachya**	Prairie Bush Clover
Lesquerella ludoviciana	Silvery Bladderpod
Lonicera dioica var. *glaucescens*	Red Honeysuckle
Lonicera flava	Yellow Honeysuckle
Luzula acuminata	Hairy Woodrush
Lycopodiella inundata	Bog Clubmoss
Lycopodium clavatum	Running Pine
Lycopodium dendroideum	Ground Pine
Lysimachia radicans	Creeping Loosestrife
Malus angustifolia	Narrow-leaved Crabapple
Malvastrum hispidum	False Mallow
Matelea decipiens	Climbing Milkweed
Medeola virginiana	Indian Cucumber Root
Megalodonta beckii	Water Marigold
Melanthera nivea	White Melanthera
Melica mutica	Two-Flowered Melic Grass
Mentzelia oligosperma	Stickleaf
Mimulus glabratus	Yellow Monkey Flower
Mirabilis hirsuta	Hairy Umbrella-wort
Nemophila triloba	Baby Blue-eyes
Nothocalais cuspidata	Prairie Dandelion
Opuntia fragilis	Fragile Prickly Pear
Orobanche fasciculata	Clustered Broomrape
Penstemon grandiflorus	Large-flowered Beard Tongue
Penstemon tubaeflorus	Tube Beard Tongue
Phacelia gilioides	Ozark Phacelia
Phegopteris connectilis	Long Beech Fern
Phlox pilosa subsp. *sangamonensis*	Sangamon Phlox

Endangered (continued

Pinus banksiana	Jack Pine
Pinus echinata	Shortleaf Pine
Pinus resinosa	Red Pine
Plantago cordata	Heart-leaved Plantain
Platanthera ciliaris	Orange Fringed Orchid
Platanthera clavellata	Wood Orchid
*Platanthera leucophaea**	Eastern Prairie Fringed Orchid
Platanthera psycodes	Purple Fringed Orchid
Poa alsodes	Grove Bluegrass
Poa languida	Weak Bluegrass
Poa wolfii	Wolf's Bluegrass
Pogonia ophioglossoides	Snake-mouth
Polanisia jamesii	James' Clammyweed
Polygala incarnata	Pink Milkwort
Polygonum careyi	Carey' Heartsease
Populus balsamifera	Balsam Poplar
Potamogeton praelongus	White-stemmed Pondweed
Potamogeton pulcher	Spotted Pondweed
Potamogeton robbinsii	Fern Pondweed
Potamogeton strictifolius	Stiff Pondweed
Primula mistassinica	Bird's-eye Primrose
Ptilimnium nuttallii	Mock Bishop's Weed
Quercus texana	Nuttall's Oak
Rhamnus alnifolia	Alder Buckthorn
Rhexia mariana	Dull Meadow Beauty
Rhynchospora alba	Beaked Rush
Rhynchospora glomerata	Clustered Beak Rush
Ribes hirtellum	Northern Gooseberry
Rosa acicularis	Bristly Rose
Sabatia campestris	Prairie Rose Gentian
Sagittaria australis	Arrowhead
Salix serissima	Autumn Willow
Salix syrticola	Dune Willow
Sambucus racemosa subsp. *pubens*	Red-berried Elder
Sanguisorba canadensis	American Burnet
Sanicula smallii	Southern Black Snakeroot
Sarracenia purpurea	Pitcher Plant
Saxifraga virginiensis	Early Saxifrage
Schizachne purpurascens	False Melic Grass
Schoenoplectus purshianus	Pursh's Bulrush
Schoenoplectus smithii	Smith's Bulrush

Endangered (continued)

Scirpus hattorianus	Bulrush
Scirpus microcarpus	Small-fruited Bulrush
Scleria muhlenbergii	Muhlenberg's Nut Rush
Scleria pauciflora	Carolina Whipgrass
Shepherdia canadensis	Buffaloberry
Silene ovata	Ovate Catchfly
Silene regia	Royal Catchfly
Sisyrinchium atlanticum	Eastern Blue-eyed Grass
Sisyrinchium montanum	Mountain Blue-eyed Grass
Sorbus americana	American Mountain Ash
Sparganium americanum	American Bur-reed
Sparganium emersum	Green-fruited Bur-reed
Spiranthes lucida	Yellow-lipped Ladies' Tresses
Spiranthes vernalis	Spring Ladies' Tresses
Stellaria pubera	Great Chickweed
Stylisma pickeringii	Patterson's Bindweed
Styrax grandifolius	Bigleaf Snowbell Bush
Symphoricarpos albus var. *albus*	Snowberry
Talinum calycinum	Fameflower
*Tetraneuris herbacea**	Lakeside Daisy
Thelypteris noveboracensis	New York Fern
Tilia heterophylla	White Basswood
Torreyochloa pallida	Pole Manna-Grass
Tracaulon arifolium	Halberd-leaved Tearthumb
Tradescantia bracteata	Prairie Spiderwort
Trichomanes boschianum	Filmy fern
Trichophorum cespitosum	Tufted Bulrush
Trientalis borealis	Star-flower
Trillium cernuum	Nodding Trillium
Trillium erectum	Ill-scented Trillium
Trillium viride	Green Trillium
Ulmus thomasii	Rock Elm
Utricularia cornuta	Horned Bladderwort
Utricularia minor	Small Bladderwort
Utricularia subulata	Hair Bladderwort
Vaccinium corymbosum	Highbush Blueberry
Vaccinium macrocarpon	Large Cranberry
Vaccinium oxycoccos	Small Cranberry
Vaccinium stamineum	Deerberry
Valeriana uliginosa	Marsh Valerian
Valerianella chenopodifolia	Corn Salad

Endangered (continued)

Valerianella umbilicata	Corn Salad
Veronica americana	American Brooklime
Viola blanda	Hairy White Violet
Viola canadensis	Canada Violet
Viola primulifolia	Primrose Violet
Woodsia ilvensis	Rusty Woodsia
Zigadenus elegans	White Camass

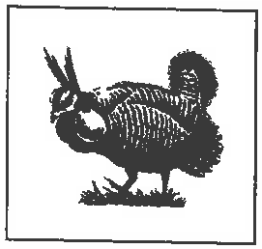
Threatened

Agalinis skinneriana	Pale False Foxglove
Amelanchier interior	Shadbush
Ammophila breviligulata	Marram Grass
Aster furcatus	Forked Aster
Besseya bullii	Kitten Tails
*Boltonia decurrens**	Decurrent False Aster
Buchnera americana	Bluehearts
Cakile edentula	Sea Rocket
Carex atlantica	Sedge
Carex aurea	Golden Sedge
Carex bromoides	Sedge
Carex communis	Fibrous-rooted Sedge
Carex cryptolepis	Yellow Sedge
Carex oxylepis	Sharp-scaled Sedge
Carex prasina	Drooping Sedge
Carex viridula	Little Green Sedge
Carex willdenowii	Willdenow's Sedge
Carya aquatica	Water Hickory
Chamaedaphne calyculata	Leatherleaf
*Cirsium pitcheri**	Pitcher's (Dune) Thistle
Cyperus grayoides	Umbrella Sedge
Cyperus lancastriensis	Galingale
Delphinium carolinianum	Wild Blue Larkspur
Dodecatheon frenchii	French's Shootingstar
Drosera intermedia	Narrow-leaved Sundew
Eleocharis rostellata	Beaked Spike Rush
Epilobium strictum	Downy Willow Herb
Equisetum pratense	Meadow Horsetail
Euonymus americanus	American Strawberry Bush
Filipendula rubra	Queen-of-the-Prairie
Helianthus angustifolius	Narrow-leaved Sunflower
Huperzia porophila	Cliff Clubmoss

Threatened (continued)

Hymenopappus scabiosaeus	Old Plainsman
Juncus alpinoarticulatus	Richardson's Rush
Juniperus communis	Ground Juniper
Larix laricina	Tamarack
Lathyrus ochroleucus	Pale Vetchling
Melanthium virginicum	Bunchflower
Melothria pendula	Squirting Cucumber
Menyanthes trifoliata	Buckbean
Minuartia patula	Slender Sandwort
Orobanche ludoviciana	Broomrape
Oxalis illinoensis	Illinois Wood Sorrel
Phaeophyscia leana	Lea's Bog Lichen
Planera aquatica	Water Elm
Platanthera flava	Tubercled Orchid
Polygonatum pubescens	Downy Solomon's Seal
Potamogeton gramineus	Grass-leaved Pondweed
Quercus montana	Rock Chestnut Oak
Quercus phellos	Willow Oak
Ranunculus rhomboideus	Prairie Buttercup
Rubus odoratus	Purple-flowering Raspberry
Rubus pubescens	Dwarf Raspberry
Rubus schneideri	Bristly Blackberry
Rudbeckia missouriensis	Missouri Orange Coneflower
Salvia azurea	Blue Sage
Schoenoplectus hallii	Hall's Bulrush
Scirpus polyphyllus	Bulrush
Sedum telephioides	American Orpine
Solidago sciaphila	Cliff Goldenrod
Stenanthium gramineum	Grass-leaved Lily
Styrax americana	Storax
Sullivantia sullivantii	Sullivantia
Synandra hispidula	Hairy Synandra
Talinum parviflorum	Small Flower-of-an-hour
Tofieldia glutinosa	False Asphodel
Trifolium reflexum	Buffalo Clover
Triglochin maritima	Common Bog Arrowgrass
Triglochin palustris	Slender Bog Arrowgrass
Urtica chamaedryoides	Nettle
Utricularia intermedia	Flat-leaved Bladderwort
Veronica scutellata	Marsh Speedwell
Viburnum molle	Arrowwood

Illinois Endangered Species Protection Board



One Natural Resources Way, Springfield, Illinois 62702 - 1271
PHONE (217) 785-8687; FAX (217) 785-2438
website: http://www.dnr.state.il.us/espb/index.htm

Silica Sand Mining & Health

The recent increase of silica sand mining in Minnesota is raising community concerns about possible health risks. The Minnesota Department of Health (MDH) is working to develop public health responses and tools to support citizens and communities as they consider impacts from mining activities.

How people are exposed to silica sand and the health concern.

Silica sand is a common part of our natural environment, found mostly in soil and rocks. Silica sand naturally occurs with either a crystalline or amorphous structure. Silica in a crystalline form is much more toxic to human health. Crystalline silica becomes of concern to human health only when it is released into the air in small particles.

Dust-sized silica particles, invisible to the naked eye, are generated during the mining process when they can be breathed into the body and deep into the lungs. Once in the lungs, these particles can be coughed up, or pass from the lungs to other organs in the body through the blood stream, or stay stuck in the lungs.

Exposure to silica sand particles from mining is of greatest concern to:

- People who work in the fracking or mining industry. They can be exposed to crystalline silica during the course of their work (occupational exposures).
- People living in communities near silica sand mining and processing operations. They can be exposed to crystalline silica sand emitted to the air as a result of general mining activities (environmental exposures).

Possible health concerns from exposure to crystalline silica.

The health effects of crystalline silica have been well characterized in occupational settings. Diseases associated with occupational crystalline silica exposure include:

- Diseases of the lungs including silicosis, emphysema, chronic obstructive pulmonary disease, tuberculosis, and lung cancer.
- Immune system diseases

Disease risk is related to both the levels and duration of crystalline silica exposure. The onset of disease may occur long after the exposure has stopped. Lung cancer, chronic bronchitis, silicoproteinosis and several autoimmune diseases have been linked to long term or very high exposures to crystalline silica.

The effect of high levels in air of crystalline silica in humans has been

Silica Sand is...
a material that forms rock, soil, sand, and other parts of the earth. Over many years, silica in the soil can form into crystalline silica due to natural heat and pressure.

Silica Sand is used for...
industrial and commercial processes like glass-making, road-building, , hydraulic fracturing for oil and gas production, water filtration and even electrics.

Silica sand mines may pose some risk to groundwater and surface water, either from chemical releases or changes to natural water systems.

For more information about environmental impacts from silica sand mining, see the MDH website at http://www.health.state.mn.us/divs/eh/hazardous/topics/silica/index.html

MINNESOTA MDH DEPARTMENT OF HEALTH

Site Assessment and Consultation Unit
Phone: 651-201-4897 or toll-free 1-800-657-3908
Email: health.hazard@state.mn.us
www.health.state.mn.us/divs/eh/hazardous/index.html

Updated June 2014

Blumberg No. 5208 EXHIBIT E-1

well studied. The US Occupational Safety and Health Administration have set a permissible exposure limit for crystalline silica for occupational exposures. The National Institute for Occupational Safety and Health also has a recommended exposure limit. There is research which suggests the current occupational limits may not be protective enough.

Few studies have been done on environmental crystalline silica exposures, and health effects resulting from these low level exposures have not been documented. It is known that a small amount of crystalline silica is naturally present in ambient air throughout the world, and that people breathe in small amounts of crystalline silica throughout the course of their lifetime during normal daily activities. At this time, there is no evidence that exposure to low-levels of breathable crystalline silica in air has adverse health effects. This continues to be an area of on-going research.

Minnesota Department of Health (MDH) Health Based Guidance for Crystalline Silica

MDH completed a review of breathable (respirable) crystalline silica and released an air quality chronic health-based value (HBV) of 3 micrograms per cubic meter ($\mu g/m^3$) in July 2013. This guidance was developed by MDH because there are no federal or state guidelines or standards for respirable crystalline silica in ambient air.

MDH guidance is focused on human health. Crystalline silica is toxic to human health when inhaled because of how it damages tissues in the lungs. Crystalline silica is not a concern for human health in other places in the environment, such as surface water or groundwater, because it is not breathed in from these sources. Therefore, the focus of MDH's health-based guidance is on crystalline silica that is found in the air, and may be breathed into the lungs.

For more information about MDH Health Based Guidance for Crystalline Silica, see the MDH website at http://www.health.state.mn.us/divs/eh/hazardous/topics/silica/index.html

Addressing Community Concerns: Health Impact Assessment

Community concerns related to general mining activities include impacts to air quality and non-mining industries (i.e. tourism) and increased traffic, noise, and risk of accidents. Health Impact Assessment (HIA) is a process that could lead to a more complete evaluation of all of the risks associated with silica sand mining and processing.

MDH supports HIA as a tool to ensure that health is considered in these and other important decisions. HIA is a systematic process used by organizations and community groups to provide decision-makers with information about how any policy, program or project may affect the health of people. HIA emphasizes a comprehensive approach to health, which includes economic, political, social, psychological, and environmental factors that influence people's health.

For more information, see the MDH website at http://www.health.state.mn.us/divs/hia/

MINNESOTA MDH DEPARTMENT OF HEALTH

Site Assessment and Consultation Unit
Phone: 651-201-4897 or toll-free 1-800-657-3908
Email: health.hazard@state.mn.us
www.health.state.mn.us/divs/eh/hazardous/index.html

Updated June 2014

Silica Sand Mining & the Environment

The recent increase of silica sand mining in Minnesota is raising community concerns about possible environmental impacts from silica sand mining. Mining may impact drinking water sources or the air we breathe. The Minnesota Department of Health (MDH) is working to develop public health responses and tools to support citizens and communities as they consider impacts from mining activities.

Water and Silica Sand Mining

Silica sand mining or processing impacts on drinking water sources

Any mine may create a pathway for chemicals and/or bacteria to more easily reach the groundwater.

- The risks to drinking water depend on how close the mining operations are to the water table, the use of heavy equipment, leaks and spills of fuel, engine oil or other chemicals, and runoff from contaminant sources or illegally dumped waste in the mine.
- Some frac sand mines use products called flocculants to remove silt and clay in the sand washing process. These products are generally considered to be environmentally safe; however, they often contain low concentrations of chemicals (acrylamide and DADMAC) which are of potential concern. MDH recommends monitoring of the groundwater at facilities where these chemicals are to be used to ensure safe drinking water levels are not exceeded.
- Groundwater near frac sand mines may become slightly more acidic (lower in pH). This may cause minerals (like iron and manganese) to more easily dissolve, which can cause water to have unpleasant taste and odor and may cause staining. MDH recommends that pH be included in the water monitoring list for groundwater near frac sand mining operations.

Silica sand mining and groundwater

Mining can remove large volumes of groundwater and has the potential to impact nearby wells. Impacts could include the lowering of water levels, possibly even causing a nearby well to go dry.

- The Minnesota DNR reviews large water removal activities to ensure that groundwater use will not harm wells in the area.
- MDH evaluates whether there are any potential risks to community water supply wells.
- MDH recommends a number of actions to prevent or reduce the potential for pollutants to enter the groundwater and water quality monitoring to protect nearby drinking water wells. For more information, visit the MDH website: "Wellhead Protection Issues Related to Mining Activities" (http://www.health.state.mn.us/divs/eh/water/swp/mining.pdf)

Silica Sand is...
a material that forms rock, soil, sand, and other parts of the earth. Over many years, silica in the soil can form into crystalline silica due to natural heat and pressure.

Silica Sand is used for...
industrial and commercial processes like glass-making, road-building, , hydraulic fracturing for oil and gas production, water filtration and even electrics.

Community concerns have been raised about possible health risks for people living near silica sand mining facilities.

For more information about health impacts from silica sand mining, visit the MDH website at http://www.health.state.mn.us/divs/eh/hazardous/topics/silica/index.html

MINNESOTA MDH DEPARTMENT OF HEALTH

Site Assessment and Consultation Unit
Phone: 651-201-4897 or toll-free 1-800-657-3908
Email: health.hazard@state.mn.us
www.health.state.mn.us/divs/eh/hazardous/index.html

Updated June 2014

Blumberg No. 5208 EXHIBIT E-2

Air and Silica Sand Mining

Mining activities that break up soil and rock layers by digging or blasting release dust-sized particles (particulate matter) into the air that are invisible to the naked eye. The smallest of these particles that are broken up can become airborne for an extended period of time.

Crystalline silica is a specific kind of particulate matter. The concentration of crystalline silica in air is based on a specific particle size range called PM4 (particulate matter 4 micrograms per meter and smaller). Monitoring particulate matter is important because industrial activities and diesel engines generate these types of particles that can cause adverse human health effects.

More information about particulate matter can be found by visiting the US Environmental Protection Agency Web page: http://www.epa.gov/pm/basic.html

People who work in hydraulic fracturing or frac sand mining activities are most at risk for exposure to high levels of respirable crystalline silica. Occupational safety and health officials have long known about the importance of monitoring for airborne crystalline silica – many workers at mines wear personal monitoring devices that record how much exposure to crystalline silica they receive while working. Engineering controls, such as keeping sand wet, can control airborne silica levels at the mine, during processing and when transported. These activities can also lower the exposure to airborne silica for people living downwind of silica sand mining, processing, or hauling operations. Monitoring of airborne crystalline silica with scientific instruments at a mine can show how much silica may be in the air, and if human exposures may be occurring nearby.

Data about crystalline silica in air in the United States is limited. Monitoring is not done regularly and often is measured with different types of instruments. Only recently has the same size fraction of crystalline silica that is used in occupational studies been measured in air. This makes it hard to compare the data directly. Minnesota-specific data on crystalline silica in air are only beginning to be measured. Information is available on the Minnesota Pollution Control Agency Web page - Air monitoring at Minnesota silica sand facilities (http://www.pca.state.mn.us/index.php/air/air-quality-and-pollutants/air-pollutants/silica-sand-mining/air-monitoring-data-at-minnesota-silica-sand-facilities.html).

Addressing Community Concerns: Health Impact Assessment

Community concerns related to general mining activities include impacts to air quality and non-mining industries (i.e. tourism) and increased traffic, noise, and risk of accidents. Health Impact Assessment (HIA) is a process that could lead to a more complete evaluation of all of the risks associated with silica sand mining and processing.

MDH supports HIA as a tool to ensure that health is considered in these and other important decisions. HIA is a systematic process used by organizations and community groups to provide decision-makers with information about how any policy, program or project may affect the health of people. HIA emphasizes a comprehensive approach to health, which includes economic, political, social, psychological, and environmental factors that influence people's health.

For more information, see the MDH website at http://www.health.state.mn.us/divs/hia/

MINNESOTA MDH DEPARTMENT OF HEALTH

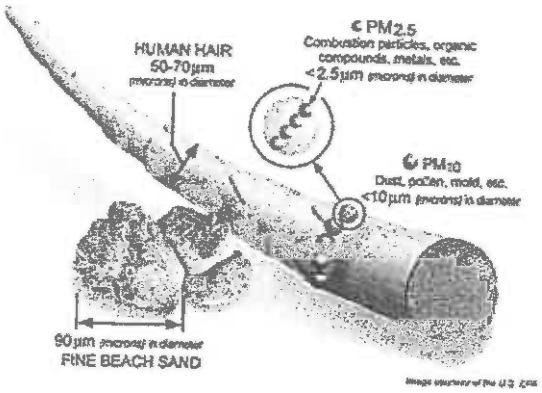
Site Assessment and Consultation Unit
Phone: 651-201-4897 or toll-free 1-800-657-3908
Email: health.hazard@state.mn.us
www.health.state.mn.us/divs/eh/hazardous/index.html

Updated June 2014

Fast Facts on Frac Sand Mining: Silica Dust, Air Quality and Our Health

Apr 07, 2014

How does silica dust impact our health?



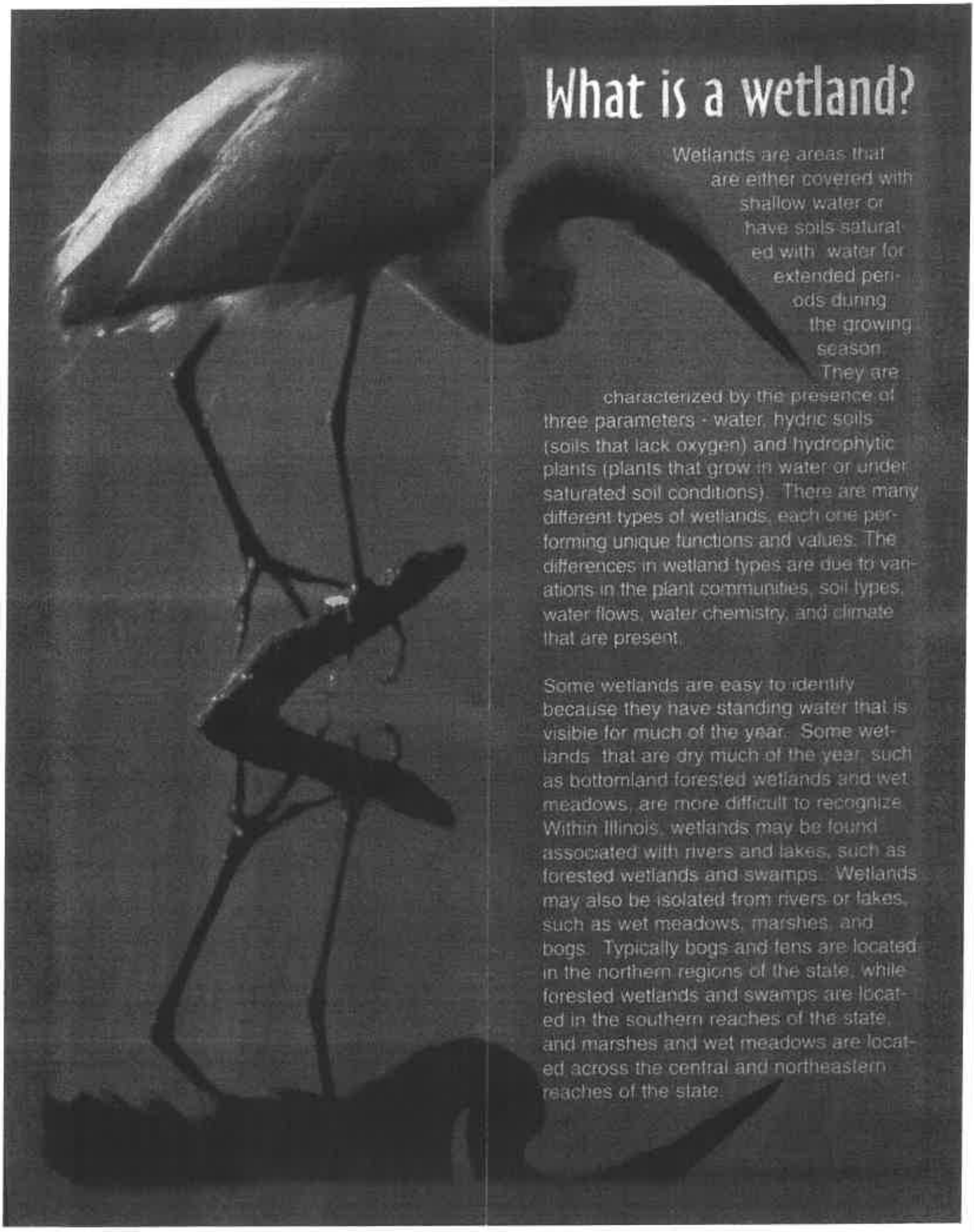
- Silica dust is a known carcinogen, according to the latest update in the 2014 report on carcinogens by the National Institute of Health. Silica dust is produced by frac sand mining operations as a waste byproduct. Most studies are on sillicosis and cancer linked to occupational exposure, but the report acknowledges that "residents near quarries and sand and gravel operations potentially are exposed to respirable crystalline silica."

- Breathing silica dust causes silicosis, a serious and incurable lung condition that causes scarring in the lungs, difficulty breathing, and in some cases, death.

NEWS TAGS

wolves (1)
wolf (2)
wetlands (3)
water (4)
transportation (5)
rural (6)
rail safety (7)
public trust doctrine (8)
phosphorus (9)
petition for corrective action (10)
mississippi river (11)
mining (12)
land (13)
lakes (14)
great lakes compact (15)
great lakes (16)
government (17)
frack (18)
frac sand (19)
frac (20)
federal (21)
environmental justice (22)
energy (23)
endangered (24)
enbridge (25)
drinking water (26)
crude oil (27)
coal (28)
climate change (29)
clean water act (30)
clean air act (31)
air (32)
agriculture (33)

Blumberg No. 5208
EXHIBIT
E-3



What is a wetland?

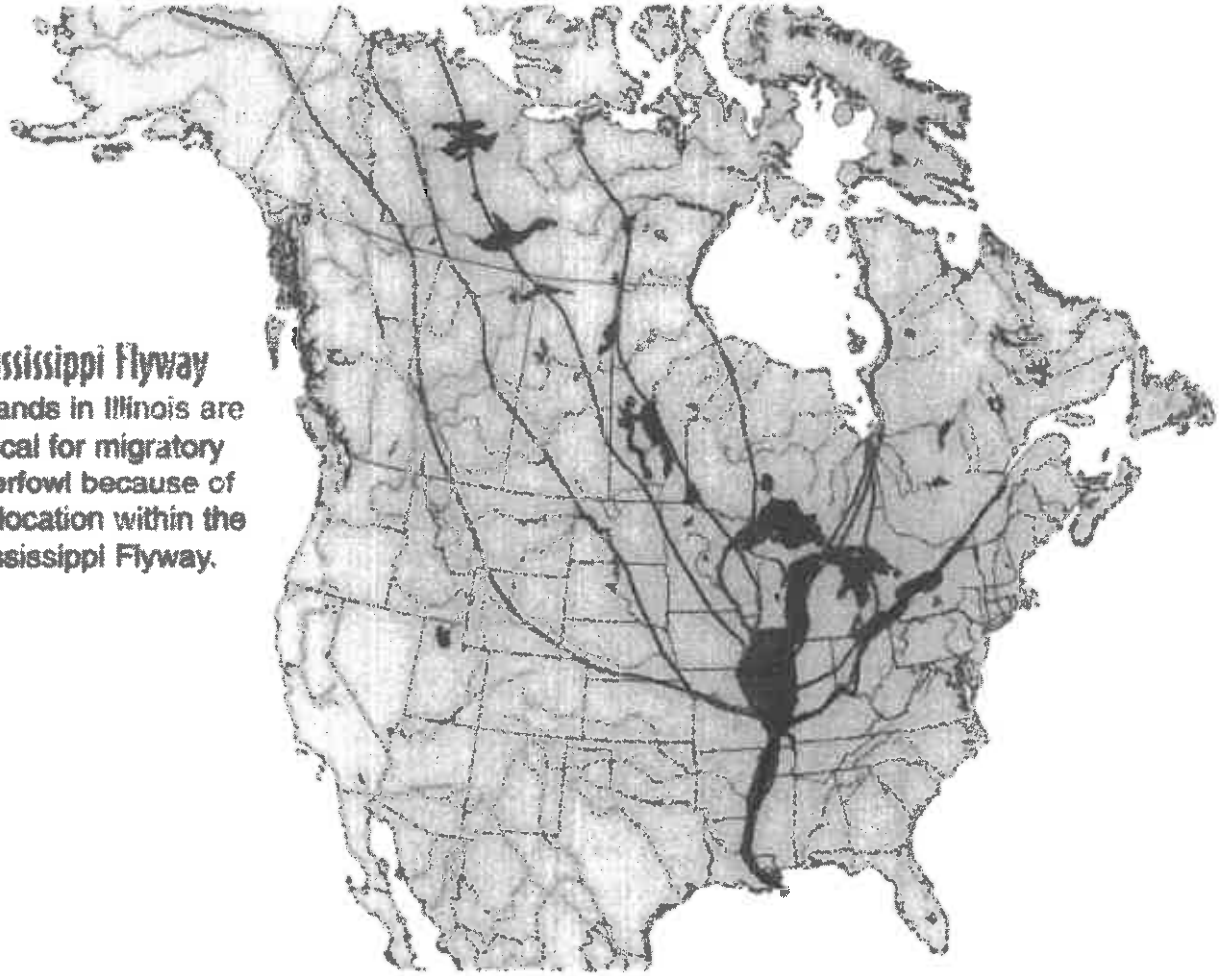
Wetlands are areas that are either covered with shallow water or have soils saturated with water for extended periods during the growing season. They are characterized by the presence of three parameters - water, hydric soils (soils that lack oxygen) and hydrophytic plants (plants that grow in water or under saturated soil conditions). There are many different types of wetlands, each one performing unique functions and values. The differences in wetland types are due to variations in the plant communities, soil types, water flows, water chemistry, and climate that are present.

Some wetlands are easy to identify because they have standing water that is visible for much of the year. Some wetlands that are dry much of the year, such as bottomland forested wetlands and wet meadows, are more difficult to recognize. Within Illinois, wetlands may be found associated with rivers and lakes, such as forested wetlands and swamps. Wetlands may also be isolated from rivers or lakes, such as wet meadows, marshes, and bogs. Typically bogs and fens are located in the northern regions of the state, while forested wetlands and swamps are located in the southern reaches of the state, and marshes and wet meadows are located across the central and northeastern reaches of the state.

Why are wetlands important?

Wetlands are a dynamic resource, ever changing in response to weather conditions and precipitation patterns. During a dry year, for example, some wetlands may not be very wet at all. During a year with heavy rains, those same areas may fill and hold water. Depending upon whether it is a dry or wet year, wetlands may perform different functions, serving as habitat for different assemblages of plants and animals, and contributing more or less control over the flow rates of nearby streams. This flexible nature is what helps make them so valuable to humans and natural systems. The following is a list of some of the more valuable functions wetlands perform.

Flood Prevention and Stream Flow Control: Wetlands, (especially drier wetlands) absorb large amounts of storm water and reduce flooding by storing and slowing down the force of the water. During dry periods these same wetlands continue to release the stored water back into their associated streams, resulting in a more constant flow rate. In fact, an Illinois State Water Survey study has shown for every 1% of a watershed that exists as wetland, the peakflow of the associated streams decreases by an average of 3.7%, and low flow of those streams increases by an average of 7.9%. Preserving the water storage capability of wetlands can have substantial benefits.



Mississippi Flyway

Wetlands in Illinois are critical for migratory waterfowl because of their location within the Mississippi Flyway.

Nationally, flooding causes approximately $8 billion in damage annually, and here in Illinois, a DuPage County study found that 80% of all flood damage reports came from homeowners whose houses were built on converted wetlands.

Hines Emerald Dragonfly is one of many endangered wetland species.

Threatened and Endangered Species Habitat: All wildlife depends upon the presence of suitable habitat in order to live and breed. Many species require very specific habitats, such as wetlands. Because so many of our unique wetlands have been lost, many species that once thrived and were plentiful, are now endangered or threatened. At least 1/3 of the nation's threatened or endangered plants and animals depend on wetlands. In Illinois, over 60% of the vertebrates and 18% of the plants listed as threatened or endangered are wetland dependent. These species' survival relies heavily upon the remaining 3.5% of the state's landscape that exists as either natural or artificial wetlands.

Several wildlife species, such as the Ring-Necked Duck, depend upon wetlands.

Wildlife and Fish Habitat: In addition to those species listed as threatened or endangered, wetlands provide food and shelter for a wide variety of other plants, fish, wildlife, waterfowl, and shorebirds. Many species of fish depend on the wetlands that are adjacent to lakes and rivers as places to spawn, for small fish to grow, and for feeding. Several species of resident animals such as dragonflies, mussels, and muskrats depend on wetlands all year long to provide them with homes, food, and a place to raise their young. Migrating birds, such as the Ring-Necked Duck depend on wetlands during critical times in the spring and fall as places to stop to rest and feed.

Wetlands can support a large number of plants and animals. This diverse assembly of plant and animal communities is often referred to as biological diversity. Unfortunately, Illinois has lost nearly 90% of its original wetland base and the biological diversity of the state has drastically declined. Therefore, the few remaining wetlands are critical to the species which still remain including those migratory waterfowl passing through Illinois. Without Illinois' wetlands, migrating birds would either never make it to their destinations, or

Wetlands provide a variety of recreational opportunities.

they would be in such poor condition that their breeding success would be greatly reduced.

Improving Water Quality: The lush vegetation in wetlands, and the associated microorganisms, work together to improve water quality. The vegetation slows down storm water, which allows suspended sediment and other materials to drop out. This reduces sediment loads that are delivered to streams and lakes downstream from these wetlands. Wetland vegetation also has a tremendous capacity to absorb dissolved nutrients, such as nitrogen and phosphorus from water. In some cases, a wetland can absorb up to 90% of these nutrients that it receives. Many other pollutants brought into wetlands can get trapped in the sediment and then be broken down by the many microorganisms that thrive in the nutrient rich system. This filtering capability of wetlands is critical to improve the ecological health of our nation's waters.

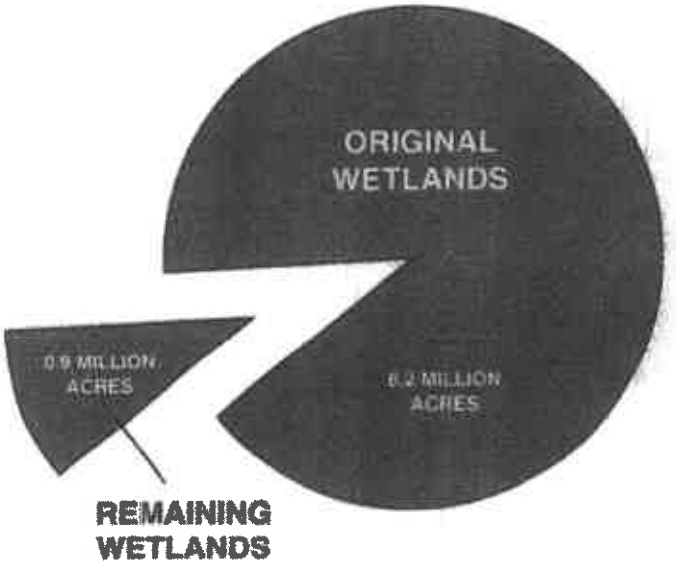
High levels of sediments, nutrients, and pollutants, however, can easily "overload" the assimilation capacity of a wetland and create serious management problems as those impurities reach ponds, lakes, rivers or other, more sensitive wetland areas.

Aesthetics and Recreation: Wetlands are also important sources of outdoor recreation. They help support fishing, hunting, trapping, and wildlife observation opportunities. Waterfowl hunters and fur trappers use wetlands almost exclusively. Because of the diversity of plants and animals that are associated with wetlands, bird-watchers and wildflower enthusiasts can see unique and beautiful species they can not observe elsewhere. For the same reason, nature photographers find scenes in wetlands that cannot be duplicated. Even though the value of our wetlands cannot be easily measured in dollars, studies show that these activities contribute well over $1.6 billion annually to Illinois' economy.

Lush wetlands vegetation helps filter excess nutrients and improve water quality.

What is the status of Illinois' wetlands?

Although wetlands can provide many public benefits, those benefits are at risk. The predominant cause of these losses is generally conversion to agricultural crops, although in northeastern Illinois, conversion to urban uses is the major threat. Approximately 23% of the state was wetland prior to European settlement. Since 1818, Illinois has lost nearly 90% of its wetland acreage, ranking it sixth nationally in converting wetlands to other uses. Currently, there are only an estimated 870,000 acres of the original 8.2 million acres of natural wetlands remaining within the state. Furthermore, it is estimated that Illinois continues to lose between 3,000 to 5,000 acres of wetlands annually.



The following table contains the size, acres of wetlands, and percent of wetlands in the six northeastern Illinois counties. Four of these six counties exceed the statewide average of 2.4%. It is interesting to compare one area to another in order to demonstrate differences. For example, the six counties in northeastern Illinois comprise 6.7% of the state's acreage. Yet the wetlands in these counties comprise 10.8% of the state's wetlands. Northeastern Illinois is fortunate to have a greater percentage of natural wetlands remaining than much of the rest of the state. Another concentration of the state's natural wetlands is in the southern counties, while the central counties have lost the greatest number of their natural wetlands. For comparison, the county with the highest percent of remaining natural wetlands is Alexander County (in southern Illinois) with13.5% and the lowest is Ford County (in central Illinois) with .3%.

County	Total Acres in County	Acres of Natural Wetlands	% Total Area in County
Cook	607,261	14,313	2.4%
DuPage	213,476	7,752	3.6%
Kane	332,563	8,066	2.4%
Lake	298,839	28,713	9.6%
McHenry	387,915	20,709	5.3%
Will	538,379	14,021	2.6%
Totals	2,378,453	93,574	3.9%

What is being done to protect Illinois' wetlands?

There are a number of approaches to wetland protection including regulation, economic incentives, education, and acquisition/restoration activities. Wetland regulation is an effective tool for protecting these valuable resources, but the regulations are limited and as a result the health and existence of many wetlands continue to be at risk. Economic incentives are another effective wetlands protection measure, but are voluntary in nature and rely on concerned landowners taking the responsibility of protecting a particular wetland upon themselves. Education can help change public perceptions and attitudes towards wetlands, but unless the actions of those individuals are also changed, the resource will still remain in jeopardy. Acquisition and restoration activities are also very good protection efforts, but rely heavily on availability of funds and technical expertise. None of these efforts alone is enough to protect Illinois' wetland resource, but collectively they can help ensure Illinois' remaining wetlands can be enjoyed by future generations. The following is a discussion of how each of these types of protection measures is being applied in Illinois.

The deposition of fill material in a wetland requires a permit.

Federal regulations: The major federal regulatory tool protecting wetlands against development is Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers with oversight from the U.S. Environmental Protection Agency. Under Section 404, it is necessary to secure a permit from the Army Corps of Engineers to discharge dredged or fill material into waters of the United States, which includes wetlands. Failure to secure a permit can result in civil and/or criminal penalties. When the Army Corps of Engineers receives a permit application to fill a wetland for development, it is evaluated on regulations developed by the Corps and Section 404(b)(1) guidelines developed by U.S. Environmental Protection Agency, which establish the environmental criteria and standards that determine whether the project is in the public interest.

The major federal regulatory tool for wetland protection against agricultural conversions is the Swampbuster provision of the Food Securities Act (Farmbill). The Swampbuster program is administered by the U.S. Department of Agriculture - Natural Resource Conservation Service. This regulation requires anyone wishing to alter a wetland for the purposes of making it capable of producing an agricultural product to first secure a permit from the Natural Resource Conservation Service. Failure to obtain such a permit may result in the denial of all U.S. Department of Agriculture subsidies and benefits.

State Regulations: The Section 404 and Swampbuster programs are not comprehensive wetland protection programs, in that many activities that damage or destroy wetlands are often conducted without the discharge of a dredge or fill material, or making the land completely capable of producing an agricultural product. The Section 404 and Swampbuster mitigation policies

also do not ensure that there will be no net loss of wetland acreage. As a result many states have passed legislation to further protect wetlands. In 1989, the Interagency Wetland Policy Act was passed by the Illinois General Assembly. This legislation applies to all state supported activities.

Development pressures threaten the existence of many valuable wetlands.

The Interagency Wetlands Policy Act of 1989 established a no-net-loss of wetlands goal for the State of Illinois. This goal applies to wetland types and functional values as well as acreage. The state legislation also requires replacement of all wetlands lost with like kind and quality which provides protection for unique wetland types. The mitigation requirement is based on the degree of destruction, the type of wetland, and the location of the replacement wetland. For example, under this act, bogs and fens cannot be destroyed because the expertise does not currently exist to replace them.

Economic Incentives: The State of Illinois also allows for decreased property taxes for open space lands which have not been developed or are not under intensive agricultural practices. Local governments can also help protect wetlands by enacting special ordinances offering landowners similar economic incentives or disincentives through property taxes.

Education: There are currently several educational programs related to wetlands. The federal government and the State of Illinois each have developed and make available a wide variety of wetland educational materials designed for all age groups. Individuals or organizations interested in receiving additional educational materials or setting up a workshop or interpretive talk should contact the Illinois Department of Natural Resources' Office of Land Management and Education at (217) 524-9505. The U.S. Fish and Wildlife Service also has a number of educational programs and materials related to wetlands, and can provide assistance by being contacted at (847) 381-2253. Additionally, the U.S. Environmental Protection Agency has a Wetlands Information Hotline that can be contacted for other wetland educational materials. That number is 1-800-832-7828.

Acquisition/Restoration: Acquisition and restoration measures involve the purchase of wetlands and surrounding uplands which serve as buffers. This may be complemented by technical or financial assistance for restoring the wetland's hydrology by dismantling drainage systems; replanting or encouraging the growth of native vegetation; and/or improving water flow into and out of the wetland, and/or removing non-native and invasive species. This approach is used by private conservation organizations as well as governmental agencies. Ducks Unlimited, The Nature Conservancy, the U.S. Fish and Wildlife Service, and the Illinois Department of Natural Resources are each involved in a variety of private and public land acquisition and restoration projects to protect wetlands. Some such acquisition/restoration projects include; *Redwing Slough* in Lake County, *Cypress Creek Wildlife Refuge* in Pulaski, Union, Johnson and Alexander Counties, and *Banner Marsh* in Fulton and Peoria Counties.

How do wetlands change as a result of human activity?

An undisturbed wetland may be teeming with plants and animals and have clear water in both shallow and deep areas. In this wetland we see a Yellow-Headed Blackbird, Snowy Egret, and Osprey, which are all listed as endangered in Illinois. There is also a snake, turtle, fish, ducks and an assortment of high quality wetland plants such as sedges and arrowhead.

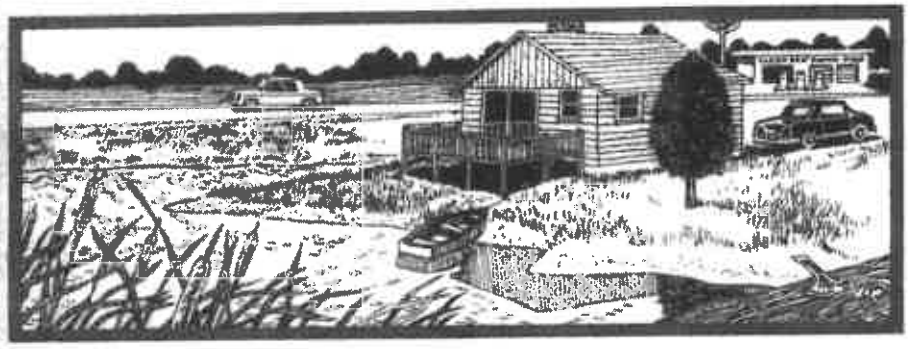
A. Wetland loss may happen quickly and dramatically, such as when a bulldozer fills one in prior to construction of a home or highway. More often, however, wetland loss and the resulting species declines are the result of minor individual impacts which cumulatively destroy the wetland over a period of time.

Even though there has been no direct loss of wetlands with the construction of the road and plowing of the adjacent field, changes have occurred in this wetland. The snake and Osprey are no longer present and the water quality and number of ducks has declined.

B. Land use changes nearby, such as new roads or conversion of uplands to agricultural fields, may increase runoff into the wetland, gradually altering both the water chemistry and the amount of silt which enters the wetland.

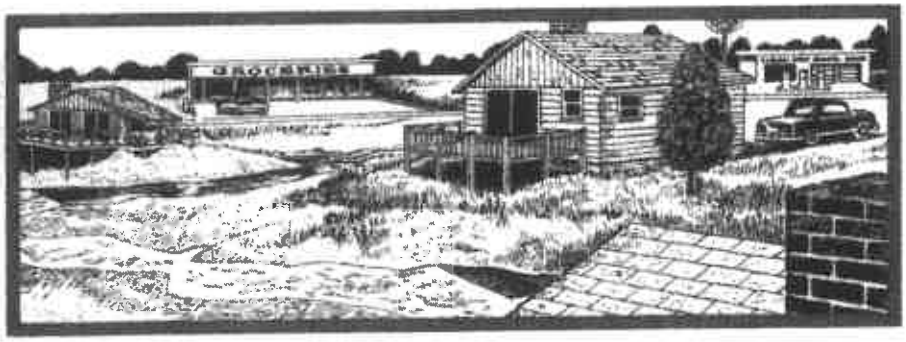
Significant changes to the wetland are now visible. This wetland no longer provides habitat for the endangered Yellow-Headed Blackbird and Snowy Egret, both have left this site as development encroaches. The vegetation has also changed to the more tolerant cattails and the fish are no longer as abundant.

C. Conversion of nearby land to new uses will cause additional changes in the habitat because there is less of a buffer for the wetland. As homes and commercial areas are placed closer and closer to the wetland, animals less tolerant to human disturbance will be unsuccessful in raising their young and will eventually leave the area altogether. The plant composition of the wetland will also change as species intolerant of the new conditions die out and are replaced by other species, often those which are not native to Illinois.



Virtually all wildlife has disappeared from this wetland as a result of the development on adjacent lands. The vegetation has also continued to decline in quality, further degrading the habitat available to animal species.

D. The increasing demand for land places developed areas ever closer to the wetland. As this occurs there is a lower diversity of native species found there. As runoff increases, it carries eroded soil from the uplands which gradually fills in the deep water areas, making it unsuitable for certain plants and animals which had lived there.



The former values this wetland provided have been lost or degraded. The wildlife is now absent, the vegetation is altered, and the flood control function has been greatly reduced as the wetland area has become smaller and smaller. The end result is less habitat for endangered species and the other wildlife and increased flooding of the surrounding land.

E. Eventually the wetland is so surrounded by development that it can no longer survive. Although it was not directly paved over, it has nevertheless been destroyed because it no longer supports the diversity of the life which it once saw.

What can concerned citizens do?

Effective protection of the state's natural resources requires the involvement of not only state and federal agencies, but also local governments, and most importantly, individuals. As a citizen your voice helps to shape the priorities of government at all levels. People often want to become involved in protecting resources, but have no idea where to begin. Unfortunately, all too often, an interest in protection comes about late in the process, usually when a proposal to develop a treasured wetland comes before a planning commission, or even worse when the equipment arrives on the scene to begin construction.

There are many opportunities for the public to participate in the protection of wetlands.

Public Involvement: In either case, as a private citizen you can ensure that all applicable ordinances are being followed and, if necessary, that a Section 404, Swampbuster, or Interagency Act of 1989 permit has been secured. If equipment has arrived on the scene you can call your village board, or local Army Corps of Engineers office to quickly verify that approvals have been secured. If they have not, cease and desist actions may be initiated before more damage has been done.

Of course, it is better to become involved before a wetland is at risk. Every citizen can work to develop a public appreciation for wetlands by making sure local officials know that developing wetlands is expensive, with higher construction costs, increased demand for flood control assistance, increased maintenance costs for roads and other infrastructure, decreased quality of life, and the loss of unique environmental assets which in many instances drew people to the community in the first place. You should also point out the positive values of wetlands, including reducing storm water damage to developed areas, purifying water supplies, and providing natural open space for unique wildlife.

You can work with your local government to develop ordinances which provide meaningful protection for wetlands and other important natural resources. Encourage them to incorporate wetland protection provisions into such things as storm water management plans, watershed plans, zoning requirements, subdivision ordinances, and comprehensive city development plans. Do not rely solely on

existing federal and state regulatory programs to protect wetlands. These laws provide useful guidelines, but need to be supported by local regulations.

Protection/Management: More than 95% of the land area in Illinois is privately owned. This means a great deal can be done, in both urban and agricultural landscapes, to protect wetlands by implementing conservation management techniques on private lands. Such techniques include the maintenance of buffers around existing wetlands, implementing soil erosion control techniques when disturbing the ground, and placing conservation easements on certain areas.

Buffers: Prior to the settlement and development of the state, vast areas of wetlands, prairies and forests did not need to be buffered from human activities. As land was converted to agricultural and urban uses, the impacts to the natural environment were so great that buffering became necessary. A buffer is nothing more than a protective strip of vegetation (grasses, trees, and/or shrubs) between wetlands and developed land. Buffers reduce storm water and contaminant runoff, reduce noise, and provide undisturbed opportunities for wildlife habitat, particularly for threatened and endangered species.

Buffers protect wetlands from cropland and urban development on adjacent properties. For example, the water that runs off from housing developments can vary widely in quality. Quality of runoff is determined by a number of factors including slope (and therefore water velocity) vegetation type, soil permeability, detention time, and the presence

Healthy wetlands require an adequate buffer.

or absence of lawn chemicals. On steeper slopes, for instance, there may be increased water velocity of the runoff from less permeable sites. When velocity doubles, water moves particles, such as soil, 64 times larger and transports 32 times more suspended materials, increasing the erosion power of water four times. This runoff can be controlled by a buffer.

The size of the buffer needed to protect a wetland depends upon the purpose of the developed site, and the purpose of the buffer. If water quality is the concern, the buffer can range from 50 to 400 feet depending upon the slope and vegetation. If protecting a wetland and its wildlife species from noise is the goal, more elaborate buffers are needed. Noise can be reduced by the use of barriers such as trees or shrubs. Approximately 5 to 10 decibels of noise reduction can be achieved per 100 feet of forest width. To protect highly sensitive species, such as the endangered black-crowned night heron, from human disturbance a buffer from 330 to 700 feet may be needed. Fortunately, buffers can generally be incorporated into any agricultural or suburban land use plan to the benefit of both humans and the environment.

Many wetlands can be protected or restored by placing them into a conservation easements.

Soil Erosion Control: It is important that wetlands be protected from sedimentation that results from bare soil being exposed, particularly on slopes. Sedimentation may result in a wetland gradually filling in. A potential by-product of reducing water depth in this manner is an invasion by exotic species such as purple loosestrife, and the loss of habitat required by other animals, particularly threatened or endangered bird species.

An excellent reference for learning more about methods of reducing urban soil erosion is the *Procedures and Standards for Urban Soil Erosion and Sedimentation Control in Illinois* published by the Association of Illinois Soil and Water Conservation Districts. This book proposes principles for limiting erosion and sedimentation from urban development projects. Some good guidelines to follow when trying to reduce soil erosion include:

1. Keep disturbed areas small. As much natural vegetation as possible should be maintained. All areas vulnerable to erosion should be disturbed as little as possible, and the construction should be sequenced so that only the area actively being developed is exposed.

2. Stabilize disturbed areas. Mechanical, structural, or vegetative methods exist to stabilize vulnerable areas.

3. Keep runoff velocities low. Short slopes, low gradients, and maintenance of natural vegetation help to reduce velocities and thereby limit soil erosion hazards.

4. Protect disturbed areas from storm water runoff. Methods that may be employed include waterways, sediment basins, and straw bale barriers.

5. Retain sediment within the site boundaries. Sediment that does occur can be held on site by two methods: filtering runoff as it flows, and detaining sediment-laden runoff for a period of time in order to allow the soil particles to settle out.

6. Implement a monitoring program. A site cannot be effectively protected from soil erosion without frequent examinations of the erosion and sediment control practices.

Conservation Easements: Another method of providing long-term protection for both urban and rural wetlands is the dedication of a conservation easement. An easement gives the holder of that easement interest in some but not all of the property rights. For example, a wetland within a subdivision may be owned by an individual landowner but have a conservation easement placed on it that limits the use of the property for the purpose of protecting the wetland.

Wetlands are an integral part of a healthy watershed.

A conservation easement may be held by the homeowners association, a local unit of government such as a park or forest preserve district or municipality, state or federal agency, citizen's organization, or land trust. If the group holding the easement has limited experience with wetland management, it is important that a long-term management plan be prepared to guide management of the site.

Local units of government and agricultural communities have many opportunities before them to protect wetlands that exist on their property. Incorporating wetlands into subdivision designs and retaining wetlands on farms provide many benefits to the landowner and the public at large. It is necessary, however to protect the wetland and an adequate buffer to prevent the gradual degradation and eventual loss of the wetland.

In many parts of the state, private citizen groups work with landowners to plan and implement wetland protection programs. Get to know local landowners. You may find them grateful for management assistance. If you own a wetland, protect it from development or degradation. You may wish to restore or enhance the wetland. Please contact your local Illinois Department of Natural Resources, or Natural Resource Conservation Service field office, or the U.S. Fish and Wildlife Service Chicago Wetlands Office for more information, on how to accomplish your restoration or enhancement goals.

There are a several managed wetland sites with facilities for you to enjoy.

Wetland Sites to Visit: If you are interested in visiting a wetland, there are a number of exciting sites throughout the state, in addition to those mentioned before. The sites listed below are publicly owned and protected areas in Northeastern Illinois which have facilities to accommodate group trips.

Cook County: Crabtree Nature Center, located in Barrington, is bordered by Dundee, Algonquin, and Palatine Roads. Boardwalks and trails allow access to a variety of wetlands. This site is owned by the Cook County Forest Preserve District.

Kane County: Nelson Lake Marsh Nature Preserve is located approximately 3 miles west of Batavia. At the intersection of Highway 31 and Main Street, take Main Street 3 miles west and then go south 0.3 miles. Nelson Lake Marsh includes several wetland types, including marsh, fen, and open water communities. This site is owned by the Kane County Forest Preserve District.

Lake County: Volo Bog Nature Preserve is located north and west of Volo. Take Highway 12 north 1.2 miles to Sullivan Lake Road, go west 1.4 miles to Brandenburg Road, and turn north to the entrance. Volo Bog is the only site in the Illinois Nature Preserve system which contains all the stages of a classical bog succession. Unique plant and animal species have adapted to the distinctive conditions within the bog. The site is owned by the Illinois Department of Natural Resources.

People can visit swamps that are rare in Illinois at Cypress Creek National Wildlife Refuge.

McHenry County: Pike Marsh is located in the southeast corner of Moraine Hills State Park. From the intersection of Highway 31 and Highway 120 in McHenry, take Highway 120 east, turn right onto River Road immediately after crossing the Fox River and follow the signs to the park. Pike Marsh is a peat-filled basin which contains marsh and fen vegetation. The site is owned by the Illinois Department of Natural Resources.

For information on other wetland sites to visit in Illinois contact one of the following Illinois Department of Natural Resources Regional Offices:

Region I
2612 Locust Street
Sterling, IL 61081
(815) 625-2968

Region II
110 James Rd.
Spring Grove, IL 60081
(815) 675-2385

Region III
2005 Round Barn Rd.
Champaign, IL 61821
(217) 278-5773

Region IV
4521 Alton Commerce Pkwy.
Alton, IL 62002
(618) 462-1181

Region V
11731 State Highway 37
Benton, IL 62812
(618) 435-8138

WEBSITES

http://dnr.state.il.us
Illinois Department of Natural Resources

http://www.fws.gov
U.S. Fish and Wildlife Service

http://www.epa.gov/region5
U.S. Environmental Protection Agency - Region 5

http://www.il.nrcs.usda.gov
U.S. Department of Agriculture/Natural Resource Conservation Service - Illinois

http://www.usace.army.mil/lrc
Chicago District - U.S. Army Corps of Engineers

http://www.lrl.usace.army.mil
Louisville District - U.S. Army Corps of Engineers

http://www.mvm.usace.army.mil
Memphis District - U.S. Army Corps of Engineers

http://www.mvr.usace.army.mil
Rock Island District - U.S. Army Corps of Engineers

http://www.mvs.usace.army.mil
St. Louis District - U.S. Army Corps of Engineers

Funding provided by:
U.S. Fish and Wildlife Service
Chicago Metro Wetlands Office
1000 Hart Road, Suite 180
Barrington, Illinois 60010
(847) 381-2253

Prepared by:
Illinois Department of Natural Resources
Office of Resource Conservation
(217) 785-8262
Office of Realty and Environmental Planning
(217) 785-5500
524 South Second Street
Springfield, Illinois 62701-1787

This information may be provided in an alternative format if required. Contact the DNR Clearinghouse at (217) 782-7498

The Illinois Department of Natural Resources receives federal financial assistance and therefore must comply with federal anti-discrimination laws. In compliance with the Illinois Human Rights Act, Illinois Constitution, Title VI of the 1964 Civil Rights Act, Section 504 of the Rehabilitation act of 1973 as amended, and the U.S. Constitution, the Illinois Department of Natural Resources does not discriminate on the basis of race, color, sex, national origin, age, disability, or religion. If you believe you have been discriminated against in any program, activity or facility, please contact the Equal Employment Opportunity Officer, Department of Natural Resources, 524 S. Second St., Springfield, IL 62701-1787, (217) 785-0067, or the Office of Human Resources, U.S. Fish and Wildlife Service, Washington D.C. 20240.

Rod R. Blagojevich
Governor

EcoCAT
Ecological Compliance Assessment Tool

Applicant:	Heartland Recycling - Aurora CCDD	*IDNR Project Number:*	1803689
Contact:	Joseph Volini	*Date:*	11/01/2017
Address:	213 Mettel Road Aurora, IL 60505		
Project:	Sugar Grove Mine Reclamation		
Address:	NW Corner of Harter Road and Route 47, Sugar Grove		

Description: Reclamation of former sand and gravel pit

Natural Resource Review Results

Consultation for Endangered Species Protection and Natural Areas Preservation (Part 1075)

The Illinois Natural Heritage Database shows the following protected resources may be in the vicinity of the project location:

Blanding's Turtle *(Emydoidea blandingii)*
Northern Long-Eared Myotis *(Myotis septentrionalis)*
Wilson's Phalarope *(Phalaropus tricolor)*

An IDNR staff member will evaluate this information and contact you to request additional information or to terminate consultation if adverse effects are unlikely.

Location
The applicant is responsible for the accuracy of the location submitted for the project.

County: Kane

Township, Range, Section:
38N, 7E, 5
38N, 7E, 8

IL Department of Natural Resources Contact
Natalia Jones
217-785-5500
Division of Ecosystems & Environment

Government Jurisdiction
Village of Sugar Grove
Walter Magdziarz
601 Heartland Drive
Sugar Grove, Illinois 60554 -9594

Disclaimer

The Illinois Natural Heritage Database cannot provide a conclusive statement on the presence, absence, or condition of natural resources in Illinois. This review reflects the information existing in the Database at the time of this inquiry, and should not be regarded as a final statement on the site being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are encountered during the project's implementation, compliance with applicable statutes and regulations is required.

EXHIBIT
D-2

Terms of Use

By using this website, you acknowledge that you have read and agree to these terms. These terms may be revised by IDNR as necessary. If you continue to use the EcoCAT application after we post changes to these terms, it will mean that you accept such changes. If at any time you do not accept the Terms of Use, you may not continue to use the website.

1. The IDNR EcoCAT website was developed so that units of local government, state agencies and the public could request information or begin natural resource consultations on-line for the Illinois Endangered Species Protection Act, Illinois Natural Areas Preservation Act, and Illinois Interagency Wetland Policy Act. EcoCAT uses databases, Geographic Information System mapping, and a set of programmed decision rules to determine if proposed actions are in the vicinity of protected natural resources. By indicating your agreement to the Terms of Use for this application, you warrant that you will not use this web site for any other purpose.

2. Unauthorized attempts to upload, download, or change information on this website are strictly prohibited and may be punishable under the Computer Fraud and Abuse Act of 1986 and/or the National Information Infrastructure Protection Act.

3. IDNR reserves the right to enhance, modify, alter, or suspend the website at any time without notice, or to terminate or restrict access.

Security

EcoCAT operates on a state of Illinois computer system. We may use software to monitor traffic and to identify unauthorized attempts to upload, download, or change information, to cause harm or otherwise to damage this site. Unauthorized attempts to upload, download, or change information on this server is strictly prohibited by law.

Unauthorized use, tampering with or modification of this system, including supporting hardware or software, may subject the violator to criminal and civil penalties. In the event of unauthorized intrusion, all relevant information regarding possible violation of law may be provided to law enforcement officials.

Privacy

EcoCAT generates a public record subject to disclosure under the Freedom of Information Act. Otherwise, IDNR uses the information submitted to EcoCAT solely for internal tracking purposes.

EcoCAT
Ecological Compliance Assessment Tool

ILLINOIS DEPARTMENT OF NATURAL RESOURCES

EcoCAT Receipt

Project Code 1803689

APPLICANT	DATE
Heartland Recycling - Aurora CCDD Joseph Volini 213 Mettel Road Aurora, IL 60505	11/1/2017

DESCRIPTION	FEE	CONVENIENCE FEE	TOTAL PAID
EcoCAT Consultation	$ 500.00	$ 11.75	$ 511.75

TOTAL PAID $ 511.75

Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702
217-785-5500
dnr.ecocat@illinois.gov

Blanding's turtle
(*Emydoidea blandingii*)

Kingdom:	Animalia
Division/Phylum:	Chordata
Class:	Reptilia
Order:	Testudines
Family:	Emydidae

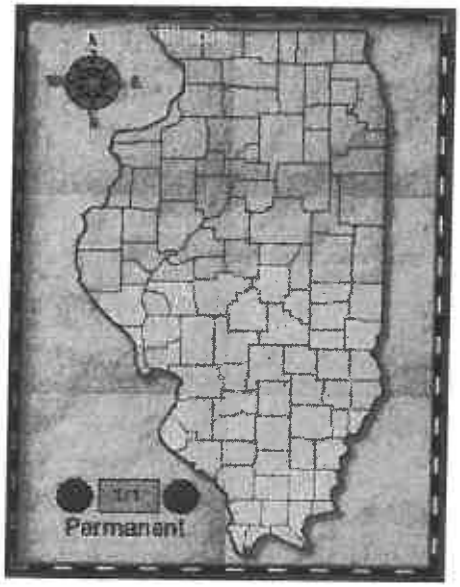
ILLINOIS STATUS
Endangered, native

Populations of this turtle in Illinois are small and isolated due to the loss of marsh habitat. Blanding's turtle is listed as endangered in Illinois.

FEATURES
Blanding's turtle averages five to seven and one-half inches in length. It has a hinge on the plastron (lower shell), allowing the shell to be partially closed. Its yellow chin and throat are distinctive. The carapace (upper shell) is helmet-shaped and covered with pale yellow spots. The plastron is yellow with black blotches.

BEHAVIORS
Blanding's turtle may be found in the northern one-half of Illinois. It lives in marshes, bogs, lakes and streams. This reptile prefers aquatic habitats with much vegetation and a mud bottom. Blanding's turtle is aquatic but is often found on land not far from water. It spends the winter buried in mud at the bottom of its body of water. Courtship and mating occur from April through June. The female deposits about six to 15 eggs in a nest in the soil during June or July. The eggs hatch in August or September. Blanding's turtle eats crayfish, insects, frogs, snails, berries and plants. This turtle may live for more than 70 years.

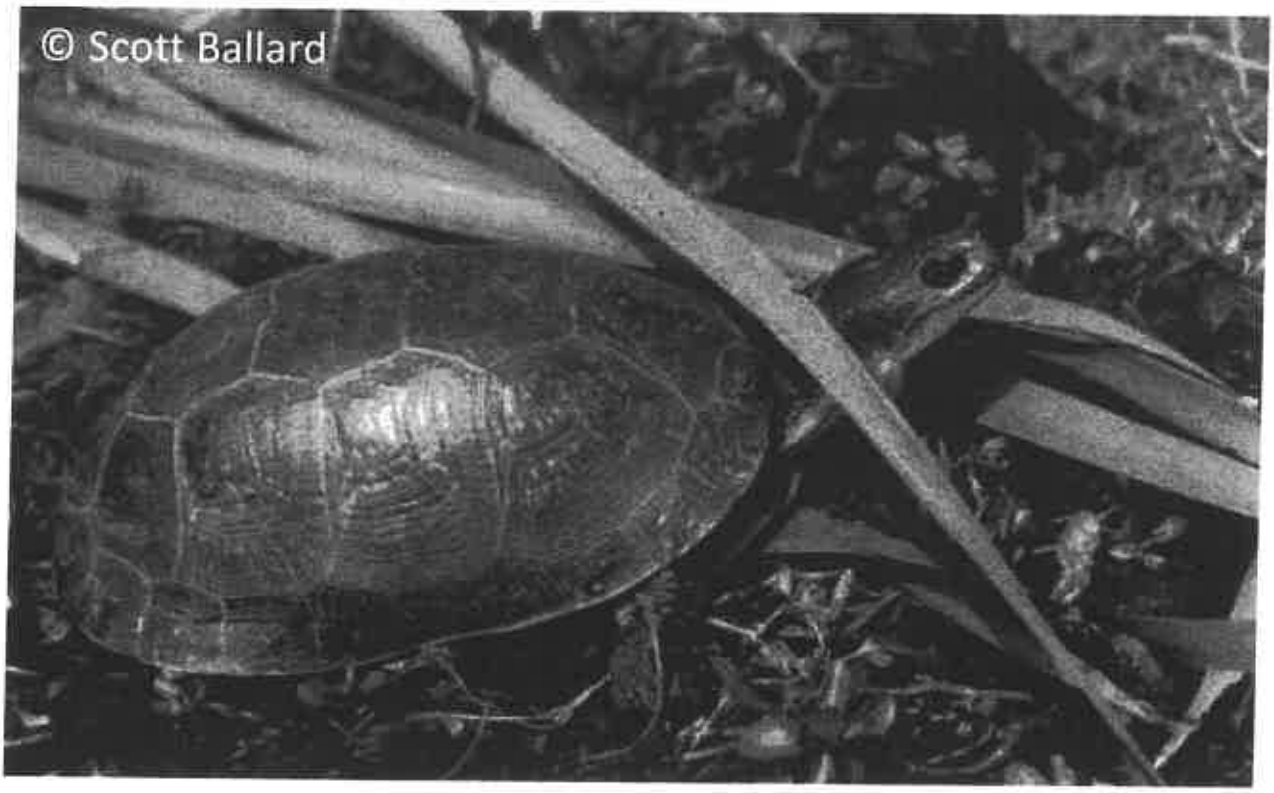
ILLINOIS RANGE

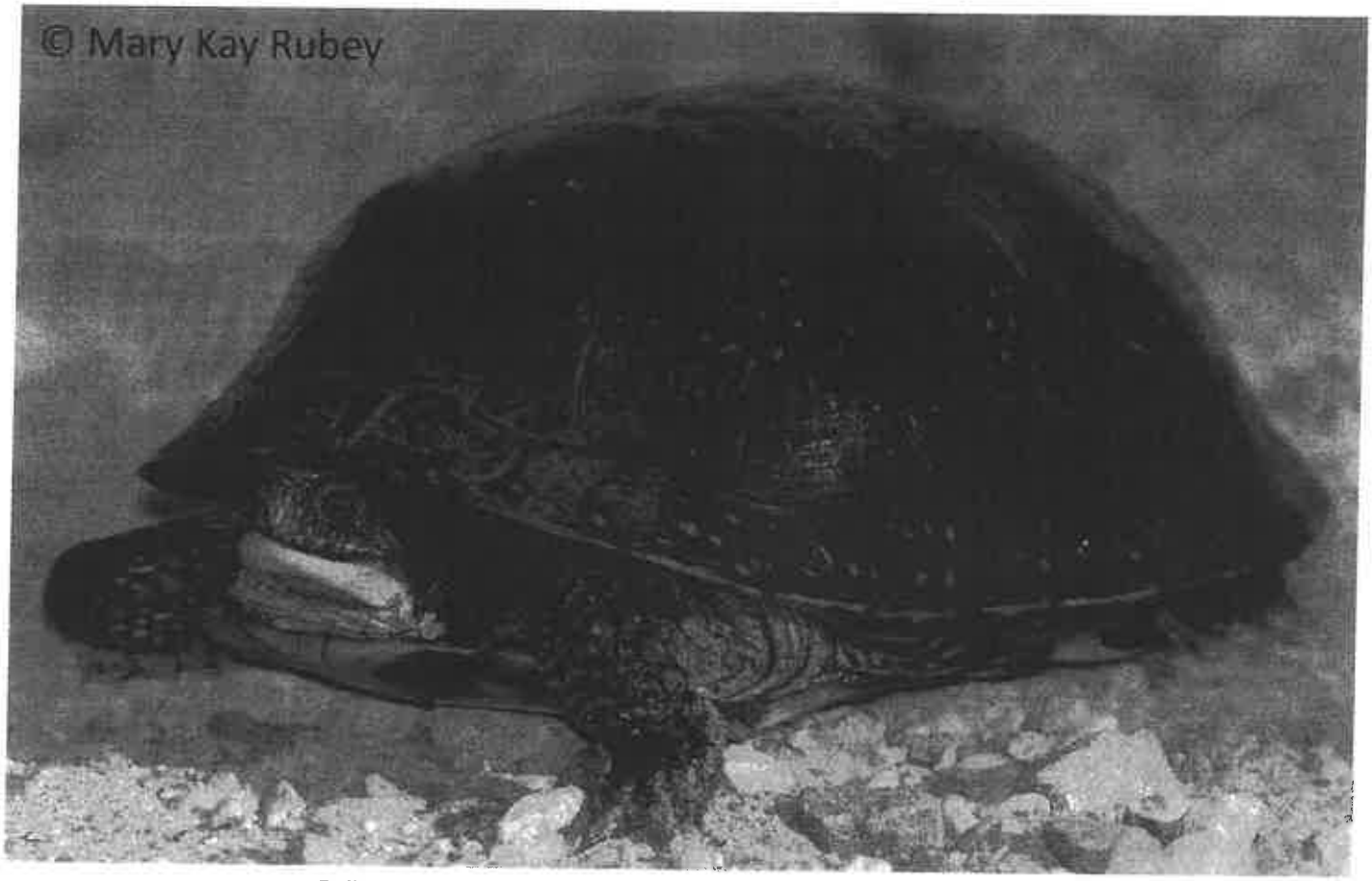


adult

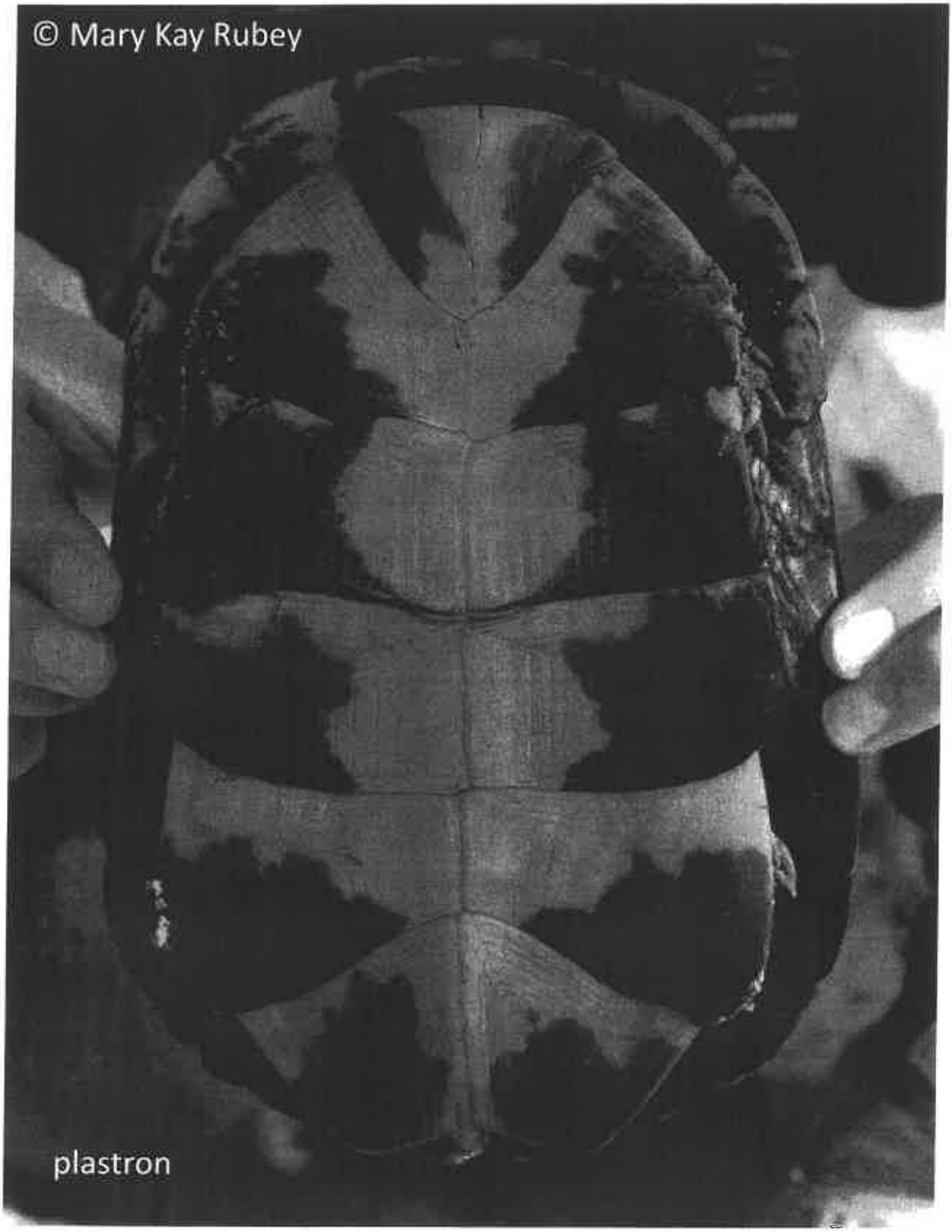
© Illinois Department of Natural Resources. 2017. *Biodiversity of Illinois*.
Unless otherwise noted, photos and images © Illinois Department of Natural Resources.

EXHIBIT
D-3

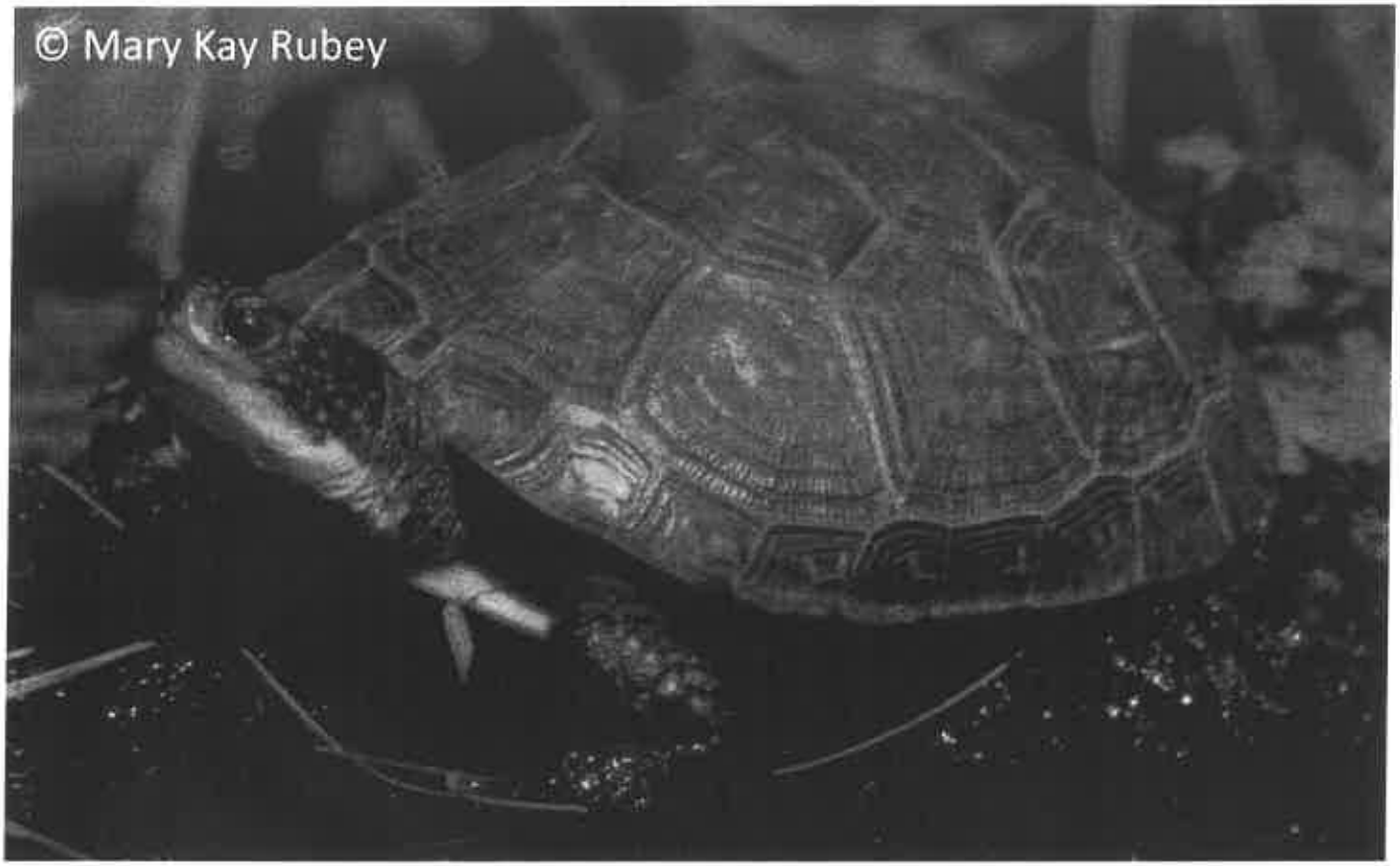




© Illinois Department of Natural Resources. 2017. *Biodiversity of Illinois*.
Unless otherwise noted, photos and images © Illinois Department of Natural Resources.



© Illinois Department of Natural Resources. 2017. *Biodiversity of Illinois*.
Unless otherwise noted, photos and images © Illinois Department of Natural Resources.



Aquatic Habitats
lakes, ponds and reservoirs; marshes; peatlands; rivers and streams

Woodland Habitats
none

Prairie and Edge Habitats
none

© Illinois Department of Natural Resources. 2017. *Biodiversity of Illinois*.
Unless otherwise noted, photos and images © Illinois Department of Natural Resources.

Northern Long-Eared Bat

Myotis septentrionalis

The northern long-eared bat is federally listed as a threatened species under the Endangered Species Act. ***Endangered*** species are animals and plants that are in danger of becoming extinct. ***Threatened*** species are animals and plants that are likely to become endangered in the foreseeable future. Identifying, protecting and restoring endangered and threatened species is the primary objective of the U.S. Fish and Wildlife Service's Endangered Species Program.

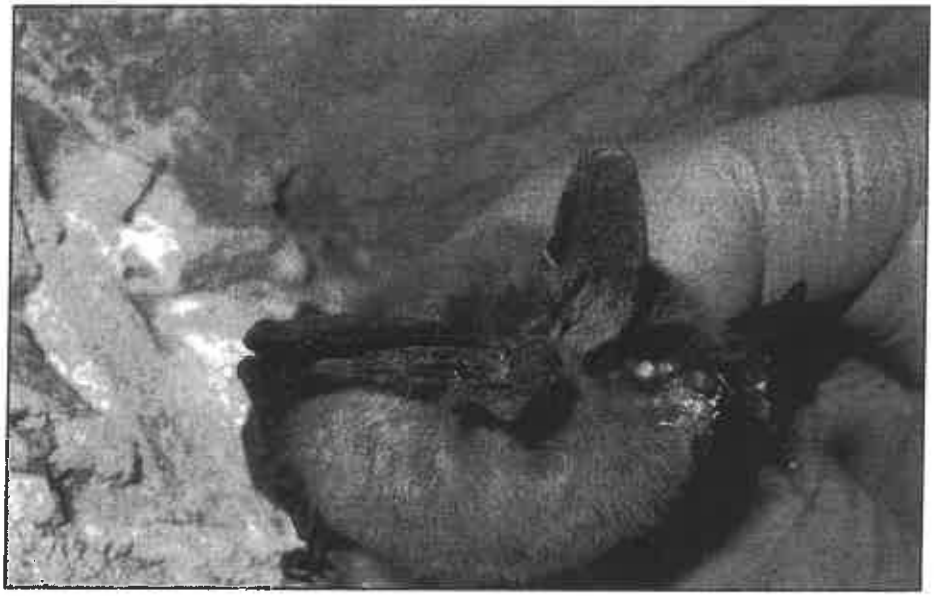


Photo by Steve Taylor, University of Illinois

This northern long-eared bat, observed during an Illinois mine survey, shows visible symptoms of white-nose syndrome.

What is the northern long-eared bat?

Appearance: The northern long-eared bat is a medium-sized bat with a body length of 3 to 3.7 inches and a wingspan of 9 to 10 inches. Their fur color can be medium to dark brown on the back and tawny to pale-brown on the underside. As its name suggests, this bat is distinguished by its long ears, particularly as compared to other bats in its genus, *Myotis*.

Winter Habitat: Northern long-eared bats spend winter hibernating in caves and mines, called hibernacula. They use areas in various sized caves or mines with constant temperatures, high humidity, and no air currents. Within hibernacula, surveyors find them hibernating most often in small crevices or cracks, often with only the nose and ears visible.

Summer Habitat: During the summer, northern long-eared bats roost singly or in colonies underneath bark, in cavities or in crevices of both live trees and snags (dead trees). Males and non-reproductive females may also roost in cooler places, like caves and mines. Northern long-eared bats seem to be flexible in selecting roosts, choosing roost trees based on suitability to retain bark or provide cavities or crevices. They rarely roost in human structures like barns and sheds.

Reproduction: Breeding begins in late summer or early fall when males begin to swarm near hibernacula. After copulation, females store sperm during hibernation until spring. In spring, females emerge from their hibernacula, ovulate and the stored sperm fertilizes an egg. This strategy is called delayed fertilization.

After fertilization, pregnant bats migrate to summer areas where they roost in small colonies and give birth to a single pup. Maternity colonies of females and young generally have 30 to 60 bats at the beginning of the summer, although larger maternity colonies have also been observed. Numbers of bats in roosts typically decrease from the time of pregnancy to post-lactation. Most bats within a maternity colony give birth around the same time, which may occur from late May or early June to late July, depending where the colony is located within the species' range. Young bats start flying by 18 to 21 days after birth. Maximum lifespan for the northern long-eared bat is estimated to be up to 18.5 years.

Feeding Habits: Like most bats, northern long-eared bats emerge at dusk to feed. They primarily fly through the understory of forested areas feeding on moths, flies, leafhoppers, caddisflies, and beetles, which they catch while in flight using echolocation or by gleaning motionless insects from vegetation.

Range: The northern long-eared bat's range includes much of the eastern and north central United States, and all Canadian provinces from the Atlantic Ocean west to the southern Yukon Territory and eastern British Columbia. The species' range includes 37 States and the District of Columbia: Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Why is the northern long-eared bat in trouble?

White-nose Syndrom threat is as severe and

EXHIBIT

D-4

this. If this disease had not emerged, it is unlikely that northern long-eared bat populations would be experiencing such dramatic declines. Since symptoms were first observed in New York in 2006, white-nose syndrome has spread rapidly from the Northeast to the Midwest and Southeast; an area that includes the core of the northern long-eared bat's range, where it was most common before this disease. Numbers of northern long-eared bats (from hibernacula counts) have declined by up to 99 percent in the Northeast. Although there is uncertainty about the rate that white-nose syndrome will spread throughout the species' range, it is expected to continue to spread throughout the United States in the foreseeable future.

Other Sources of Mortality:

Although no significant population declines have been observed due to the sources of mortality listed below, they may now be important factors affecting this bat's viability until we find ways to address WNS.

Impacts to Hibernacula: Gates or other structures intended to exclude people from caves and mines not only restrict bat flight and movement, but also change airflow and microclimates. A change of even a few degrees can make a cave unsuitable for hibernating bats. Also, cave-dwelling bats are vulnerable to human disturbance while hibernating. Arousal during hibernation causes bats to use up their energy stores, which may lead to bats not surviving through winter.

Loss or Degradation of Summer Habitat: Highway construction, commercial development, surface mining, and wind facility construction permanently remove habitat and are activities prevalent in many areas of this bat's range. Many forest management activities benefit bats by keeping areas forested rather than converted to other uses. But, depending on type and timing, some forest management activities can cause mortality and temporarily remove or degrade roosting and foraging habitat.

Wind Farm Operation: Wind turbines kill bats, and, depending on the species, in very large numbers. Mortality from windmills has been documented for northern long-eared bats, although a small number have been found to date. However, there are many wind projects within a large portion of the bat's range and many more are planned.

What Is Being Done to Help the Northern Long-Eared Bat?

Disease Management: Actions have been taken to try to reduce or slow the spread of white-nose syndrome through human transmission of the fungus into caves (e.g. cave and mine closures and advisories; national decontamination protocols). A national plan was prepared by the Service and other state and federal agencies that details actions needed to investigate and manage white-nose syndrome. Many state and federal agencies, universities and non-governmental organizations are researching this disease to try to control its spread and address its affect. See www.whitenosesyndrome.org/ for more.

Addressing Wind Turbine Mortality: The Service and others are working to minimize bat mortality from wind turbines on several fronts. We fund and conduct research to determine why bats are susceptible to turbines, how to operate turbines to minimize mortality and where important bird and bat migration routes are located. The Service, state natural resource agencies, and the wind energy industry are developing a Midwest Wind Energy Habitat Conservation Plan, which will provide wind farms a mechanism to continue operating legally while minimizing and mitigating listed bat mortality.

Listing: The northern long-eared bat is listed as a threatened species under the federal Endangered Species Act. Listing a species affords it the protections of the Act and also increases the priority of the species for funds, grants, and recovery opportunities.

Hibernacula Protection: Many federal and state natural resource agencies and conservation organizations have protected caves and mines that are important hibernacula for cave-dwelling bats.

What Can I Do?

Do Not Disturb Hibernating Bats: To protect bats and their habitats, comply with all cave and mine closures, advisories, and regulations. In areas without a cave and mine closure policy, follow approved decontamination protocols (see http://whitenosesyndrome.org/topics/decontamination). Under no circumstances should clothing, footwear, or equipment that was used in a white-nose syndrome affected state or region be used in unaffected states or regions.

Leave Dead and Dying Trees Standing: Like most eastern bats, the northern long-eared bat roosts in trees during summer. Where possible and not a safety hazard, leave dead or dying trees on your property. Northern long-eared bats and many other animals use these trees.

Install a Bat Box: Dead and dying trees are usually not left standing, so trees suitable for roosting may be in short supply and bat boxes may provide additional roost sites. Bat boxes are especially needed from April to August when females look for safe and quiet places to give birth and raise their pups.

Support Sustainability: Support efforts in your community, county and state to ensure that sustainability is a development goal. Only through sustainable living will we provide rare and declining species, like the northern long-eared bat, the habitat and resources they need to survive alongside us.

Spread the Word: Understanding the important ecological role that bats play is a key to conserving the northern long-eared and other bats. Helping people learn more about the northern long-eared bat and other endangered species can lead to more effective recovery efforts. For more information, visit www.fws.gov/midwest/nleb and www.whitenosesyndrome.org

Join and Volunteer: Join a conservation group; many have local chapters. Volunteer at a local nature center, zoo, or national wildlife refuge. Many state natural resource agencies benefit greatly from citizen involvement in monitoring wildlife. Check your state agency websites and get involved in citizen science efforts in your area.

Illinois Natural History Survey - University of Illinois

INRS State Scientific Surveys

- Illinois Natural History Survey
- |
- Illinois State Archaeological Survey
- |
- Illinois State Geological Survey
- |
- Illinois State Water Survey
- |
- Illinois Sustainable Technology Center

ILLINOIS Illinois Natural History Survey PRAIRIE RESEARCH INSTITUTE

Navigation

- Home
- People
- Data
- Publications
- News
- Links
- Collections

Search ...

Home > Collections > Bird Collection > Birds of Illinois > **Wilson's phalarope**

Wilson's phalarope
Phalaropus tricolor

EXHIBIT
D-5

Taxonomy
Occurence in Illinois
Status
Habitat associations
Guilds
Food-habits
Environmental associations
Life history
Management practices
References

TAXONOMY

- Phylum: Chordata
- Class: Aves
- Order: Charadriiformes
- Family: Scolopacidae
- Genus: *Phalaropus*
- Species: *Phalaropus tricolor*
- Authority: Vieillot

Comments on taxonomy:
Local names - summer phalarope, sea goose, swimming sand piper *03, 06*.

OCCURENCE IN ILLINOIS

Uncommon migrant *02,09*. Rare summer resident in extreme n. east Illinois, possible nesting in Lake Co. in 1977 *09*.

STATUS

Items in **bold** indicate applicable categories
Forest Service Categories: S = recommended for regional sensitive status, F = forest listed species, M = management indicator species

Federal Status:

Endangered	Threatened	Proposed for listing
Candidate for proposal	Recovery plan approved	Recovery plan received (USFWS)
Recovery plan in preparation	Under notice of review	Delisted
Migratory	EPA indicator	Forest Serv.- Shawnee species

State Status:

Endangered	Threatened	Proposed

Other:

Game	Furbearer	**Nongame protected**	
Sportfish	Commercial	Pest	None of the above

Comments on status:
Species on state endangered list due to lowering of water levels and the removal of open water, see Bowles et al. (1981).

HABITAT ASSOCIATIONS

Items in **bold** indicate applicable categories

General habitat:

Unknown	**Terrestrial**	Aquatic	**Riparian**

USFS timber inventory forest size class:

Unknown	Unstocked	Seedling	Sapling
Seedling/sapling	Pole	Mature	Over mature

Land use and land cover:

Unknown		Urban	Residential Commercial Industrial Transportation, communication Complex industrial/commercial Mixed Other
Agricultural	**Crop, pasture** Orchards, groves, nurseries Feedlot Other	Rangeland	Herbaceous Shrub and brush Mixed
Forestland	Deciduous Evergreen Mixed	**Water**	**Stream** **Lake** **Reservoir** Bay
Wetland	Forest **Non-forest**	Barren	Salt flat Beach Sand Rock Mine Transit Mix

---

Forest cover types: No records.

Associated tree species: No records.

National wetland inventory classifications:

System	Subsystem	Class	Subclass	Water regime modifiers	Water chemistry
Lacustrine	Littoral	Emergent vegetation	Narrowleaved	Intermittently exposed/permanent	Freshwater

			persistent	nontidal	
Palustrine		Emergent vegetation	Narrowleaved persistent	Intermittently exposed/permanent nontidal	Freshwater
Palustrine		Flat	Mud	Intermittently exposed/permanent nontidal	Freshwater
Palustrine		Open water of unknown bottom type		Intermittently exposed/permanent nontidal	Freshwater
Riverine	Unknown perennial	Emergent vegetation	Narrowleaved persistent	Intermittently exposed/permanent nontidal	Freshwater

Comments on species-habitat associations:
Wilson's phalarope is the most land dwelling of the phalaropes *03, 13*. Prefers shallow waters of smaller lakes and rivers with grassy surrounding, shallow pools, mud flats, rain pools in pasture and meadowland *02,03,05,08,13,21,22*.

Important plant and animal association: Shovelers and other water fowl. Mosquito larvae.
species has a commensal relationship with birds who stir up bottom, exposing food *03,10,15*. Mosquito larvae often mentioned as major food *03,08,12,14*.

High value habitats

Habitat	Structural stage	Season
Central and eastern grasslands- bluestem prairie	Grass-forb	Spring/summer
Cropland	Grass-forb	Spring/summer
Lakes	Special habitat	Spring/summer
Nonforested wetland	Grass-forb	Spring/summer
Wet-mesic prairie	Special habitat	Spring/summer
Wetland	Grass-forb	Spring/summer
Lakes and ponds	Special habitat	Spring/summer
Forageland	Grass-forb	Spring/summer
Prairie restoration	Special habitat	All
Marsh restoration	Special habitat	All

Species-habitat interrelations: Type of habitat (grassy wetlands/shallows ponds and lakes with grassy borders) function (feed/breed/nest) value (high) season (spring/ summer). Existence of given habitats appears to be essential for use during migration, feeding/foraging sites and as potential breeding and nesting sites within the state *02,03,08,09,12,13,14*.

GUILDS

Feed-guilding:

Habitat	Structural stage	Season	Feed-guilds
Central and eastern grasslands- bluestem prairie	Grass-forb	All	Water column- arthropods Terrestrial subsurface- arthropods Terrestrial surface- arthropods
Wet-mesic prairie	Special habitat	All	Water column- arthropods Terrestrial subsurface- arthropods Terrestrial surface- arthropods
Wetland	Grass-forb	All	Water column- arthropods Terrestrial subsurface- arthropods Terrestrial surface- arthropods

Lakes and ponds	Not applicable (HVAL-HAB cover)	All	Water column- arthropods Terrestrial subsurface- arthropods Terrestrial surface- arthropods
Forageland	Grass-forb	All	Water column- arthropods Terrestrial subsurface- arthropods Terrestrial surface- arthropods

Comments on feed-guilding:
Species feeds mainly in shallow water, mud flats, shores and occasionally in terrestrial grassy areas *03,05,14,21*. Johns (1969) reported that the species eats some seeds of aquatic plants *14*.

Breed-guilding:

Habitat	Structural stage	Season	Breed-Guilds
Central and eastern grasslands- bluestem prairie	Grass-forb	Spring/summer	Terrestrial surface, grass and grasslike vegetation
Cropland	Special habitat	Spring/summer	Terrestrial surface, grass and grasslike vegetation
Nonforested wetland	Grass-forb	Spring/summer	Terrestrial surface, grass and grasslike vegetation
Forageland	Grass-forb	Spring/summer	Terrestrial surface, grass and grasslike vegetation

Comments on breed-guilding:
Nesting takes place on periphery of potholes, sloughs, or shallow waters with surrounding prairies or pastures *05,08,09,12,17,21*. Courtship activities occur along shorelines or in open water of ponds and lakes *11*. Many authors suggest polyandry to occur but Johns (1969) believes promiscuity is the most probable mating system *14*.

FOOD-HABITS

Trophic level is CARNIVORE

Food item	Life stage/plant part
Insecta	See comments
Coleoptera (beetles)	Adult
Diptera (flies, midges, mosquitoes)	Larva
Important:	
Insecta	See comments
Coleoptera (beetles)	Adult
Diptera (flies, midges, mosquitoes)	Larva
Juvenile:	
Insecta	See comments
Coleoptera (beetles)	Adult
Diptera (flies, midges, mosquitoes)	Larva
Adult:	
Insecta	See comments
Coleoptera (beetles)	Adult
Diptera (flies, midges, mosquitoes)	Larva

Comments on food habits:
General: Mainly aquatic insects eaten but also some terrestrial insects *05, 12*. Mosquito and crane fly larvae and predacious diving beetles mentioned often *03,05,08,12,14*.

Juvenile: Juveniles assumed to have same food habits as adults *00,14*. Johns (1969) mentions young being led to feeding grounds soon after hatching.
Adult: See [FH].

ENVIRONMENTAL ASSOCIATIONS

General:

- Biodegradable organics: clean waters that have not been polluted
- Aquatic habitat: shallows with emergent vegetation (littoral zone)
- Water depth preference: see comments
- Aquatic habitats: freshwater marsh
- Aquatic habitats: mud flats
- Aquatic habitats: vegetated offshore islands
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: prairie potholes
- Aquatic habitats: seasonal wet depressions
- Aquatic habitats: pool areas
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Pastures: see comments
- Grassland: see comments
- Meadows: see comments
- Vegetation successional stage: stable prairie/grassland
- Human associations: farm ponds
- Human associations: wildlife refuges/sanctuaries
- Unknown

Limiting:

- Aquatic habitat: shallows with emergent vegetation (littoral zone)
- Water depth preference: see comments
- Aquatic habitats: freshwater marsh
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: prairie potholes
- Aquatic habitats: pool areas
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Vegetation successional stage: stable prairie/grassland

Egg

- Unknown

Feeding juvenile:

- Biodegradable organics: clean waters that have not been polluted
- Aquatic habitat: shallows with emergent vegetation (littoral zone)
- Water depth preference: see comments
- Aquatic habitats: freshwater marsh
- Aquatic habitats: mud flats
- Aquatic habitats: sloughs, bayous

- Aquatic habitats: sloughs, bayous
- Aquatic habitats: prairie potholes
- Aquatic habitats: seasonal wet depressions
- Aquatic habitats: pool areas
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Vegetation successional stage: stable prairie/grassland
- Human associations: farm ponds
- Human associations: wildlife refuges/sanctuaries

Resting juvenile:

- Aquatic habitats: freshwater marsh
- Aquatic habitats: vegetated offshore islands
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Pastures: see comments
- Grassland: see comments
- Meadows: see comments
- Vegetation successional stage: stable prairie/grassland
- Human associations: wildlife refuges/sanctuaries

Feeding adult:

- Biodegradable organics: clean waters that have not been polluted
- Aquatic habitat: shallows with emergent vegetation (littoral zone)
- Water depth preference: see comments
- Aquatic habitats: freshwater marsh
- Aquatic habitats: mud flats
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: prairie potholes
- Aquatic habitats: seasonal wet depressions
- Aquatic habitats: pool areas
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Vegetation successional stage: stable prairie/grassland
- Human associations: farm ponds
- Human associations: wildlife refuges/sanctuaries

Resting adult:

- Aquatic habitats: freshwater marsh
- Aquatic habitats: vegetated offshore islands
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Pastures: see comments
- Grassland: see comments
- Meadows: see comments

- Vegetation successional stage: stable prairie/grassland
- Human associations: wildlife refuges/sanctuaries

Breeding adult:

- Biodegradable organics: clean waters that have not been polluted
- Aquatic habitats: freshwater marsh
- Aquatic habitats: vegetated offshore islands
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: sloughs, bayous
- Aquatic habitats: prairie potholes
- Aquatic habitats: seasonal wet depressions
- Aquatic habitats: pool areas
- Aquatic habitats: marsh
- Ecotones: old field/water
- Ecotones: grassland/water
- Pastures: see comments
- Grassland: see comments
- Meadows: see comments
- Vegetation successional stage: stable prairie/grassland
- Human associations: wildlife refuges/sanctuaries

Comments on environmental associations:
General: Sloughs, mud flats, potholes and shallow waters with surrounding grasslands often mentioned as feeding, foraging, breeding and nesting habitat *02,03,05,08,09,12,13,21,22*.
Feeding juvenile: See [JF]. Bent (1927) reports young "care for themselves soon after hatching." Juveniles display "spinning" while foraging as do the adults, see Johns (1969).
Resting juvenile: Assumed to rest in or near nesting site *00,05,12,13*.
Feeding adult: Spin in circles, jabbing at prey as they begin to move *03,05,08,14*. Food obtained while walking through shallow water and muddy shores *03,05,14*.
Resting adult: Hohn (1967) viewed species sleeping in full daylight, standing and afloat.
Breeding adult: Breeds in small colonies near shallow waters *03,08*. Copulation standing on land or in shallow water *08*.

LIFE HISTORY

Origin: Native *02*.

Physical description: Length 8 1/2 to 10 in., female larger of the two *03,04,05,06,12*. Wingspread 14 1/2 to 16 in. (116 to 137 mm) *03,12*. Bill needle-like *02,04,05,12*. Weight 1 1/2 to 3 oz. *03*. Male and female different color in summer. Female more colorful with pale gray back, crown, wings and tail. Broad black stripe through eyes, down neck, blending into rich cinnamon. Faint beige on neck, white underneath *03,04,05,06*. Male duller with only faint cinnamon patch on side of neck, white spot behind neck *03,04,05*. Male and female similar in fall/winter with pale yellow legs, gray above, white below and white streak above eyes *03,05*. No white wing stripe on male or female, white rump patch all year round *03, 04,05*. Juvenile plumage characterized by white chin and throat, grayish white below, "ochraceous" buff upper with band across chest *14*.

Reproduction: Female arrives on breeding grounds, before the male, from late April to mid May *11,14*. Female defends the mobile vicinity of a male from other females with flying threats *03,08,11, 17*. Courtship, characterized by repeated bowing and aerial chasing, is initiated by the female *03,06,12,21*. The female is more aggressive during courtship while the male is more so during egg laying and incubation *17*. In a North Dakota study, pair formation was completed in mid may *17*. After this formation, male will defend female from other birds of the same species *17*. Copulation takes place from mid May to early June *17*. The nest, built by the male, consists of a shallow scrape, scantily or well lined with dead grasses among short or taller grass or mowed areas, are located on periphery of shallow waters, sloughs, potholes *03,05,08,12,13,17,21,22*. Nesting done in lose colonies when in favorable habitat *22*. Three to four eggs (usually 4) per clutch *03,05,06,08,12,17,22*. [Pairs separate after egg laying *17*.] Eggs are laid from may through June in various locations in the U.S. and Canada *03,08,14,17*. Eggs buffy, heavily blotched with blacks and browns *03,06,12,22*. Average measurements are 33.0 x 23.0 mm *22*. Incubation period from 20 to 21 days, performed by male *03,06,08,11,12,17,22*. Females continue to court incubating males who reject this activity with head forward displays, flying threats and pecks *17*. Kagarise (1979) observed hatching in mid June in North Dakota. Kagarise (1979) reported that all the eggs disappeared in 96% of the 23 nests observed

and that only 3% of 80 eggs laid hatched. Young cared for by male who leads them to feeding site soon after hatching. At this time, young may run about and care for themselves *03,13,14*.

Behavior: Territoriality mainly displayed during copulation, see reproduction. Females gather into feeding flocks away from nesting area soon after eggs are laid *17,22*. Hohn (1967) reports that females disappear shortly after the beginning of incubation. Migration through U.S. mainly over interior prairies west of the Mississippi River *03,13*. Departure from breeding grounds from late July to mid September *02*. Winters in marshlands of South America *03,05, 16*. Species breeding behavior promiscuous. Polyandry observed *17*.

Limiting factors: Hohn (1967) observed 7 nests where only one produced young while other nests were believed to be robbed by mammalian predators. Predators of eggs and young include snakes, birds, and small mammals *17*. Less of nesting habitat *09*. Parasitism by cowbirds in a few instances *03,07*.

Population parameters: Evidence of sex ratios showing males outnumbering females *08,13,14*.

MANAGEMENT PRACTICES

Beneficial:

- Maintaining undisturbed/undeveloped areas
- Maintaining natural areas and nature preserves
- Developing/maintaining edge (ecotones)
- Preserving endangered species habitat
- Preserving sensitive species habitat
- Performing special survey prior to prescription
- Performing field survey prior to prescription
- Controlling land use and human activities
- Seasonal restriction of human use of habitats
- Controlling water levels
- Developing/maintaining lakes and ponds
- Developing/maintaining wetlands
- Developing/maintaining mudflats
- Protecting existing wetlands
- Restoration of wetlands (return flooded or drained areas to previous wetland conditions)
- Mowing
- Develop/maintain prairie
- Developing/maintaining water holes, ponds, potholes, etc.
- Restricting human disturbance during migration, breeding, and nesting

Adverse:

- Draining ponds/lakes
- Drawdown of ponds/lakes
- Draining wetlands
- Drawdown of ponds/lakes

Comments on management practices:
Ecotones of grassland/shallow waters mentioned often as preferred breeding sites *02,03,05,11,13*. Draining wetlands adverse to species *09*. Nesting does occur in mowed areas *05*. Nesting has been induced by artificially controlling water levels *09*. Protected by the Ill. Endangered Species Act of 1972, the Ill. Wildlife Code of 1971 and the Federal Migratory Bird Treaty Act of 1918 *09,18,19*.

REFERENCES

0. IRISH, J.T. 1984. ILL. NAT. HIST. SURV., 607 E. PEABODY DR., CHAMPAIGN, ILL. (217)333-6846.

1. AMERICAN ORNITHOLOGISTS' UNION. 1982. THIRTY-FOURTH SUPPLEMENT TO THE AMERICAN ORNITHOLOGISTS' UNION. CHECK-LIST OF NORTH AMERICAN BIRDS. SUPPLEMENT AUK 99(3).

2. BOHLEN, H. 1978. AN ANNOTATED CHECK-LIST OF THE BIRDS OF ILLINOIS. ILLINOIS STATE MUS. POP. SCI. SER., VOL. IX. 156 P.

3. TERRES, J. 1980. AUDUBON SOCIETY: ENCYCLOPEDIA OF NORTH AMERICAN BIRDS. ALFRED KNOPF, NEW YORK. 1109 P.

4. PETERSON, R. 1980. A FIELD GUIDE TO THE BIRDS. 4 ED. HOUGHTON-MIFFLIN CO., BOSTON. 384 P.

5. POUGH, R.H. 1951. AUDUBON WATER BIRD GUIDE: WATER, GAME AND LARGE LAND BIRDS. DOUBLEDAY AND COMPANY, INC., GARDEN CITY, NEW YORK. 352 PP. + 48 PLS.

6. NUTTALL, T. 1919. BIRDS OF THE UNITED STATES AND CANADA, PART II GAME AND WATER BIRDS. LITTLE, BROWN AND CO., BOSTON. 431 PP.

7. FRIEDMANN, H. 1963. HOST RELATIONS OF THE PARASITIC COWBIRDS. U.S. NATL. MUSEUM BULL. WASHINGTON D.C. NO. 233. P. 45.

8. HOHN, E.O. 1967. OBSERVATIONS ON THE BREEDING BIOLOGY OF WILSON'S PHALAROPE (STEGANOPUS TRICOLOR) IN CENTRAL ALBERTA. AUK 84(2): 220-244.

9. BOWLES, M.L., V.E. DIERSING, J.E. EBINGER AND H.C. SCHULTZ, EDS. 1981. ENDANGERED AND THREATENED VERTEBRATE ANIMALS AND VASCULAR PLANTS OF ILLINOIS. ILLINOIS DEPT. CONSERV. 189 P.

10. WILLIAMS, G.G. 1953. WILSON PHALAROPES AS COMMENSALS. THE CONDOR. VOL. 55(1):158.

11. HOWE, M.A. 1975. SOCIAL INTERACTIONS IN FLOCKS OF COURTING WILSON'S PHALAPORES (PHALAROPUS TRICOLOR). THE CONDOR 77(1): 24-33.

12. GODFREY, W.E. 1966. THE BIRDS OF CANADA. NATL. MUS. OF CANADA, BULLETIN NO. 203. BIO SERIES NO. 73. 428 PP.

13. BENT, A.C. 1927. LIFE HISTORIES OF NORTH AMERICAN SHORE BIRDS. U.S. NATL. MUS. BULL. NO. 142.

14. JOHNS, J.E. 1969. FIELD STUDIES OF WILSON'S PHALAROPE. THE AUK 86(4):660-670.

15. SIEGFRIED, W.R. AND B.D.J. BATTS, 1972. WILSON'S PHALAROPES FORMING FEEDING ASSOCIATIONS WITH SHOVELERS. THE AUK 89(3):667-668.

16. BURGER, J. AND M. HOWE. 1975. NOTES ON WINTER FEEDING BEHAVIOR AND MOLT IN WILSON'S PHALAROPE. AUK 92(3):442-451.

17. KAGARISE, C.M. 1979. BREEDING BIOLOGY OF THE WILSON'S PHALAROPE IN NORTH DAKOTA. BIRD BANDING 50(1):12-22.

18. U.S. FISH AND WILDLILFE SERVICE. 1983. CODE OF FEDERAL REGULATIONS. TITLE 50. WILDLIFE AND FISHERIES. CHAPTER 1. PP. 11-18. 50 CFR 10.13. LIST OF MIGRATORY BIRDS. SPEC. PUBL. FEDERAL REGISTER. GENERAL SERV. SERVICES ADMIN. OCT. 1.

19. ILLINOIS DEPARMENT OF CONSERVATION. 1980. CONSERVATION LAWS, CH. 61. WILDLIFE. ART. II. PAR. 2.2. REPRINTED FROM ILLINOIS REVISED STATUTES, 1979. WEST PUBL. CO., ST. PAUL, MN. 120 P.

20. KLEEN, V.M. 1983. FIELD NOTES: SPRING MIGRATION. ILL. AUDUBON BULL. NO. 206. PP. 28-41.

21. HOWE, M.A. 1975. BEHAVIORAL ASPECTS OF THE PAIR BOND IN WILSON'S PHALAROPE. WILSON'S BULL. 87(2):248-270.

22. HARRISON, H.H. 1979. A FIELD GUIDE TO WESTERN BIRDS' NESTS. HOUGHTON- MIFFLIN CO., BOSTON. 279 PP. + 32 PLS.

Next ---- Previous

Illinois Natural History Survey

1816 South Oak Street, MC 652
Champaign, IL 61820
217-333-6880
cms@inhs.illinois.edu

Terms of use. Email the Web Administrator with questions or comments.

© 2017 University of Illinois Board of Trustees. All rights reserved.
For permissions information, contact the Illinois Natural History Survey.

Staff Intranet
Login

CHECKLIST OF ILLINOIS ENDANGERED AND THREATENED ANIMALS AND PLANTS

Illinois Endangered Species Protection Board

Effective May 19, 2015

The Illinois Endangered Species Protection Board (Board) reviews and revises the Illinois List of Endangered and Threatened Species (Illinois List) as warranted and no less often than every five years. The Board completed its most recent review in 2014 and the following checklist includes all species designated as endangered or threatened by the Board from that review. Species are listed by taxonomic group and alphabetically by scientific name.

The Illinois List is officially promulgated via two Illinois Administrative Rules: the Illinois List of Endangered and Threatened Fauna (Title 17 ILL. ADM. CODE, CH. I, SEC 1010) and the Illinois List of Endangered and Threatened Flora (Title 17 ILL. ADM. CODE, CH. I, SEC 1050). For links to these and other administrate rules, the Illinois Endangered Species Protection Act, and information about the Illinois List review and revision process, please visit the Board's website at http://www.dnr.state.il.us/espb/index.htm.

NOTE REGARDING FEDERALLY DESIGNATED ENDANGERED OR THREATENED SPECIES
All federally designated endangered or threatened species and subspecies have been automatically listed as endangered or threatened under the Illinois Endangered Species Protection Act and placed on the Illinois List by the Board and are protected under the Act even though their names do not appear in this checklist. Only those federally designated endangered or threatened species and subspecies known to occur in Illinois are designated as Illinois- endangered or Illinois-threatened by the Board and their names appear in this checklist (** = federally endangered; * = federally threatened). Users should refer to the US Fish and Wildlife Service website at http://www.fws.gov/endangered/ for a complete listing of all federally designated endangered and threatened species and subspecies.

CRITERIA FOR STATE LISTING
1) Species or subspecies designated as federally endangered or threatened , 2) Species proposed for Federal Endangered or Threatened status that occur in Illinois, 3) Species that formerly were widespread in Illinois but have been nearly extirpated from the State due to habitat destruction, collecting, or other pressures resulting from the development of Illinois, 4) Species that exhibit very restricted geographic ranges of which Illinois is a part, 5) Species that exhibit restricted habitats or low populations in Illinois, or 6) Species that are significant disjuncts in Illinois i.e., the Illinois population is far removed from the rest of the species' range.

DEFINITIONS:
"Endangered Species" means any species of plant or animal classified as endangered under the Federal Endangered Species Act of 1973, P.L. 93-205, and amendments thereto, plus such other species which the Board may list as in danger of extinction in the wild in Illinois due to one or more causes including but not limited to, the destruction, diminution or disturbance of habitat, overexploitation, predation, pollution, disease, or other natural or manmade factors affecting its prospects of survival.
"Threatened Species" means any species of plant or animal classified as threatened under the Federal Endangered Species Act of 1973, P.L. 93-205, and amendments thereto, plus such other species which the Board may list as likely to become endangered in the wild in Illinois within the foreseeable future.

Citation: Illinois Endangered Species Protection Board. 2015. Checklist of Endangered and Threatened Animals and Plants of Illinois. Illinois Endangered Species Protection Board, Springfield, Illinois. 18 pp. Published online at http://www.dnr.state.il.us/espb/index.htm.

Blumberg No. 5208
EXHIBIT
D-6

FISHES
19 Endangered, 16 Threatened

Endangered

Acipenser fulvescens	Lake Sturgeon
Ammocrypta clarum	Western Sand Darter
Etheostoma camurum	Bluebreast Darter
Etheostoma histrio	Harlequin Darter
Hybognathus hayi	Cypress Minnow
Hybopsis amblops	Bigeye Chub
Hybopsis amnis	Pallid Shiner
Ichthyomyzon fossor	Northern Brook Lamprey
Lepomis miniatus	Redspotted Sunfish
Macrhybopsis gelida	Sturgeon Chub
Moxostoma valenciennesi	Greater Redhorse
Nocomis micropogon	River Chub
Notropis anogenus	Pugnose Shiner
Notropis boops	Bigeye Shiner
Notropis heterolepis	Blacknose Shiner
Notropis maculatus	Taillight Shiner
Notropis texanus	Weed Shiner
Noturus stigmosus	Northern Madtom
*Scaphirhynchus albus***	Pallid Sturgeon

Threatened

Ammocrypta pellucidum	Eastern Sand Darter
Anguilla rostrata	American Eel
Catostomus catostomus	Longnose Sucker
Coregonus artedi	Cisco
Crystallaria asprella	Crystal Darter
Erimystax x-punctatus	Gravel Chub
Etheostoma exile	Iowa Darter
Fundulus diaphanus	Banded Killifish
Fundulus dispar	Starhead Topminnow
Hybognathus hankinsoni	Brassy Minnow
Lampetra aepyptera	Least Brook Lamprey
Lepomis symmetricus	Bantam Sunfish
Lethenteron appendix	American Brook Lamprey
Moxostoma carinatum	River Redhorse
Notropis chalybaeus	Ironcolor Shiner
Notropis heterodon	Blackchin Shiner

AMPHIBIANS
3 Endangered, 6 Threatened

Endangered

Salamanders

Ambystoma platineum	Silvery Salamander
Cryptobranchus alleganiensis	Hellbender
Desmognathus conanti	Spotted Dusky Salamander

Threatened

Salamanders

Ambystoma jeffersonianum	Jefferson Salamander
Hemidactylium scutatum	Four-toed Salamander
Necturus maculosus	Mupuppy

Frogs and Toads

Gastrophryne carolinensis	Eastern Narrow-mouthed Toad
Hyla avivoca	Bird-voiced Treefrog
Pseudacris illinoensis	Illinois Chorus Frog

EXHIBIT

F-1

Drawing No. 3208

Blumberg No. 5208

EXHIBIT

F-2

EXHIBIT
F-3

tabbies

EXHIBIT

F-4

EXHIBIT

F-5

EXHIBIT

F-6

EXHIBIT
F-7

tabbies

EXHIBIT

F-8

tabbies

EXHIBIT

F-9

tabbies

EXHIBIT

F-10

Whipple v. Vill. of N. Utica

Appellate Court of Illinois, Third District

April 25, 2017, Opinion Filed

Appeal No. 3-15-0547

Reporter

2017 IL App (3d) 150547 *; 79 N.E.3d 667 **; 2017 Ill. App. LEXIS 275 ***; 414 Ill. Dec. 32 ****

MARY WHIPPLE, MONTY WHIPPLE, DONNA COLEMAN, PHYLLIS COLEMAN, MORGAN COLEMAN, JOE HARMON, DEE HARMON, RITA WHIPPLE, MALCOLM WHIPPLE, MARK WOLD, SUE WOLD, FRED BLUE, and MONICA BLUE, Plaintiffs-Appellants, v. THE VILLAGE OF NORTH UTICA, La Salle County, Illinois, and ARAMONI LLC, Defendants-Appellees.

Subsequent History: Appeal denied by Whipple v. Vill. of North Utica, 2017 Ill. LEXIS 819 (Ill., Sept. 27, 2017)

Prior History: **[***1]** Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois. Circuit No. 14-MR-62. Honorable Cornelius J. Hollerich, Judge, Presiding.

Whipple v. Vill. of N. Utica, 2017 IL App (3d) 150547-U, 2017 Ill. App. Unpub. LEXIS 481 (Mar. 9, 2017)

Disposition: Affirmed in part and reversed in part; cause remanded.

Counsel: Kerry D. Nelson and William C. Meters, of Goldberg Kohn Ltd., Nancy C. Loeb and Deborah G. Musiker, of Bluhm Legal Clinic, both of Chicago, and Walter J. Zukowski, of Zukowski Law Offices, of Peru, for appellants.

Jamie A. Robinson and Ronald S. Cope, of Nixon Peabody LLP, of Chicago, Herbert J. Klein, of Jacob & Klein, Ltd., and James A. Andreoni, of Perona, Peterlin, Andreoni & Brolley, LLC, both of Peru, for appellees.

Kate E. Scwartz, of Hughs Socol Piers Resnick & Dym, Ltd., of Chicago, for amicus curiae La Salle County Farm Bureau.

Albert F. Ettinger, of Chicago, for amici curiae Openlands et al.

Judges: JUSTICE LYTTON delivered the judgment of the court, with opinion. Presiding Justice Holdridge concurred in the judgment and opinion. Justice McDade concurred in part and dissented in part, with opinion.

Opinion by: LYTTON

Opinion

[**35]** **[**670]** JUSTICE LYTTON delivered the judgment of the court, with opinion.

Presiding Justice Holdridge concurred in the judgment

EXHIBIT G-1

and opinion.

Justice McDade concurred in part and dissented in part, with opinion.

OPINION

[*P1] Plaintiffs, 13 owners and possessors of land in La Salle County, filed a three-count complaint against defendants, the Village of North Utica and Aramoni LLC, seeking to invalidate several village ordinances that allowed Aramoni to operate a silica sand mine in Waltham Township and requesting an injunction based on prospective nuisance. The trial court granted defendants' motion to dismiss plaintiffs' second amended complaint under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), and plaintiffs' appeal. We reverse the dismissal of counts I and III and remand **[***2]** for further proceedings.

[*P2] I. BACKGROUND

[*P3] Aramoni is a sand mining company that owns approximately 497 acres north of Interstate 80 in Waltham Township near Utica, Illinois. Aramoni's property is comprised of tracts A, B, C, D and E. Plaintiffs own, reside on, and/or operate **[**671]** **[****36]** farmland that is adjacent to or within 1/2 mile of the company's mining property.

[*P4] In 2009, North Utica annexed tracts A and B into the village pursuant to an annexation agreement between Aramoni and North Utica. Tracts A and B contain 375 acres of Aramoni's property. Both tracts were previously zoned A-1 Agricultural and retained that designation under the agreement.

[*P5] In August of 2013, Aramoni petitioned the village to amend the 2009 annexation agreement to include tracts C, D, and E, which the county had also zoned A-1 Agricultural. At the time Aramoni petitioned the village, a moratorium on new sand mines and high capacity wells had been imposed in La Salle County, which prevented Aramoni from constructing a silica sand mine on property outside the village limits. The proposed amendments to the 2009 annexation agreement stated that future use of all five tracts of land would be silica sand mining. The petition was **[***3]** contingent upon North Utica granting (1) A-1 Agricultural zoning to tracts C, D, and E, and (2) a special use permit allowing Aramoni to mine silica sand from the entire 497-acre parcel. Under North Utica zoning ordinances, mining is a permissible special use in A-1 Agricultural zones.

[*P6] North Utica Planning Commission and North Utica Board of Trustees held joint hearings on the petitions. Plaintiffs and other members of the community opposed the proposed amendments and the special use permit. They testified that the proposed mine threatened their health and safety, jeopardized the productivity of their farmland, and interfered with the use and enjoyment of their property. The planning commission voted to recommend that the village deny the proposed

annexation agreement and the special use permit.

[*P7] One week after the planning commission recommended denying the petition, the board of trustees voted to approve Aramoni's application for annexation and rezoning and its special use permit, with the proposed amendments. The amendments as approved permitted Aramoni to (1) develop and operate a silica sand mine on tracts A-E, (2) operate the mine continuously seven days a week, and (3) blast [***4] with explosives during daylight hours Monday through Friday and on Saturdays under "certain meteorological conditions." The amendments also prohibited trucks that were leaving the mine from using North Utica roads except for local deliveries.

[*P8] In addition to the permitted activities, the agreement stated that the operation of a mine under the special use ordinance "will not constitute a nuisance" under the village nuisance ordinance. The agreement provided that Aramoni would comply with "appropriate laws, rules and regulations of all local, state and national governmental agencies," and stated that Aramoni agreed not to "cause negative impact upon any existing farm drainage tile and to repair any disruption caused by Developer." A provision of the agreement also provided that Aramoni would offer to enter into a well protection agreement with those persons owning property within 1/2 mile of the mine.

[*P9] In connection with the agreement, North Utica adopted six ordinances allowing Aramoni to operate the property as a silica sand mine. In exchange, Aramoni agreed to pay a fee of $100,000 to the village and eight additional quarterly payments of $50,000, as well as a fee of $0.20 per ton of [***5] sand extracted from the proposed mine.

[*P10] Plaintiffs filed a complaint against the Village of North Utica and Aramoni seeking administrative review of the annexation agreements and claiming that the related permits for rezoning, variance, and special use violated local ordinances and [**672] [****37] Illinois law. Defendants moved to dismiss, and the trial court granted the motion on the basis that administrative review was not permissible for a zoning action taken by a legislative body.

[*P11] Plaintiffs then filed an amended complaint for declaratory judgment and injunctive relief. The amended complaint contained two counts alleging that North Utica violated plaintiffs' substantive and procedural due process rights and that, by adopting the mining ordinances, the village unlawfully surrendered its police powers to regulate any nuisance generated by the mine. Defendant again moved to dismiss under section 2-615 of the Code, claiming that plaintiffs failed to state a cause of action, and under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (2014)), arguing that plaintiffs lacked standing to bring a zoning action against them.

[*P12] The trial court denied defendants' section 2-619 motion, holding that plaintiffs had standing to bring a

claim for violation of their substantive [***6] due process rights based on their legally cognizable interest in property adjacent to or nearby the proposed mine. However, the court granted defendants' motion to dismiss the complaint pursuant to section 2-615 of the Code, finding that plaintiffs' allegations were insufficient to sustain a cause of action for constitutional relief. The court dismissed plaintiffs' complaint without prejudice, noting that the owners and residents had not raised substantive due process issues in their previous pleadings.

[*P13] In response to the court's order, plaintiffs filed a second amended complaint, reasserting substantive due process violations and including two new claims: equal protection and prospective nuisance. Count I alleged that North Utica's adoption of the amended agreement and ordinances and approval of the special use permit violated plaintiffs' substantive due process rights. Count II claimed that the adoption of the ordinances violated plaintiffs' equal protection rights. Count III alleged prospective nuisance based on the planned construction and operation of the proposed silica sand mine.

[*P14] In addition to the general allegations of harm contained in the first amended complaint, the second amended complaint [***7] contained detailed factual allegations that the sand mine would harm plaintiffs' property and alleged that the mine constituted a prospective nuisance in relation to nearby residents. Plaintiffs set forth specific harms that would likely occur if Aramoni was allowed to operate its sand mine in Waltham Township, including (1) harm to plaintiffs by exposure to airborne silica sand, (2) harm to the level of plaintiffs' wells and the quality of their well water, (3) harm due to flooding of plaintiffs' properties, (4) damage to plaintiffs' farm tiles, (5) extreme noise caused by blasting during extended hours, (6) harm related to increased truck traffic, (7) harm caused by lighting at the sand mine, and (8) diminution of plaintiffs' property values.

[*P15] Defendants filed a motion to dismiss, seeking dismissal based on lack of standing under section 2-619 of the Code and failure to state a cause of action under section 2-615 of the Code. The trial court found that plaintiffs had standing to bring their complaint, but granted defendants' motion to dismiss under section 2-615, finding that plaintiffs failed to state a cause of action as to all three counts. The court's written order dismissed plaintiffs' complaint with prejudice.

[*P16] II. [***8] STANDING

[*P17] Before reaching the substance of plaintiffs' arguments, we must first address defendants' claim that plaintiffs lack standing to challenge North Utica's annexation ordinances and its decision to grant Aramoni a special use permit.

[*P18] [****38] [**673] A party with an injury in fact to a "legally cognizable interest" has standing to bring a claim for that injury. *Village of Chatham v. County of*

Sangamon, 216 Ill. 2d 402, 419, 837 N.E.2d 29, 297 Ill. Dec. 249 (2005). The injury, threatened or actual, must be "(1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23, 809 N.E.2d 1240, 284 Ill. Dec. 294 (2004). Illinois courts have held that this standard is met where a plaintiff has a "possessory interest" in land that is adjacent to or nearby the property on which a threatened harmful action is proposed. *Rodriguez v. Henderson*, 217 Ill. App. 3d 1024, 1036-37, 578 N.E.2d 57, 160 Ill. Dec. 878 (1991) (plaintiffs who occupy land near rezoned property have standing); *Metroweb Corp. v. County of Lake*, 130 Ill. App. 3d 934, 936, 474 N.E.2d 900, 85 Ill. Dec. 940 (1985) (possessory interest is sufficient to confer standing). In this case, each plaintiff alleges a possessory interest in property adjacent to or nearby the proposed mine site. Further, the harms plaintiffs complain of may be prevented or redressed by the injunctive relief they requested.

[*P19] Moreover, lack of standing to bring an action is an affirmative defense, and the **[***9]** burden of proving the defense is on the party asserting it. Here, defendants have not shown that the facts establishing plaintiffs' standing are legally insufficient. See 735 ILCS 5/2-619(a)(9) (West 2014); *PennyMac Corp. v. Colley*, 2015 IL App (3d) 140964, ¶ 11 (burden of disproving standing is on the party asserting lack of it). Defendants' motion to dismiss for lack of standing was properly denied.

[*P20] III. ANALYSIS

[*P21] Plaintiffs appeal from the trial court's grant of defendants' motion to dismiss counts I, II and III of their second amended complaint for failure to state a claim under section 2-615 of the Code.

[*P22] On a section 2-615 motion to dismiss, a court must accept as true all well-pled facts in the complaint, as well as any reasonable inferences that may arise from those facts. *DeHart v. DeHart*, 2013 IL 114137, ¶ 18. At the motion to dismiss stage, the merits of the case are not yet considered. *Kilburg v. Mohiuddin*, 2013 IL App (1st) 113408, ¶ 19. Rather a court is to construe the complaint liberally and should not dismiss it unless it is clearly apparent from the pleadings that "no set of facts can be proved which would entitle the plaintiff to recover." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305, 891 N.E.2d 839, 322 Ill. Dec. 548 (2008). We are not to determine whether the plaintiffs have met the heavy burden of proving that the legislative actions are unconstitutional but only whether they have alleged sufficient facts to allow the cause to proceed **[***10]** further. *Rodriguez*, 217 Ill. App. 3d at 1030-34. Our inquiry upon review is whether the allegations of the complaint, when construed in the light most favorable to the nonmoving party are sufficient to establish a cause of action upon which relief may be granted. *DeHart*, 2013 IL 114137, ¶ 18. We review a motion to dismiss *de*

novo. Id.

[*P23] In this case, we must also consider the substantive rational basis standard because it is at the heart of the motion to dismiss. The rational basis standard requires the municipality to prevail if any set of facts reasonably may be conceived to justify the classification in its legislation. *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 323-24, 664 N.E.2d 1024, 216 Ill. Dec. 96 (1996). At **[**674]** **[****39]** this juncture in the proceedings, however, we review the allegations under the rational basis standard to determine whether the complaint survives the dismissal motion. See *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992) (discussing review process when rational basis standard meets the standard applied to dismissal under Federal Rule of Civil Procedure 12(b)(6)). It is with that review process in mind that we evaluate the trial court's order dismissing plaintiffs' substantive due process and equal protection claims.

[*P24] A. Substantive Due Process

[*P25] In dismissing count I of plaintiffs' complaint, the trial court held that plaintiffs failed to state a claim of arbitrary and capricious rezoning that would have violated **[***11]** their substantive due process rights. In the trial court's view, plaintiffs failed to allege facts showing that the adoption of the annexation ordinances was invalid under *La Salle National Bank of Chicago v. County of Cook*, 12 Ill. 2d 40, 145 N.E.2d 65 (1957) and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 167 N.E.2d 406 (1960), and that North Utica's decision to grant Aramoni a special use permit violated the principles set forth in *City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc.*, 196 Ill. 2d 1, 749 N.E.2d 916, 255 Ill. Dec. 434 (2001).

[*P26] To state a cause of action for a violation of substantive due process, a plaintiff must allege that the deprivation of his or her property interest is arbitrary, unreasonable, or capricious, and that the legislation at issue bears no rational relationship to the public welfare. *Safanda v. Zoning Board of Appeals*, 203 Ill. App. 3d 687, 695, 561 N.E.2d 412, 149 Ill. Dec. 134 (1990). When a legislative zoning ordinance is challenged based on substantive due process, we examine the ordinance for arbitrariness under the six-factor test set forth in *La Salle National Bank. Our Savior Evangelical Lutheran Church v. Saville*, 397 Ill. App. 3d 1003, 1027, 922 N.E.2d 1143, 337 Ill. Dec. 566 (2009). Those factors include (1) the existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of the plaintiff's property values promotes the health, safety, morals, or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed on the individual property owner, (5) the suitability of the subject property **[***12]** for the zoned purposes, and (6)

the length of time the property has been vacant as zoned. *La Salle National Bank*, 12 Ill. 2d at 46-47. Our supreme court identified additional factors to consider in *Sinclair Pipe Line*, namely (1) whether a comprehensive zoning plan for land use and development exists, and whether the ordinance is in harmony with it, and (2) whether the community needs the proposed use. *Sinclair Pipe Line*, 19 Ill. 2d at 378. Courts evaluate the factors as a whole to determine whether the zoning or rezoning action was reasonably related to a legitimate government interest and was a reasonable method to achieve that purpose. *Napleton v. Village of Hinsdale*, 374 Ill. App. 3d 1098, 1110, 872 N.E.2d 23, 313 Ill. Dec. 263 (2007). The list is not exclusive, and no single factor is controlling. *La Salle National Bank*, 12 Ill. 2d at 47. Moreover, a complaint does not fail simply because it does not allege facts in support of each and every factor. *Rodriguez*, 217 Ill. App. 3d at 1029-30.

[*P27] In *Living Word*, our supreme court held that a municipality's decision to grant a special use permit is also a legislative action that is reviewed for arbitrariness as **[**675]** **[****40]** a matter of substantive due process. *Living Word*, 196 Ill. 2d at 25-26. The court noted that, generally, a special use permit may not be denied on the ground that the use is not in harmony with the surrounding neighborhood. However, "a special use permit must be denied when it is determined from the facts and circumstances **[***13]** that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." (Internal quotation marks omitted.) *Id.* at 21-22.

[*P28] Evaluating plaintiffs' substantive due process claim under the *La Salle/Sinclair* factors and *Living Word* in the context of a motion to dismiss, we find that the trial court erred in dismissing count I of plaintiffs' complaint.

[*P29] The first *La Salle/Sinclair* factor is the existing use and zoning of nearby property. The property surrounding the proposed sand mine is zoned A-1 Agricultural, the same zoning designation as the Aramoni property, and A-1 Agricultural includes a special use for mining. Plaintiffs' complaint states that "[t]he neighborhood surrounding the annexed land on which the Proposed Mine will be operated has historically been and is today overwhelmingly rural and agricultural." The map attached to the complaint shows that the surrounding area is zoned A-1 and indicates that another sand mine is located within the A-1 zone. Thus, while nearby property is **[***14]** primarily agricultural, the annexation ordinances conform to the A-1 designation and use of the other properties in the zoning area.

[*P30] Plaintiffs' complaint alleges that the second factor, diminution of property values, weighs in their favor. It states that the "development and operation of a

silica sand mine in close proximity to plaintiffs' homes and farms will adversely affect the value of their properties." Plaintiffs support their claims with reports of diminished property values due to sand mines in other locations and a report from the Federal Reserve Bank stating that studies of gravel and coal mining in other parts of the country show that homes situated near a mine or sand truck route lose value. These allegations are sufficient, for purposes of a 2-615 motion, to support a claim that the annexation ordinances diminish the value of the property surrounding Aramoni's property.

[*P31] The third and fourth factors also favor plaintiffs' position. The promotion of public welfare and the gain/loss balance are additional *La Salle/Sinclair* factors that, as alleged, suggest North Utica's legislative action may have violated substantive due process. The parties have alleged that "[t]he harm to **[***15]** Aramoni from denial of the special use would be the inability to profit from the Proposed Mine at this location." By contrast, as detailed in the second amended complaint, plaintiffs will suffer harm to their health, water supply, and agricultural land, and they will experience a decrease in the values of their properties. These harms may outweigh the loss of any potential gain to Aramoni.

[*P32] The next two factors, five and six, are easily resolved regardless of the procedural stage of the case. Factor five indicates that the property is suitable for the zoned purpose. The property is zoned A-1 Agricultural and mining is a special use in an A-1 zone. Factor six is not a factor because the property has not been vacant for any length of time.

[*P33] The last two *La Salle/Sinclair* factors tip the balance in plaintiffs' favor. The seventh factor involves the care with which the community has undertaken to plan its **[**676]** **[****41]** land use development, and the eighth factor tests the need in the community for the proposed use. As alleged in the complaint, the plan specifically mandates that the north and northeast sections of the planning area should continue as agricultural. Section 7-1 of the plan defines "agricultural" as **[***16]** "undeveloped or sparsely developed or primarily used for farm-related activities." In contrast, mining is specifically listed as an "industrial" use. Thus, the annexation ordinances are not in harmony with the community's comprehensive plan. The eighth factor also favors plaintiffs where the community's need for the use is minimal. Three silica sand mines are currently in operation in La Salle County, and plat maps attached to the complaint indicate that two are in close proximity to Aramoni's proposed mine. Taking as true the facts pleaded in the second amended complaint, the need for additional sand mines in Waltham Township is negligible.

[*P34] Plaintiffs' second amended complaint also alleges sufficient facts to satisfy the *Living Word* test in light of a section 2-615 motion to dismiss. Plaintiffs have sufficiently alleged numerous adverse effects that will result from the proposed mine's "particular use" at the "particular location" in immediate proximity to their homes and farms that differ from adverse effects that

would result if the mine were located elsewhere in the A-1 zone. They have alleged a concentration of mine-related truck activity and noise and harms that would adversely affect the **[***17]** quality and flood potential of a nearby stream. None of these specific harms would necessarily result from the proposed mine at another location in the zoning area. Accepting plaintiffs' allegations of harm as true, they have stated a claim for a violation of their substantive due process rights under *Living Word*.

[*P35] Here, it was improper to dismiss plaintiffs' second amended complaint at the pleading stage for perceived failure to meet the *La Salle/Sinclair* criteria and the *Living Word* test. Plaintiffs' met a significant number of the factors and thereby stated a constitutional substantive due process claim. Therefore, the trial court erred in dismissing count I based on failure to state a claim.

[*P36] B. Equal Protection

[*P37] Plaintiffs also argue that they sufficiently stated a claim for a violation of their equal protection rights as pleaded in count II.

[*P38] To state a cause of action for a violation of equal protection, plaintiffs must allege that there are other similarly situated people who are being treated differently than them and that there is no rational basis for this difference. *Safanda*, 203 Ill. App. 3d at 695. The guarantee of equal protection means that if a governmental body treats similarly situated people dissimilarly, **[***18]** it must have a rational basis for doing so. *Jenkins v. Wu*, 102 Ill. 2d 468, 477, 468 N.E.2d 1162, 82 Ill. Dec. 382 (1984). The classification must be reasonable, not arbitrary and must rest on some ground of difference having a fair and substantial relation to the legislation. *Id.* The threshold question is whether similarly situated people are being treated dissimilarly. *Safanda*, 203 Ill. App. 3d at 695. The burden of proof is on the one asserting the unconstitutionality of an ordinance, and there is a presumption that the ordinance is valid. *Village of Cahokia v. Wright*, 11 Ill. App. 3d 124, 131, 296 N.E.2d 30 (1973).

[*P39] Plaintiffs' second amended complaint alleges that the annexation agreement:

> "abrogates the protection of [North Utica's] nuisance laws solely with respect to plaintiffs and others living and farming in the immediate vicinity of the proposed **[****42]** mine **[**677]** while continuing to provide the far-reaching protections of its nuisance laws to all others. This denial of equal protection is irrational and violates plaintiffs' equal protection rights."

These allegations fail to provide sufficient support for a claim of a violation of equal protection because they are legal conclusions rather than statements of fact. See *Smith v. Malone*, 317 Ill. App. 3d 974, 979, 742 N.E.2d 785, 252 Ill. Dec. 247 (2000) (court must accept as true

all well-pleaded factual allegations and disregard conclusions of law).

[*P40] In this case, the annexation agreement does not single **[***19]** out plaintiffs for disparate treatment. First, the village's actions of adopting the annexation ordinances and granting the special use permit do not shield plaintiffs from the protection of nuisance laws. North Utica's nuisance ordinances do not prohibit plaintiffs from taking action against the sand mine under state or common law. They also do not prohibit the village from taking action against the sand mine if it is operated in a manner contrary to the ordinances. The annexation ordinances simply provide that the lawful, normal operation of a silica sand mine is not a nuisance under the village ordinances.

[*P41] Moreover, the annexation agreement does not treat plaintiffs any differently than the other residents of North Utica. It does not single out plaintiffs for unequal treatment. North Utica's interpretation of its ordinance applies generally and equally to all residents of the village. Plaintiffs are permitted to bring a nuisance action against Aramoni if the mining activity creates an irreparable harm or causes injury, as is any resident of North Utica.

[*P42] In *Beverly Bank v. Board of Review*, 117 Ill. App. 3d 656, 453 N.E.2d 96, 72 Ill. Dec. 791 (1983), the court held that a plaintiff alleging that a law is neutral on its face, but administered in an unequal fashion must allege **[***20]** that the discrimination was "intentional or purposeful." *Id.* at 664. To establish an intentional or purposeful act, a plaintiff must plead and show that the decision maker singled out a particular group for disparate treatment and selected the course of action, at least in part, for the purpose of causing adverse effects on an "identifiable group." (Internal quotation marks omitted.) *Id.* Here, no such allegation has been made in plaintiffs' second amended complaint. Because this legislation operates the same as to each resident of North Utica and plaintiffs have not alleged any facts to suggest that it is being applied in a discriminatory manner, their equal protection claim must fail. Thus, the trial court properly dismissed count II of plaintiffs' second amended complaint.

[*P43] C. Prospective Nuisance

[*P44] Plaintiffs argue that the trial court erred in dismissing their prospective nuisance claim because they alleged that it is "highly probable" that the proposed mine will harm plaintiffs' health and safety and welfare, the availability of ground water, their crops and property values, and the peaceful use and enjoyment of their homes and farms. They maintain that the allegations contained in the second **[***21]** amended complaint were not merely legal conclusions and were supported by ample evidence in the record, including sworn testimony and submissions by defendants.

[*P45] A private nuisance is the substantial invasion of a person's interest in the use and enjoyment of his

property. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 689, 941 N.E.2d 347, 346 Ill. Dec. 789 (2010). The invasion must be substantial, either intentional or negligent, and unreasonable. **[**678]** **[****43]** *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 204, 680 N.E.2d 265, 223 Ill. Dec. 532 (1997). Whether particular conduct constitutes a "nuisance" is determined by the conduct's effect on a reasonable person. *Id.* A "nuisance must be physically offensive to the senses to the extent that it makes life uncomfortable." *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 375-76, 929 N.E.2d 30, 340 Ill. Dec. 726 (2010). A prospective nuisance is a candidate for injunctive relief where the defendant is engaged in a hazardous undertaking at a location "which seriously and imminently poses a threat to the public health." *Village of Wilsonville v. SCA Services, Inc.*, 86 Ill. 2d 1, 30, 426 N.E.2d 824, 55 Ill. Dec. 499 (1981). Moreover, the existence of possible government oversight does not prevent nuisance or provide the appropriate recourse under a prospective nuisance claim. *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 494, 906 N.E.2d 556, 329 Ill. Dec. 358 (2009).

[*P46] In *Fink v. Board of Trustees of Southern Illinois University*, 71 Ill. App. 2d 276, 218 N.E.2d 240 (1966), the plaintiff sought to enjoin construction of a dam and also the discharge of sewage effluent in a watercourse, which flowed past plaintiffs' property. Construction of the dam was not enjoined, but the discharge of effluent was prospectively enjoined. **[***22]** The court stated:

"While, as a general proposition, an injunction will be granted only to restrain an actual, existing nuisance, a court of equity may enjoin a threatened or anticipated nuisance, where it clearly appears that a nuisance will necessarily result from the contemplated act or thing which it is sought to enjoin. This is particularly true where the proof shows that the apprehension of material injury is well grounded upon a state of facts from which it appears that the danger is real and immediate. While care should be used in granting injunctions to avoid prospective injuries, there is no requirement that the court must wait until the injury occurs before granting relief." *Id.* at 281-82.

[*P47] Here, the alleged nuisance is prospective because the silica sand mine is not yet in operation. As noted above, a plaintiff may seek injunctive relief for a prospective nuisance. *Id.* at 282. A "defendant may be restrained from entering upon an activity where it is highly probable that it will lead to a nuisance, although if the possibility is merely uncertain or contingent he may be left to his remedy of damages until after the nuisance has occurred." Prosser & Keeton on the Law of Torts § 89, at 640-41 (W. Page Keeton **[***23]** et al. eds. 5th ed. 1984). The plaintiff must show by a preponderance of the evidence that the defendant's operation is a prospective nuisance. *Village of Wilsonville*, 86 Ill. 2d at 14.

[*P48] In *Village of Wilsonville*, the defendant's attempt to establish and operate a chemical waste disposal site

was properly enjoined where the trial court heard conflicting evidence regarding the hazards likely to arise. The trial court accepted the plaintiff's evidence, finding that it showed that it was "highly probable" that the toxic chemical waste deposited at the site could escape, either through explosions, migration, subsidence of the site itself, or groundwater. The court found no abuse of discretion in granting the preliminary injunction, observing that "[a] court does not have to wait for [the harm] to happen before it can enjoin such a result." *Village of Wilsonville*, 86 Ill. 2d at 27; see also *Nickels v. Burnett*, 343 Ill. App. 3d 654, 663, 798 N.E.2d 817, 278 Ill. Dec. 433 (2003) (appellate court affirmed trial court's decision to enjoin the construction of a hog farm based on extensive affidavits and articles describing harms associated with hog farms).

[*P49] [**44] [**679]** In this case, we agree with defendants that some of plaintiffs' allegations of irreparable harm are based on legal conclusions that are not sufficiently supported by facts. Claims such as harm to field tile, **[***24]** flooding, and well contamination are speculative and are not supported by affidavits or other documents demonstrating a direct harm.

[*P50] However, not all of the allegations in count III can be so easily dismissed. Other facts and allegations have been adequately alleged in support of plaintiffs' prospective nuisance claim. Plaintiffs have also alleged (1) that there will be continuous lights and noise of up to 133 decibels from blasting, drilling, and rock crushing equipment, (2) that 146 trailer loads of sand exiting the operation each day will increase traffic on rural roads, (3) that the operation will discharge up to 1.25 million gallons of effluent per day into the Pecumsaugan Creek, and (4) that the mining operation will add particulate silica dust to the air around the mining site. These are facts, not legal conclusions. When these facts are considered in tandem with the operating parameters allowed by the annexation agreement and ordinances, plaintiffs' allegations are sufficient to state a claim of prospective nuisance. The annexation agreement, which was attached to plaintiffs' complaint, states that Aramoni is allowed to conduct silica sand mining operations 24 hours a day, **[***25]** seven days a week, and to use explosive devices during daylight hours five days a week and on Saturday if necessary. Considering the potential to mine 365 days a year using mining equipment, lights and trucks, plaintiffs' complaint alleged sufficient facts to support the argument that the proposed mine will lead to a nuisance. Accepting all well-pleaded allegations as true and considering them in a light most favorable to plaintiffs, it is likely that the noise, lights, dust, and traffic will substantially interfere with plaintiffs' ability to use and enjoy their property.

[*P51] Defendants cite *Village of Willow Springs v. Village of Lemont*, 2016 IL App (1st) 152670, 410 Ill. Dec. 393, 70 N.E.3d 210, in support of their argument that the trial court properly dismissed plaintiffs' prospective nuisance claim. In *Willow Springs*, the village filed a prospective public nuisance complaint

seeking to enjoin its neighboring village, Lemont, from approving a zoning reclassification and proposed industrial development of certain property. On appeal, the court affirmed the trial court's dismissal of the plaintiff's complaint, noting that to survive a motion to dismiss, a plaintiff seeking to enjoin a prospective nuisance must allege that the harms are more than just a possibility, it must allege that the **[***26]** harms are highly probable. *Id.* ¶ 48. The court found that Willow Springs failed to meet that threshold. The court also determined that the village's allegations of harm were too uncertain to survive a motion to dismiss because the proposed zoning reclassification and development had not yet been approved by the neighboring village. *Id.* ¶ 51.

[*P52] We find *Willow Springs* distinguishable. Unlike the village of Willow Springs, plaintiffs have alleged that the proposed mine constitutes a prospective private nuisance based on detailed allegations of harm. They have alleged specific harms to their property, nearby waterways and surrounding roads. *Willow Springs* is also distinguishable in that the challenged annexation agreement in this case has already been accepted by North Utica and ordinances have been passed permitting Aramoni to develop the property. Contrary to the proposed development in *Willow Springs*, defendant's development and operation of a silica sand mine has already been approved by the municipality.

[*P53] [**45] [**680]** Illinois courts have held that invasions of property rights as a result of noise, water contamination, bright lights, and diminished property values constitute a cognizable private **[***27]** nuisance. See *Dobbs*, 401 Ill. App. 3d at 379 (noise from barking dogs in a kennel next to residence in a rural area was a private nuisance); *Fink*, 71 Ill. App. 2d at 281-82 (effluent released into creek which then flowed onto plaintiff's property was a nuisance); *Phelps v. Winch*, 309 Ill. 158, 140 N.E. 847 (1923) (noises and bright lights from cars leaving an event were a nuisance); *Nickels*, 343 Ill. App. 3d at 663 (extensive evidence of potential harms to health, safety, and welfare of nearby residents and diminished property values established prospective nuisance of proposed hog farm). Plaintiffs have alleged that similar invasions on their properties constitute a prospective nuisance. It remains to be seen whether plaintiffs can prove that it is highly probable that Aramoni's proposed sand mine will lead to a nuisance. However, a section 2-615 motion does not require plaintiffs to prove their case at this juncture, and plaintiffs' allegations are sufficient to show that the operation of the mine may result in a private nuisance. Thus, the trial court erred in dismissing count III.

[*P54] IV. CONCLUSION

[*P55] The judgment of the circuit court of La Salle County granting defendants' section 2-615 motion to dismiss is affirmed in part and reversed in part, and the cause is remanded for further proceedings.

[*P56] Affirmed in part and reversed in part; cause

remanded. **[***28]**

Concur by: McDADE (In Part)

Dissent by: McDADE (In Part)

Dissent

[*P57] JUSTICE McDADE, concurring in part and dissenting in part.

[*P58] The majority has reversed the order of the trial court granting the defendants' motion to dismiss counts I and III of the plaintiffs' complaint. I concur with that decision.

[*P59] I dissent from the affirmance of the dismissal of count II, which raises a claim that plaintiffs' equal protection rights were violated by their annexation into North Utica. No claim should be dismissed unless there is no set of facts alleged which could state a viable claim for relief. "[A] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 305 Ill. Dec. 897 (2006).

[*P60] Included in all three counts of the complaint is paragraph 28, which states:

> "28. On information and belief, the annexation of the Proposed Mine site into North Utica was proposed by Aramoni to evade or circumvent the moratorium on sand mines in effect in LaSalle County at the time. Further, irrespective of intent, the annexation did evade or circumvent the moratorium on sand mines in effect in LaSalle County at the time."

[*P61] Here plaintiffs have alleged that they lived in an **[***29]** area in which they were protected by La Salle County's moratorium against the initiation of any additional sand mining activities and that they were cut out of the group of county residents who were protected by the moratorium and annexed into North Utica so that Aramoni would be free to begin a new sand mining operation. They have also alleged within count II that they will suffer significant specified harm to their persons and their property that those who continued under the protection of the moratorium would escape and that the harm is irreparable because they have been deprived of legal recourse by the annexation agreement's declaration and definition of the mine as *not* a nuisance. Although the plaintiffs **[**681]** **[****46]** did not formulate their argument in this precise manner, I believe these facts they have alleged could, if they were allowed to replead, state a viable claim of an equal protection violation. I would, therefore, find that the trial court also erred in dismissing count II with prejudice.

End of Document

McCOMB v. STATE

Court of Claims of Illinois

June 10, 1941, Opinion Filed

Nos. 3353, 3354, 3355, 3356, 3357, 3358, 3359, consolidated

Reporter

11 Ill. Ct. Cl. 580 *; 1941 Ill. Ct. Cl. LEXIS 82 **

JOE McCOMB AND JAMES McCOMB, NO. 3353, ALBERT JACOBS AND FAYE JACOBS, NO. 3354, ED. P. SMITH, NO. 3355, OSCAR LAMORE AND ZEPHYR LAMORE, NO. 3356, ARTHUR BENOIT, NO. 3357, ALFRED GIROUX AND LEONARD GIROUX, NO. 3358, HENRY P. WRIGHT, E. BELLE WRIGHT, EDWARD WRIGHT AND MILTON WRIGHT, NO. 3359, Claimants, vs. STATE OF ILLINOIS, Respondent.

Disposition: [**1] No. 3353, claimant awarded $ 562.50, No. 3354, claimant awarded $ 120.00, No. 3355, claimant awarded $ 486.00, No. 3356, claimant awarded $ 1,881.00, No. 3357, claimant awarded $ 652.50, No. 3358, claimant awarded $ 732.50, No. 3359, claimant awarded $ 936.00.

Counsel: JOHN H. BECKERS, for claimants.

GEORGE F. BARRETT, Attorney General; MURRAY F. MILNE, Assistant Attorney General, for respondent.

Judges: MR. JUSTICE LINSCOTT delivered the opinion of the court.

Opinion by: LINSCOTT

Opinion

[*581] MR. JUSTICE LINSCOTT delivered the opinion of the court:

The above entitled cases are all claims for damages caused by the pollution of a stream known as Rock Creek, by the Manteno State Hospital; all grew out of the same state of facts, and therefore, upon motion of the several claimants have been consolidated for the purposes of the hearing and consideration thereof.

The Manteno State Hospital is a charitable institution operated and maintained by the State of Illinois through its Department of Public Welfare. It is located on 1,220 acres of land owned by the State, located in Sections 22, 23, 25, 26, 27 and 35 in Township 32 North Range 12 East of the Third Principal Meridian in Kankakee County.

[**2] The institutional buildings are located on Section 26, and the remainder of the land is devoted to agriculture, orchards, nursery, etc. The original buildings and improvements were constructed in 1930, and then consisted principally of the following: eight two-story ward buildings; one administration building; one sewage

Blumberg No. 5208 EXHIBIT G-2

disposal plant; one power house; two employees' dormitories; five doctors' cottages; one Managing Officer's residence; one farm house; one kitchen building; garages, etc.

In 1933 eight additional ward buildings, a dining room, and a hospital were erected.

In 1935 a kitchen building, a general stores building, and a laundry building were erected.

In 1936 and 1937 twelve ward buildings, one mechanical stores building, one building for tubercular patients, one diagnostic building, two employees' buildings, one assembly hall, seven doctors' cottages, one chief engineer's residence, and two hydro-therapy buildings were erected.

The number of patients and employees housed on the premises from 1935 to 1939 inclusive, were as follows: in 1935, 1,446; in 1936, 3,144; in 1937, 3,187; in 1938, 4,451; and in 1939, 6,093.

The sewage from the several buildings is carried through **[**3]** an 18-inch sanitary sewer which empties into Rock Creek approximately sixty or seventy feet east of the highway running north and south between Sections 22 and 23.

[*582] The property is also provided with a 48-inch sewer called a storm sewer, which empties into Rock Creek just west of the 18-inch sewer.

Rock Creek is a natural water course which traverses the northwest corner of Section 23 and continues in a southwesterly and westerly direction through the lands of the claimants, and finally empties into the Eankakee River about seven and one-half miles west and two miles south of Manteno; and the effluent from the sewage disposal plant and the storm sewer system of the institution empties into such creek. The creek is a winding and sluggish stream, twenty-five to thirty feet in width, with many holes in the bottom which catch and retain the sludge and solids from the institution. The fall is about ten feet in the first three and one-half miles, and an additional ten feet in the next mile.

The original sewage disposal plant constructed in 1930 as aforesaid consisted of a primary settling tank, six mechanical aerators; a secondary settling tank; a sludge digester and three **[**4]** sludge drying beds, which were able to take care of a population as follows: primary tank, 1,280; aerator tanks, 2,530; settling tank, 2,670; digester tank, 3,210; sludge beds, 3,760. From February, 1935 until July 20, 1937 the waste water from the institution laundry was discharged directly into the storm sewer system (and eventually into Rock Creek) without passing through the sewage disposal plant. Since July 20, 1937 the waste water from the laundry has been run through the sewage disposal plant, and after treatment therein, is discharged into Rock Creek along with other effluent from the plant, through the sanitary sewer.

The original plant was put into operation in 1931, and thereafter no provisions were made for any alterations therein or additions thereto until December 29, 1938,

when a contract was let for the installation of a new primary settling tank, sewage lift station and mechanical bar screen.

The several complaints herein were filed February 3, 1939, and on December 14, 1939 a contract was let for certain alterations and additions to the sewage treatment plant. The alterations and improvements above mentioned had not been completed at the time the taking of testimony **[**5]** herein was concluded, but one of the witnesses for the respondent testified, over objection by claimants, that after the completion of such alterations and improvements the capacity of the sewage disposal **[*583]** plant would be sufficient to take care of a population of 10,000 people, and that with proper operation the effluent from the plant should not possess any offensive, odor and should not render the stream unfit for cattle to drink or to stand in. The witness admitted that such results would depend upon the proper construction of the plant, and the proper operation thereof, and that in any event, even with the new alterations and improvements the stream would not be in its natural state.

Alfred A. Brensley, a sanitary engineer called by the claimants, stated that in his opinion if the plant were constructed according to the plans in evidence, it would not furnish sufficient treatment to insure the original uses which were afforded by the creek waters before the original plant was constructed; and that the effluent discharged from the plant would reduce the extent of the available uses of the creek as to the riparian owners for general farming purposes and dairying.

No **[**6]** attempt is made by the respondent to deny or excuse the conditions as they existed prior to the filing of the several complaints herein. The sewage disposal plant in use prior to the filing of such complaints was wholly inadequate to treat the sewage and effluent from the institution, and all of such sewage and effluent was and continued to be discharged into the waters of Rock Creek.

In short, the respondent created and thereafter maintained a public ***nuisance*** of an aggravated nature. The supply of water in Rock Creek was not only increased in volume but polluted as well.

After the alterations and additions hereinbefore referred to are completed, the effluent from the entire institution will continue to be emptied into Rock Creek, and the evidence of Dr. Hinton, the Managing Officer of the hospital, was to the effect that from 1934 to the time of the hearing, from 150 to 200 gallons of water per person per day were consumed at the hospital. All of such water was eventually emptied into Rock Creek by the respondent, so that in 1939 there was from 900,000 to 1,200,000 gallons of water per day emptied into Rock Creek through the sewers of the institution.

The claimants, Joe McComb **[**7]** and James McComb, do not own the land they farm, but are tenants in possession thereof. In their complaint herein such claimants seek an award for **[*584]** $ 1,405.00, for the following items of damages, to wit: decrease in milk

production; the cost of extra feed for livestock; loss of livestock; and the cost of veterinary services.

The claimants, Albert Jacobs and Faye Jacobs, are the owners of the land involved in their claim, and the claimant, Ed P. Smith, is the tenant in possession of said land. In the original complaint filed by Albert Jacobs and Faye Jacobs, damages are claimed in the amount of $ 980.00 for the loss of rent, and for the cost of excavating and hauling away slime, sludge and sediment which had accumulated in the bottom of Rock Creek. By amendment thereafter made, such claimants added the item of depreciation in the fair cash market value of their property, for which they asked an additional award in the sum of $ 2,000.00.

The claimant, Ed P. Smith, in his complaint asks for damages in the sum of $ 915.00 for depreciation in the value of livestock, loss of livestock, decrease in milk production, cost of extra feed for livestock, and cost of veterinary services.

[8]** The claimants, Oscar LaMore and Zephyr LaMore, are the owners of the land involved in their claim, but Oscar Lamore alone farms the land, and he is the sole owner of the livestock thereon. In their original complaint Oscar LaMore and Zephyr LaMore, claim damages in the sum of $ 2,000.00 for loss of rent, and for the cost of excavating and hauling away slime, sludge and sediment which had accumulated in the bottom of Rock Creek, and the claimant, Oscar LaMore, personally claims damages in the total amount of $ 2,795.00 for loss of livestock, loss of use of livestock, decrease in milk production, cost of extra feed for livestock, and cost of veterinary services. By amendment thereafter made to their complaint, said claimants added the item of depreciation in the fair cash market value of their property for which they asked additional damages in the sum of $ 7,200.00.

The claimant, Arthur Benoit, does not own the land he farms, but is a tenant in possession under Carl Becker, the owner thereof, and claims damages in the sum of $ 1,102.50 for decrease in milk production; cost of extra feed for livestock, and cost of veterinary services.

The claimant, Alfred Giroux, is the owner of the **[**9]** land involved in Claim No. 3358, and the claimant, Leonard Giroux, is the tenant in possession thereof. In their original complaint **[*585]** the claimant, Alfred Giroux, claims damages in the sum of $ 1,325.00 for loss of rent and cost of excavating and hauling away slime, sludge and sediment which had accumulated in the bottom of Rock Creek, and the claimant, Leonard Giroux, claims damages in the sum of $ 1,392.50 for loss of livestock, depreciation in the value of other livestock, decrease in milk production, and cost of extra feed for livestock. By amendment thereafter made, the claimant, Alfred Giroux, added the item of depreciation in the fair cash market value of his property, for which he asked additional damages in the sum of $ 6,000.00.

The claimants, Henry P. Wright, E. Belle Wright, Edward Wright and Milton Wright, are the owners of and operate

the land involved in their claim. In their original complaint they claim damages in the sum of $ 3,516.00 for loss of rent, cost of excavating and hauling away slime, sludge and sediment which had accumulated in the bottom of Rock Creek, decrease in milk production, and cost of extra feed for livestock. By amendment thereafter **[**10]** made, claimants added the item of depreciation in the fair cash market value of their property, for which they asked additional damages in the sum of $ 5,000.00.

The evidence produced on behalf of the several claimants shows that those portions of the farms in question traversed by the creek were devoted to pasture; that since the pollution of the stream commenced, such farm land has depreciated in value; that livestock standing in the creek, or drinking the water therefrom became diseased; that some of the stock died and that some of it depreciated in value because of the sores which developed on the animals; that by reason of the polluted condition of the stream it became necessary to remove the livestock from the pasture along the creek during the summer months of each year when the condition of such creek was most objectionable, and that during these months, and due to the inability to use these pastures, the occupying claimants were compelled to use or obtain extra feed for the livestock; that due to their removal from the pasture and the diseased condition of the livestock, the milk production of the occupying claimants fell off, and that they therefore lost the sale of certain **[**11]** quantities of milk that ordinarily would have been available for such purposes; and that it was necessary, **[*586]** in some instances, to secure the services of veterinaries in efforts to relieve or cure the livestock.

The respondent contends:

1. That as a matter of law these claims present a situation in which the State is not liable to respond in damages for the reason that the State is not liable for the negligent acts or omissions of its officers, agents or employees; that if the officers, agents or employees of the State by their acts or omissions have polluted Rock Creek and have created a continuing ***nuisance***, the remedy of the plaintiff is by injunction to restrain the continuance thereof; that the State is not liable in tort for damages arising from the creation or continuance of such ***nuisance***; that no award can be made on the claims predicated upon tort liability.

2. That where the injury complained of constitutes a public ***nuisance***, the provisions of Section 13 of Article 2 of the Constitution which provides that private property shall not be taken or damaged for public use without just compensation, has no application; that the Criminal Code makes the pollution of a **[**12]** stream a public ***nuisance***, and that therefore the right to maintain and continue such public ***nuisance*** cannot be obtained by the payment of compensation or damages; that the constitutional provisions embrace only those cases in which the Act creating the damage is a lawful act and which by the payment of compensation, can therefore

be lawfully maintained; that the aforementioned constitutional provision has no application to this case, and that the claimants cannot predicate their right of recovery thereunder; that their remedy was to abate the ***nuisance*** in its inception.

3. That even if a liability exists under the constitutional provision, claimants who are tenants have not offered any evidence to establish a proper measure of damages; that the evidence shows that the tenants occupied the land in question under leases which were renewed from year to year; that no evidence as to depreciation of the value of their leasehold was presented and that in any event it would be competent only as to the lease which was in existence when the injury arose; that subsequent leases or renewals after the creek was polluted were made with a knowledge of that fact and its effect on the land in question, **[**13]** and such facts were taken into consideration in the execution of subsequent leases or renewals.

[*587] 4. That upon the completion of the improvements now in progress or contemplated, the creek will no longer be polluted by the sewage from the hospital, and that therefore the pollution of a stream is not a permanent condition, and that the claimants who are the owners of land are not entitled to recover permanent damages therefor.

It is clear that the State in the construction, maintenance and operation of Manteno State Hospital is engaged in a governmental function; also that the State in the exercise of its governmental functions is not liable for the negligence or misconduct of its officers, servants and agents under the doctrine of respondeat superior, in the absence of a statute making it liable. *Minear* vs. *State Board of Agriculture*, 259 Ill. 549; *Gebhardt* vs. *Village of La Grange Park*, 354 Ill. 234, 188 N.E. 372; *LePitre* vs. *Chicago Park District*, 374 Ill. 184; *Finney* vs. *State*, 8 Ill. Ct. Cl. 327; *I. C. R. R. Co.* vs. *State*, 10 Ill. Ct. Cl. 410; Bishop, et *al.* vs. *State*, 10 Ill. Ct. Cl. 664. **[**14]**

In this case, however, the claimants are not relying upon any negligent acts or conduct on the part of the officers, agents or employees of the respondent. It is not claimed that the sewage disposal plant in question was improperly constructed, but it is claimed that although the facilities for disposal of sewage were sufficient at the time the institution was erected, and continued to be sufficient for some time thereafter, yet, the institution grew so rapidly both as to the number of buildings and the number of people quartered therein, that it was but a short time until the facilities for the disposal of sewage were inadequate and insufficient, and the several complaints are based upon the action of the State in casting additional waters into the stream, and in polluting the same, to the damage of the claimants as hereinbefore set forth.

Section 13, Article 2 of the Constitution, provides that "private property shall not be taken or damaged for public use without just compensation." It seems elemental that the words "private property" are words of

general application, and that they cannot be confined to any species of property, either real or personal. In the case of *Metropolitan City Railway* Co. vs. *Chicago City Railway Co.*, *87* Ill. 317, **[**15]** our Supreme Court, on page 324, said:

"Property, in its broadest and most comprehensive sense, includes all rights and interest, in real and personal property, and also in easements, **[*588]** franchises, and incorporeal hereditaments. That which may be taken for public uses is not exclusively tangible property."

So also, in the case of *I. C. R. R. Co.* vs. *Commissioners of Highways*, 161 Ill. 247, the Supreme Court, on page 250, said:

"'Property,' in the sense in which that word is thus used in the constitution, is that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects, and generally to the exclusion of all others."

In Volume 6, Words and Phrases, page 5693, the law is set forth as follows:

"Property is nomen generallissimum, and extends to every species of valuable right and interest, including real and personal property, easements, franchises, and other incorporeal hereditaments."

In Volume 3, Words and Phrases, 2d series, page 1275, the author cites the case of *I. C. R.* Co. vs. *State*, ex rel, 94 Miss. 579, in support of the following proposition, to wit:

"The term **[**16]** 'property,' as used in Const. 1906, Art. 3, Sec. 17, providing that an individual's property shall not be taken or damaged for public use, except on due compensation first made, includes every species of value, right or interest."

We are of the opinion, therefore, that the constitutional provision protects the individual in the ownership of all of its property whether the same be real or personal.

One of the earliest cases in this State bearing upon the questions here involved was the case of *Nevins* vs. *City of Peoria, 41* Ill. 502. In that case the City of Peoria in raising the grade of a street directed the flow of water from its natural channel to a new channel, and thereby the house and grounds of the plaintiff were flooded with mud and water and a stagnant pond was formed within a short distance from his house, rendering it unhealthy and ruining his business. The defendant contended, as in this case, that there was no liability on the part of the City of Peoria.

In disposing of such contention the court said, page 508:

"The city is the owner of the streets, and the legislature has given it power to grade them. But it has no more power over them than a private **[**17]** individual has over his own land, and it cannot, under the specious plea of public convenience, be permitted to exercise that dominion to the injury of another's property in a mode that would render a private individual responsible in

damages, without being responsible itself. Neither State nor municipal government can take private property for public use without due compensation, and this benign provision of our Constitution is to be applied by the courts whenever the property of the citizen is invaded, and without ref; erence to the degree." Also, on page 515: "We are unable to see why the property of an individual should be sacrified for the public convenience **[*589]** without compensation. We do not think it sufficient to call it damnum absque injuria. We know our Constitution was designed to prevent these wrongs. We are of the opinion, that, for injuries done to the property of the appellant in the case before us, by turning a stream of mud and water upon his premises, or by creating in the immediate neighborhood of his dwelling an offensive and unwholesome pond, if the jury find these things to have been done, the city of Peoria must respond in damages."

The case of *Holm* vs. *Cook County*, 213 Ill. App. 1, **[**18]** was a case very similar on the facts to the case at bar. In that case the Oak Forest Infirmary, a county institution which furnished a home and refuge for about 3,000 inmates and employees, conducted its sewage through the farm tiling of the plaintiff and across his premises, causing damage similar to that complained of in this case. In that case the county of Cook took the same position as is being taken by the Attorney General in this case, and in disposing of such contention the court, on page 4, said:

"It is insisted by plaintiff that the action here brought is one to recover compensation for the wrongful taking of and damage to his lands and tiling system for a public use without compensation. Defendant, on the other hand, argues that, being a municipality in the exercise of its governmental functions, an action in tort will not lie against it.

"So far as the *form* is concerned, if an action does lie against Cook County for the injuries complained of, trespass on the case is the appropriate one. *Bradbury* vs. *Vandalia Levee & Drainage Dist.*, 236 Ill. 36; *Allen* vs. City *of Decatur*, 23 Ill. 332.

"The paramount question here presented **[**19]** for determination is, whether any action will lie against Cook County under the facts hereinabove related.

"Section 13 of the Bill of Rights (Const. Ill. of 1870, Art. II) provides that 'private property shall not be taken or damaged for public use without just compensation'; that 'such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law.'"

"It will be seen, from an examination of the declaration, that when defendant constructed the said Oak Forest Infirmary, it contemplated that all sewerage was to be conducted from its lands into the Calumet Drainage District Ditch, by means of plaintiffs said tiling system, which was in fact done. Such action was tantamount to an appropriation not only of plaintiffs lands for this purpose, but also the tiling system which plaintiff had laid for purposes entirely foreign to the one to which defendant put it. While it is true, as argued by

defendant, that the servient estate must yield to the dominant one in carrying off surface waters, etc., yet such right cannot be enlarged to permit the defendants herein to unlawfully appropriate plaintiff's said tiling system for the purpose of conducting the **[**20]** entire sewerage of the institution in question through plaintiff's lands. In our opinion, plaintiff's declaration sets up a state of facts from which it appears Chat his said property has been both taken and damaged for public use without compensation."

[*590] In the case of *Highland* vs. *Auer*, 235 Ill. App. 327, the plaintiff Auer sought an injunction to restrain the City of Highland from polluting certain waters whereby sewage was deposited upon the lands of said plaintiff. In considering the rights of the plaintiff under the Constitution, the court in that case said:

"Our Constitution guarantees to every citizen that his property shall not be taken or damaged for public use without just compensation. Art. 2, Sec. 13. It protects him against damages caused by a ***nuisance***."

The case of *Cook* vs. *City* of *Du Quoin*, 256 Ill. App. 452, is another case which, on the facts, is almost identical with the case at bar. In disposing of the question there involved, the court said (page 455):

"It is the right of every owner of land over which a stream of water flows, to have it flow in its natural state, and with its quality unaffected. It is **[**21]** a part of the freehold of which the owner cannot be disseized except by due process of law, and the pollution of a stream constitutes the taking *of* property, which may not be done without compensation."

In considering the effect of the aforementioned constitutional provision, our Supreme Court in the case of *Roe* vs. *County* of *Cook*, 358 Ill. 568, said:

"Section 13 of Article 2 of the Constitution, principally relied upon in support of the judgment, is as follows: 'Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law,' etc. It is contended by plaintiff in error that the Constitution does not point out a remedy and that no express remedy is afforded by statute. From this it is argued that the parties damaged are left to the common law for relief, and that no liability exists at common law against an involuntary municipal corporation (such as the County of Cook) to respond in damages for a tort, in the absence of a statute creating such a liability. *(Board of Trustees* of *Odell* vs. *Schroeder*, 58 Ill. 353; **[**22]** *County of Cook* vs. *City* of *Chicago*, 311 Ill. 234.) On the other hand, the defendants in error argue that the constitutional provisions above quoted are self-executing, and that a county may not take or damage the property of an individual for public use without eminent domain proceedings and without compensation and then escape liability for its act by saying that it cannot be sued. We are impressed with the justice and soundness of the latter view. The constitutional right of all property owners to a compensation when their

property has been damaged or taken for public use is one of the most salient provisions of our bill of rights." * * *

"When the Constitution forbids the taking or damaging of private property without just compensation and points out no remedy, and no statute affords one, for the invasion of the right of property thus secured, the common law, which affords a remedy for every wrong, will furnish the appropriate action for the redress of such grievance." * * *

[*591] "The constitutional provision itself, without remedial legislation, is basic law, which not only confers a right but pre-supposes a remedy. Standing alone, Section 13 is **[**23]** self-executing and forms the basis for recovery at common law by an action on the case." * * *

"Counties may sue and be sued in Illinois, (Cahill's Stat. 1933, Chap. 34, Secs. 22, 31) and while they may not be held liable for damages in tort actions, where the doctrine of respondeat superior must be invoked, they are nevertheless liable for the value of property appropriated to their own use and for damages done to abutting property by reason of public improvements made in pursuance of their corporate powers." * * *

"It is now immaterial whether the declaration be considered as one in tort or in assumpsit, as the breach of duty relied upon is the same and it contains all the necessary averments of fact for an action in assumpsit."

The case of *Barrington Hills Club* vs. *Barrington,* 357 Ill. 11, mas another case in which the facts were very similar to those in the case at bar. In that case the plaintiffs were riparian owners of lands who sought an injunction against the village of Barrington to prevent such village from discharging sewage and the efflux from its sewage treatment plant, into the creek above their premises. In that case the court said, page 18: **[**24]**

"The claim cannot be sustained that the Village of Barrington had an inherent right to use the creek as the only available natural watercourse to carry off its sewage and waste water." * * *

Also, on page 19: "Here, in addition to the placing of an additional burden upon the servient estates of defendants in error, as lower riparian owners, through the drainage of water coming from the water system and deep wells supplying water to the village, another property right is invaded, viz., by pollution of the stream."

The Supreme Court of the United States has held in numerous cases that a claim for compensation for property taken for public use by the Federal Government is a claim founded upon an implied contract. *Phelps* vs. *U. S.*, 274 U.S. 341, 71 L. Ed. 1083; *North American Transfer* Co. vs. *U. S.,* 253 U.S. 330, 64 L. Ed. 935; Tempel, 248 U.S. 121, 63 L. Ed. 162.

The cases cited would seem to be conclusive of the right of the several claimants to recover, under the provisions of the Constitution, such damages as they

have sustained, limited, however, to the allegations of their several complaints, the testimony in the record, **[**25]** and the law governing the proper measure of damages in cases of this kind.

The respondent, however, contends that the conditions complained of constitute a public ***nuisance*** in violation of the provisions of Section 221 of the Criminal Code of this State which provides that it is a public ***nuisance*** "to corrupt or **[*592]** render unwholesome or impure the water in a stream, river, pond or lake, to the injury or prejudice of others"; that inasmuch as the same constitute a public ***nuisance*** the State cannot obtain the right to continue such ***nuisance*** by paying damages to the plaintiffs and that therefore the plaintiffs are not entitled to recover in this case. If such contention were sound, it would follow as a necessary consequence that if the State causes pure water to flow upon the lands of the claimants which such lands would not ordinarily receive in the course of nature, and thereby adds to the burden upon such lands, the claimants would be entitled to maintain an action therefor, but if the waters so cast upon the lands of the claimants are of such a nature that the stream is polluted thereby and a public ***nuisance*** created, the claimants would have no remedy therefor.

We are not **[**26]** impressed either with the soundness of this contention or the justice thereof; nor are we impressed by the further contention of the respondent that the claimants are limited in their remedy, to the abatement of the ***nuisance***. Our courts in numerous cases have held that in cases of this character, a suit for damages and the abatement of the ***nuisance*** by injunction are concurrent remedies.

In the case of *Barrington Hills* Club vs. *Barrington*, ante (357 Ill. 11) our Supreme Court said:

"The law in Illinois is, and has long been, settled upon the controlling questions involved in this case. A private ***nuisance*** may be enjoined by a suit in equity or the party suffering damage and injury may proceed at law, and the remedies are concurrent and not exclusive. (*Springer* vs. *City* of *Chicago*, 308 Ill. 356; *Village of Dwight* vs. *Hayes*, 150 Ill. 273; *City of Kewanee* vs. Otley 204 Ill. 402.)

On the question of damages, Lewis on Eminent Domain, Second Edition, Volume 2, page 1416, Section 653b, lays down the following rule:

"Where a suit is brought for damages to property by the construction, use or operation of **[**27]** a work for public use, the question arises whether all damages, past, present and ***prospective***, must be recovered in a single suit, or whether the damages must be limited to those sustained prior to the commencement of the suit, leaving future damages to be redressed by future suits, as such damages occur. If there can be but one suit and one recovery it necessarily follows; first, that the measure of damages is the diminution in the value of the property by reason of the permanent continuance of the construction or use which causes the damage;" etc. * * * "On the other hand if there may be successive actions then, first, the measure of damages is the injury

sustained up to the commencement of the suit;" etc. * * * "and successive actions may be brought as often as damages are sustained or **[*593]** injury done and a recovery had of all damages sustained subsequent to the prior suit."

It is well settled in this State that where the injury in question is of a permanent character, all damages arising on account thereof, past, present and ***prospective***, must be recovered in one proceeding; but where the injury in question is not of a permanent character, but is continuing, damages may **[**28]** be recovered only up to the time of the commencement of the proceeding, and successive actions may be maintained from time to time as damages are inflicted. *City of Centralia* vs. *Wright,* 156 Ill. 561, 41 N.E. 217; *Suehr* vs. *Chicago Sanitary District,* 242 Ill. 496; *Strange* vs. *C. C. C. & St. L.* Ry. *Co.,* 245 Ill. 246, 91 N.E. 1036; *Jones* vs. *Sanitary District of Chicago, 252* Ill. 591.

It therefore becomes necessary to determine whether the injury involved in this case is of a permanent or a continuing character.

In the case of *Baker* vs. *Leka*, 48 Ill. App. 353, the court, in considering the question as to whether a certain ditch constituted a permanent invasion of the plaintiff's rights, said:

"This is not to be determined from a consideration alone of its enduring character, or that if not changed by the hand of man it would likely continue forever. *To* be permanent in a legal sense, a structure must, in addition to being permanent or enduring within itself, be such that its continuation is lawful; because if not lawful, it is subject to be removed or abated by a legal proceeding **[**29]** and therefore cannot be deemed permanent." * * * "A ***nuisance*** which may be abated by law is not regarded as a permanent source of injury but *as* a continuing ***nuisance***. Successive actions for damages occasioned by it may be maintained from time to time as such damages are inflicted." * * *

In the case of *City* of *Kewanee* vs. *Otley*, ante, the court, on page 412, said:

"The principle of law which contemplates that damages sustained for a permanent injury to land shall be recovered in one action is applicable only to those cases where the party or agent committing the injury acts within the authority of the law. In this case, when the sewage of the defendant city, or any part thereof, though combined with sewage or deleterious waters from other sources, was cast upon the lands of appellees or mingled with the waters of a stream running over the same, so that *a* ***nuisance*** was created as to appellees and they were injured thereby, such act of the defendant was unlawful and it could not be sanctified by time Nor could it be said that such a ***nuisance*** was a permanent one, for it would be the duty of its authors to have it abated."

The case of *Jones* vs. *Sanitary District* of Chicago, *252* Ill. 591, **[**30]** was a case in which the plaintiff sought to recover damages which he claimed had been done to

his lands during **[*594]** the period of five years prior to the commencement of his suit, as the result of the overflowing of such lands by the defendant. It appeared in that case that the damage to the' plaintiff's lands was not the result of the construction of the Drainage Canal, but that such damage resulted from the use made of such canal, and the court there held that where the continuance and operation of a permanent structure are not necessarily injurious, but may or may not be so, that the injury is not considered a permanent injury, and only the damages sustained prior to the commencement of the suit may be compensated in that proceeding.

In Lewis on Eminent Domain, Volume 2, page 1422, the author says:

"In suits for the pollution *of* a stream with sewerage, it was held that *the* recovery should be limited to damages up to the commencement *of* the suit."

We are of the opinion, that under the facts in this case the ***nuisance*** in question cannot be considered a permanent ***nuisance*** within the meaning of those words as used in cases of this kind. The buildings of the respondent **[**31]** which constitute the Manteno State Hospital, although permanent structures, do not, of themselves, constitute the ***nuisance*** complained of. Such ***nuisance*** consists of the discharge of the waters and sewage from such institution upon the lands of the claimants. The discharge of such sewage upon the lands of the claimants constitutes a public ***nuisance*** in violation of the Criminal Code of this State and being unlawful, cannot ripen into or form the basis of a right to continue or maintain such ***nuisance***. Furthermore, the testimony offered on behalf of the respondent shows that a very substantial enlargement or addition to the sewage treatment plant is now under construction; and that upon the completion thereof the effluent from the Manteno State Hospital will be unobjectionable and will not constitute a public ***nuisance***. Under the testimony in the record, we are of the opinion that the ***nuisance*** in question, being unlawful, cannot be considered as of a permanent character, but on the contrary, must be considered as a continuing ***nuisance***.

There are some cases in this State in which the owners of land have treated a structure as a source of permanent injury and brought suit for and recovered **[**32]** both present and future damages, although such structure was unlawful and **[*595]** subject to abatement by legal action. This was upon the theory that where the structure is in its nature permanent, the one damaged thereby may elect to treat it as permanent in law, though he may abate it as a ***nuisance*** and may sue for and recover damages present and ***prospective***. If he does so, he is to be regarded as having consented to its continuation and is estopped from the recovery of further damages. *Baker* vs. *Leka,* 48 Ill. App. 353; *Strange* vs. *C. C. C. & St. L. Ry. Co.,* 245 Ill. 246, 91 N.E. 1036; *Dowd* vs. *Drainage District,* 160 Ill. App. 476; *Bernhardt* vs. *B. & O. Ry. Co.,* 165 Ill. App. 408.

Such cases, however, are limited to cases involving

structures which are in their nature permanent and in which it is apparent that the injury will continue indefinitely. In this case, as previously stated, the source of injury was not the hospital buildings, which are permanent structures, but the depositing of the sewage therefrom on the lands of the claimants. Furthermore, it is apparent that the pollution complained **[**33]** of will not continue indefinitely, as the evidence shows that a substantial enlargement of the sewage treatment plant is now in course of construction. Consequently, the cases last cited can have no application to the claims now under consideration.

In the recovery of the damages sustained by them, the claimants are therefore confined to the damages which they have sustained up to the time of the commencement of the present proceeding, and no recovery can be had in this proceeding for any permanent injury to the real estate, that is to say, the damage claimed for depreciation in the fair cash market value of the real estate is not a proper element of damage in this proceeding.

Some of the property owners claim as an element of damage the cost of removing the sediment from Rock Creek. Whether such cost is a proper element of damages it is not necessary to decide at this time, as the evidence offered is too indefinite, uncertain and speculative to form the basis of an award. The testimony shows that the creek is winding and of varying widths, and that there are holes in the bottom which are filled with such sediment, but there is no evidence to show the distance the creek traverses **[**34]** the several tracts, or the width of the creek on each of such tracts. There is some general testimony to the effect that the creek is from 25 to 30 feet in width, but there is nothing definite as to any particular **[*596]** piece of property, nor is there any definite testimony as to the thickness of the deposit of sediment on the several tracts, or the number or the size of the holes in the bed of the creek. Apparently the estimates of the owners with reference to the amount of such sediment and the cost of removal thereof were merely guesses, and not based upon any definite measurements or information either as to the amount of the sediment or the cost of removal.

There is some testimony to the effect that after the new addition to the sewage treatment plant is in operation, the effluent from the institution will be unobjectionable, and the flood waters will wash away all old sediments, and there is also testimony to the effect that the flood waters will have no effect upon the removal of such sediment. Even if such item were a proper element of damage, it would be necessary that the testimony disclose some definite basis upon which an award could be made, and in the present state **[**35]** of the record, we are of the opinion that no award can be made for such item.

The respondent also contends that the tenants who leased their property subsequent to the time Rock Creek was first polluted, are not entitled to recover any damages in this proceeding, for the reason that the

nuisance was in existence at the time they went into possession of the property, and therefore they must be held to have leased the property subject to the conditions as they then existed.

This is the rule which applies in cases of a permanent injury, but such rule has no application in cases where the injury complained of is of a continuing rather than a permanent character. *Baker* vs. *Leka, 48* Ill. App. 353, 360.

In the present claims the tenants had a right to assume that the ***nuisance***, being unlawful, would be abated.

As to the damages claimed by the occupying claimants, the respondent contends that there is no competent evidence to support such claims. It goes without saying that in cases of this kind the exact amount of the damages sustained is difficult to ascertain, but that fact of itself does not deprive the claimants of their rights to recover therefor.

The case of **[**36]** *Johnston* vs. *City of Galva,* 316 Ill. 598, was a case very similar to the case at bar upon the facts. The plaintiff there sought to recover damages for the pollution of a natural watercourse which ran across his farm. The items **[*597]** of damages claimed by him were similar to those sought by the claimants herein. In fact, it seems probable that the claimants in this case in preparing their claims for damages followed the authority of the Johnson case.

In that case, in considering the question of damages, the court said, page 603:

"It is further contended by the plaintiff in error that the items for (1) the cost of hay and grain fed to the cows of the defendant in error while confined to the barn lot because of the pollution of the waters of the creek, (2) the alleged resulting loss of milk, and (3) the cost of labor and the value of the defendant in error's time in driving his horses to and from water, were purely speculative and conjectural and for that reason are not proper elements of damage. If by reason of the wrongful acts of which the defendant in error complained he sustained these items of damage they were proper elements to be submitted to the jury. **[**37]** Damages must, however, be the proximate result of the wrong of which complaint is made. Where the right of recovery exists the defendant cannot escape liability because the damages are difficult of exact ascertainment. The nature of the inquiry in the instant case is such that it is difficult, if not impossible to ascertain with mathematical certainty the amount of the defendant in error's damages, but this difficulty affords no answer to a cause of action which results from a breach of duty imposed by law. The unliquidated damages growing out of the commission of a tort are seldom susceptible of exact measurement. The rule is, that while the law will not permit witnesses to speculate or conjecture as to possible or probable damages, still the best evidence which the subject will admit is receivable, and this evidence is often nothing better than the opinions of persons well informed upon the subject under investigation."

We now come to the consideration of the amount of

damages to which the claimants are entitled under their several complaints, the proof in the record, and the law as hereinbefore set forth.

Claim No. 3353, Joe McComb and James McComb. These claimants are tenants **[**38]** on the farm described as the Southeast Quarter (SE1/4) and the South Half (S1/2) of the Northeast Quarter (NE1/4) of Section Twenty-nine (29), owned by Mrs. Grace Cooley. Claimants have lived on this farm for five years and have fourteen head of cattle. During the years 1936, 1937 and 1938 these claimants had to take their livestock out of the pasture during the months of June, July and August of each year on account of the pollution of Rock Creek, and had to buy additional feed for them. As the result of such pollution and the dry feeding of the livestock on account thereof, claimants' milk production was reduced two hundred (200) gallons per year. The evidence shows that fifteen cents (15c) per gallon was a fair price for such milk, and **[*598]** that the cost to these claimants of such dry feeding was fifteen cents (15c) per day per animal. The evidence also shows that these claimants lost one horse and two cows during the month of August, 1939, and that at that time they paid Thirty Dollars ($ 30.00) in veterinary fees. The complaint in this case was filed February 3, 1939 and consequently under the law as hereinbefore set forth, claimants are not entitled to recover anything **[**39]** in this proceeding for the horse and the cows which died, nor for the money paid to the veterinary, for the reason that all of such matters occurred subsequent to the filing of the complaint herein. The damages to which the claimants are entitled in this proceeding must be confined to the damages which accrued prior to the filing of the complaint. These claimants are therefore entitled to an award for the following items of damage, to wit: reduction in milk gallonage, 200 gallons a year for the years 1936, 1937 and 1938, at 15c per gallon, $ 90.00; extra feed for fourteen head of cattle for seventy-five days a year in each of said three years, at 15c per day, $ 472.50;--total, $ 562.50.

Claim No. 3354, Alfred Jacobs and Faye Jacobs. These claimants are the owners of Lots 1 and 3 of Tyson's Subdivision in the East Half (E1/2) of Section Twenty-two (22). This land adjoins the land owned by Oscar LaMore and Zephyr LaMore. Among other items of damage, claimants sought to recover for the permanent injury to their lands, but in accordance with the views hereinbefore expressed, they cannot recover such damages in this proceeding. Claimants' entire tract consists of approximately eighty-four **[**40]** acres, of which ten acres is leased to the claimant, Ed P. Smith. The testimony in the record shows that this land was rented to Ed P. Smith during the years 1937 and 1938 at a reduction of Sixty Dollars ($ 60.00) per annum on account of the pollution of the creek. Claimants are therefore entitled to recover this item of damages in the amount of One Hundred Twenty Dollars ($ 120.00).

Case No. 3355, Ed P. Smith. The testimony in the record confines the loss sustained by Mr. Smith to the year 1937 and to the months of June, July and August

of that year. Such testimony warrants an award in favor of Mr. Smith for the following items of damages, to wit: loss on the sale of six head of cattle which ordinarily would have sold for $ 600.00, but which were sold for $ 190.00, on account of their condition, **[*599]** making a loss of $ 410.00; money expended for medicine for such livestock, $ 40.00; extra feed for ten cattle for two months at twenty cents per day, $ 120.00; reduction in milk gallonage, thirty' days, eight gallons per day at fifteen cents per gallon, $ 36.00;--making a total of $ 606.00. From this amount there must be deducted the sum of $ 120.00, being the reduction in rent **[**41]** allowed to Smith by his landlord on account of the pollution of the creek.

Case No. 3356, Oscar LaMore and Zephyr LaMore. These claimants are the owners of the Northeast Quarter (NE1/4) and the East Half (E1/2) of the Southeast Quarter (SE1/4) of Section Twenty-two (22). This property lies immediately west of the lands occupied by the Manteno State Hospital, and is approximately eighty (80) feet distant from the outlet of the sewers in question. Evidence was offered to show the depreciation in the fair cash market value of this property as the result of the pollution of Rock Creek, but as previously stated, such depreciation does not constitute a proper element of damage in this proceeding. The testimony in the record, however, does warrant an award in favor of the claimant, Oscar LaMore, who operated the farm, for the following elements of damage, to wit: reduction in milk gallonage, 500 gallons a year for each of the years 1935, 1937 and 1938, at fifteen cents per gallon, $ 225.00; extra feed for twenty-three head of cattle for ninety days in each of the years 1935, 1936, 1937 and 1938, at twenty cents per day, $ 1,656.00;--making a total of $ 1,881.00.

There was some testimony **[**42]** to the effect that the claimant, Oscar LaMore, paid $ 39.00 for veterinary services; that one cow and one colt of said claimant died, and that the mother of such colt became sick and claimant lost the use of such mare. However, neither the testimony of the veterinary nor of the claimant himself shows that the sickness or death of any of such animals resulted approximately from the pollution of Rock Creek, and consequently no allowance can be made for any of such items.

Case No. 3357, Alfred Benoit. This claimant is a tenant in possession of the Southwest Quarter (SW1/4) of Section Twenty-two (22), except the North 30.39 acres thereof, which farm is owned by Cark Becker and lies west of the LaMore property. The testimony in the record shows that the claimant is entitled to an award for the following items of damage, **[*600]** to wit: for reduction of milk gallonage, 250 gallons a year for the years 1936, 1937 and 1938, at fifteen cents per gallon, $ 112.50; extra feed for ten cows for ninety days in each of the years 1935, 1936 and 1937, at twenty cents per day, $ 540.00; total, $ 652.50.

Case No. 3358, Alfred Giroux and Leonard Giroux. The claimant, Alfred Giroux, is the owner **[**43]** of the East

Half (E1/2) of Section Twenty-eight (28) lying north of the Illinois Central Railroad, and Lots Six (6) to Ten (10), both inclusive, in Hilaire Giroux's Subdivision of the West Half (W1/2) of Section Twenty-eight (28), containing approximately 215 acres; all of which is farmed by the claimant, Leonard Giroux. There is testimony in the record which shows a depreciation in the fair cash market value of this property as the result of the pollution of Rock Creek, but as previously stated, such testimony is not competent in this proceeding. The testimony shows that the claimant, Leonard Giroux, is a tenant on a cash rent basis and pays a rent of $ 5.00 per acre for the entire farm. Alfred Giroux testified that if it were not for the present condition of the creek, the farm should rent for $ 8.50 per acre, but on account of the creek he rents it to his son for $ 5.00 per acre. However, other testimony in the record shows that Leonard Giroux has rented the property since 1934 for $ 5.00 per acre. No loss on account of the pollution of the creek is claimed prior to 1936, and under the evidence we fail bo see that the claimant, Alfred Giroux, up to the time of the commencement of **[**44]** this proceeding, has suffered any loss of rent, or any other damage for which he is entitled to an award in this proceeding. From the evidence in the record it appears that the claimant, Leonard Giroux, is entitled to an award for the following items, to wit: loss of $ 80.00 on the sale of two cattle which ordinarily would be worth $ 90.00 each, one of which was sold for $ 55.00 and the other for $ 45.00; reduction of milk gallonage, 250 gallons a year for the years 1936, 1937 and 1938 at fifteen cents per gallon, $ 112.50; extra feed for ten cows for ninety days in each year during the years 1936, 1937 and 1938 at twenty cents per cow, $ 540.00;--total, $ 732.50.

There was also some testimony to the effect that one of claimants' cows died and two others became sick, but there is nothing in the record to show that the death of the one cow or the sickness of the others was the proximate result **[*601]** of the condition of the stream in question, and no allowance can be made for either of such items.

Claim No. 3359. The claimants, Henry P. Wright; E. Belle Wright, Edward Wright, and Milton Wright, are the owners and tenants in common of 134 acres in the Southeast Quarter (SE1/4) **[**45]** (west of the railroad) of. Section Twenty-one (21), and 44 acres in the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Twenty-eight (28), which farm is operated by them as partners. This land is approximately one and one-half miles west of the Manteno State Hospital and is traversed by Rock Creek for a distance of a little over one-half mile. There is testimony in the record as to the depreciation in the value of this farm, but as previously stated, such item of damages cannot be considered in this proceeding. The evidence shows, however, that the claimants have sustained damages and are entitled to an award for the following items, to wit: reduction in milk gallonage of 600 gallons a year during the years 1936 and 1937, at fifteen cents per gallon, $ 180.00; extra feed for cattle during the years 1936 and 1937, twenty-one cows for

ninety days in each year, at twenty cents per day, $ 756.00;--total, $ 936.00.

An award is therefore entered in favor of the several claimants as follows:

Claim No. 3353, Joe McComb and James McComb, Five Hundred Sixty-two Dollars and Fifty Cents ($ 562.50).

Claim No. 3354, Alfred Jacobs and Faye Jacobs, One Hundred Twenty Dollars **[**46]** ($ 120.00).

Claim No. 3355, Ed P. Smith, Four Hundred Eighty Six Dollars ($ 486.00).

Claim No. 3356, Oscar LaMore, Eighteen Hundred Eighty-one Dollars ($ 1,881.00).

Claim No. 3357, Alfred Benoit, Six Hundred Fifty-two Dollars and Fifty Cents ($ 652.50).

Claim No. 3358, Leonard Giroux, Seven Hundred Thirty-two Dollars and Fifty Cents ($ 732.50).

Claim No. 3359, Henry P. Wright, E. Belle Wright, Edward Wright, and Milton Wright, Nine Hundred Thirty-six Dollars ($ 936.00).

End of Document

Barton v. Chicago & N. W. Transp. Co.

Appellate Court of Illinois, First District, Fifth Division

September 14, 2001, Decided

No. 1-99-2285

Reporter

325 Ill. App. 3d 1005 *; 757 N.E.2d 533 **; 2001 Ill. App. LEXIS 704 ***; 258 Ill. Dec. 844 ****

RACHEL BARTON, Plaintiff-Appellee, v. ***CHICAGO*** AND NORTH WESTERN TRANSPORTATION COMPANY, n/k/a THE UNION PACIFIC RAILROAD COMPANY, and NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION, Defendants-Appellants.

Subsequent History: **[***1]** Released for Publication October 31, 2001.

Prior History: APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. THE HONORABLE ALLEN FREEMAN, JUDGE PRESIDING.

Disposition: Affirmed.

Counsel: For Appellant: Clausen Miller P.C., of ***Chicago*** and Williams & Montgemery, Ltd., of ***Chicago*** (James T. Ferrini, Lisa Marco Kouba and Barbara I. Michaelides, of counsel.).

For Appellee: Clifford Law Offices, of ***Chicago*** (Robert A. Clifford, Kevin P. Durkin, David A. Novoselsky Kevin M. Forde, Robert C. Sheridan and Leslie J. Rosen, of counsel).

Judges: PRESIDING JUSTICE CAMPBELL delivered the opinion of the court. Buckley, J., concurs. O'Brien, J., dissents in part and concurs in part.

Opinion by: CAMPBELL

Opinion

[*1009] **[**538]** **[****849]** PRESIDING JUSTICE CAMPBELL delivered the opinion of the court:

Plaintiff Rachel Barton filed suit against defendants ***Chicago*** & North Western Transportation Company, n/k/a the Union Pacific Railroad Company (CNW) [1], and the Northeast Illinois Regional Commuter Railroad Corporation (NIRCRC), alleging that she was dragged by a train because defendants did not have a proper procedure to determine whether a passenger was caught in the train's doors before **[*1010]** leaving a station. [2] Following **[***2]** a jury trial in the circuit court of Cook County, defendants were found liable to plaintiff on the claims brought against each of them. The trial

---

[1] The CNW merged with the Union Pacific Railroad Company in October 1995.

[2] Plaintiff's brief states that Barton was dragged 366 feet. Although defendants do not appear to dispute this figure, it is not supported by the record citation in plaintiff

EXHIBIT G-3

Blumberg No. 5208

court denied defendants' post-trial motions. Defendants timely filed a Notice of Appeal to this court.

The record on appeal discloses the following facts. NIRCRC is a corporation maintained, supervised and directed by the Commuter Rail Board (CRB), the governing body of the Commuter Rail Division (CRD) of the Regional Transportation Agency (RTA) under the RTA Act. See 70:LLCS 361 5/2.20(a)(xii), 3B.01, 3B.02 (West 2000). Defendants' brief states that "the CRD/NIRCRC are known to the public through the service mark 'Metra.'" [3]

[*3]** The CRB may provide public transportation by operating facilities or through purchase of service agreements (PSAs) **[**539]** **[****850]** with other transportation agencies. See 70 ILCS 3615/2.01, 2.03 (West 2000). The CRD and CNW entered into a PSA. Article II, Section 2.04 of the PSA states in part that the CRD may, at any time, direct changes in Contract Standards. Article I of the PSA defines "Standards" as "the standards specified in Exhibit 2-C." Exhibit 2-C states in part as follows:

> "1. SAFETY
>
> The Contract Services shall be operated or provided by [CNW] in accordance with the applicable standards of safety established by any agency of the Federal Government or the State of Illinois, and any other standards established by the [RTA] pursuant to Section 2.04 of this Agreement. [CNW] shall maintain its existing practices and procedures *** for the safety of its passengers, employees and property used in providing the Contract Services ***."

Article IV, section 4.01 of the PSA states in part that CNW is an independent contractor for the CRD, and shall have managerial control with respect to the Contract Services. The PSA was in effect through December 31, 1998.

[*4]** Plaintiff Rachel Barton, born in October 1974, began playing the **[*1011]** ***violin*** when she was three and a half years old. By the time she was 11 years old, Barton was practicing eight hours daily and had joined the Civic Orchestra in ***Chicago***, which trained people to be concert masters in professional orchestras. When Barton was a teenager, she would go dancing on Friday and Saturday nights; she began dating at age 14. Barton engaged in local, national and international ***violin*** competitions. Barton paid her living and musical expenses and would travel alone. When Barton's instruction ended at age 17, she spent more time with friends and family. She hoped eventually to get married and have children.

At age 18, Barton had left the Civic Orchestra and was playing with the Grant Park Symphony and the Lyric

[3] The defendants do not cite the record in support of this statement. However, NIRCRC was sued as Metra in Ramirez v. Village of River Grove, 266 Ill. App. 3d 930, 641 N.E.2d 7, 204 Ill. Dec. 48 (1994). The CRD was sued as Metra in Wehde v. Regional Transportation Authority, 237 Ill. App. 3d 664, 604 N.E.2d 446, 178 Ill. Dec. 190 (1992). As defendants have chosen to treat the CRD and NIRCRC as interchangeable in this case, this court will adopt a similar convention in referring to Metra.

Opera Orchestra, as well as substituting for ill members of the ***Chicago*** Symphony Orchestra. Barton began giving ***violin*** lessons at the Music Center of the North Shore in Winnetka (MCNS). Barton's compact disc of Spanish classical music was released at the end of 1994.

On January 16, 1995, at 10:30 am., Barton boarded the last car of CNW northbound train No. 317 at the Ravenswood stop in ***Chicago***. **[***5]** She was going to teach at MCNS. Barton was wearing jeans, a T-shirt, possibly a flannel shirt, a bulky sweater with shoulder pads, a puffy down coat with fashion shoulder pads, gym shoes, earmuffs and thin leather gloves.

Barton was carrying a book bag, her purse and a food bag. Barton also was carrying a ***violin*** in a "cushy case" that insulated it from the cold. The ***violin*** was loaned to Barton by her patron and insured in the amount of $ 500,000. [4] **[****851]** Barton testified that she was carrying these items on her shoulder. According to Barton, these items would not slip down her shoulder, ***due*** to the puffiness of her coat. Barton stated that she routinely carried her items in the following order: purse, ***violin***, book bag, food bag.

[*6]** During the trip, Barton removed her gloves and worked on student reports. **[**540]** Barton testified that she noticed that the Winnetka stop was coming up, based on her knowledge of the prior stops. Barton stated that the train was still moving when she loaded up her belongings, but had stopped by the time she reached the vestibule of the car. Dr. Caroline **[*1012]** Clements, who was riding in the same car, heard Barton ask whether the stop was Winnetka. Dr. Clements thought that Barton would not be able to exit the train in time, but stated that the train had not stopped when she entered the vestibule.

Barton testified that her purse, ***violin*** case, briefcase and food bag were all on her left shoulder. As she tried to descend the stairs, the ***violin*** case became caught on one or two poles in the vestibule. According to Barton, while she tried to keep her belongings at her side, the ***violin*** case had "jostled sort of in back of" her. Barton stated that she took a step back, reorganized her belongings, descended the stairs and stepped off the train.

As Barton stepped onto the platform, she could hear "ambient train noise." Barton testified that she did not see or hear the train doors close, but felt and **[***7]** heard a bump. Barton attempted to take another step, but was unable to complete it. Barton thought that her ***violin*** case had become caught again. Barton testified that it was as if her left shoulder was pinned to the train. Barton could not turn to the right, so she began to turn to the left. Barton stated that she was bowed backwards because her feet were on the edge of the platform. As

---

[4] Barton testified that the ***violin*** was handmade in Italy by the Brothers Amati, the sons of Andrea Amati, who some think invented the ***violin*** in the late 1500's. The Brothers Amati were also the uncles of Nicola Amati, who taught ***violin***-making to Antonio Stradivarius. Barton later testified that when she was 14, she had lost a ***violin*** that had been a birthday present from her grandmother by leaving it in a taxicab. That ***violin***, which was insured, was valued at $ 6,500.

she turned her head, Barton could not see her ***violin*** case and deduced that it must have been inside the train.

Barton testified that based on her experience riding on CTA trains, she tried to spring open the train doors. Barton stated that it was difficult to get her right hand into the rubber where the doors met, given her body position. Barton could not see a door handle. Barton got a palm on the right door, but her hand slid down the door. Meanwhile, Barton was saying, "Hey, wait. Hey, open up the doors," thinking someone would hear her. Theresa Croghan, who was jogging on the opposite side of the train at the time, heard a very annoyed voice say, "Wait. Wait. Wait a minute. Wait a minute." Barton stated she had no sense of danger at this time, believing that a conductor would put his head out, **[***8]** see her and open the doors. Ten seconds elapsed before the train began to move.

Barton testified that she could not have removed the strap from her shoulder with a flick of the wrist. Barton stated that she would have had several factors working against her, including: her gloved hand, her awkward angle, the weight of her belongings hanging from her left shoulder; and the puffiness of her coat.

Barton testified that the train suddenly began to move northward while she was facing southward. Barton testified that she immediately stumbled and fell as the train pulled and she was pulled to the ground. Croghan testified that as the train started to move, she heard Barton saying, "No. Stop. No. Stop. No," in a very intense voice. Croghan **[*1013]** testified that she knew this was not, as she had thought, someone who had missed a train, but that Barton was attached to the train or that there was a violent crime occurring on the platform.

As the jogging path was roughly three feet lower than the train tracks, Croghan began to look under the wheels of the train. Croghan kept hearing Barton say, "Oh, God." Croghan described it as the most bloodcurdling thing she had ever heard. Croghan testified that **[***9]** she then saw a brown coat in a horizontal position between wheels, which then flashed underneath **[**541]** **[****852]** and disappeared. Croghan began running and screaming to nearby people, "Stop the train. She is being dragged. Call 9-1-1."

Barton testified that she was dragged in a half-sitting position, bumping along gravelly ground next to the wheels. Barton screamed at the top of her lungs. Barton thought she was probably going to die and had to choose between continuing to be dragged, or trying to release herself from her straps. Barton stated that she thought either choice was likely to kill her; if she freed herself by pushing the bags off, she could flip herself under the wheels of the train.

Barton testified that she decided to try to free herself. According to Barton, this was difficult, ***due*** to her gloved hand and the force pulling on her and her belongings.

Barton testified that the ***violin*** strap was the third down, so she got her hand under the straps as a bunch, gave a push to get them over the lump of her coat, and flipped away from the train.

Barton found herself in the gravelly area between the train tracks and the platform. Barton continued screaming because she wanted someone to hear **[***10]** her. Barton testified that she did not know so much pain could exist. Barton stated that all she could see "was like blood and [her] left leg was gone." Checking herself, Barton concluded that her internal organs and upper extremities were intact, at which point she thought she might live. Barton felt cold. Barton wanted to lie down and close her eyes, but thought that if she did, she would never awake. Barton decided she had to try to distract herself from thinking about her legs. At this point, people were coming toward her, one of whom was carrying something.

Brian McCarthy, another passenger on train No. 317, testified that he was walking to the vestibule of the train to exit at the next stop when he heard loud, bloodcurdling screams. McCarthy entered the vestibule from the south; a lady entering from the north said something about a young lady and a ***violin***. McCarthy saw a ***violin*** at an angle, near the bottom of the steps.

McCarthy pushed a signal button in the vestibule until the train began to slow down. When the train stopped, McCarthy used a pen to **[*1014]** trigger the train doors to open, as he had seen conductors do. The ***violin*** tumbled out of the car onto the railroad ties. McCarthy **[***11]** looked behind the train, where he saw Barton in the gravelly area between the tracks and the platform.

McCarthy left the train, carrying the ***violin*** as he went toward Barton. McCarthy was the first person to reach Barton. McCarthy put the ***violin*** on the platform, approximately six to eight feet away. McCarthy could see that one of Barton's legs had been amputated, that the other leg was mutilated, and that blood was spurting out with her every heartbeat. McCarthy removed his belt and began to apply it as a tourniquet on her left leg.

McCarthy testified that Jim Tuck, one of his friends and neighbors, arrived shortly thereafter. Tuck's belt was applied as a tourniquet to Barton's other leg. According to McCarthy, Barton was alert and calm. McCarthy testified that Barton asked him something about the ***violin***; McCarthy told her the ***violin*** was "right here." McCarthy also obtained Barton's name and her mother's telephone number. McCarthy and Tuck held onto the tourniquets until paramedics relieved them.

Barton testified that she kept talking while McCarthy was working, telling him her name, trying to remember her telephone number, and asking him to call her mother. Barton asked McCarthy **[***12]** what he was carrying, because she thought it might **[**542]** **[****853]** have been her ***violin***. Barton stated that she kept repeating these sorts of statements, even after she was put into an ambulance, also asking about her purse

and asking to have someone call her workplace, because she thought that if she stopped, she would have been "freaking out again." Barton recalled that her leg had been put next to her on the stretcher, like a jigsaw puzzle, or a broken Barbie doll.

Dr. Glen Reinhart, a board-certified orthopedic surgeon, testified that he was called to Evanston Hospital to treat Barton, who was already under anesthesia when he arrived. The lower part of Barton's left leg was attached only by a bridge of skin behind the knee. The front of Barton's right leg was missing most of the skin and soft tissue from mid-thigh to mid-leg. There was a large gap in the bone just below the right knee. The skin over the front half of Barton's right foot was torn away, exposing the bones over her toes.

Dr. Reinhart spent approximately eight hours operating on Barton that day. Barton's left leg below the knee was removed. Some of the removed tissue and bone was placed in the tissue bank for later reconstructive **[***13]** surgery. The toes on Barton's right foot had to be removed. Dr. Reinhart was deeply concerned as to whether Barton's right leg could be saved, in part because he knew that Barton ultimately was going to have an amputation of the left leg above the **[*1015]** knee, which would require a bigger prosthesis that would require more energy to use. There was no muscle remaining around Barton's right knee, the lower part of which was smashed into small pieces.

According to Dr. Reinhart, the surgeons could only close the wound on Barton's right thigh, as the skin on her shin was missing. Dr. Reinhart stated that open fractures such as this present a risk of infection. Dr. Reinhardt knew that he was going to have to remove unhealthy or contaminated skin every 24 to 48 hours for the next 10 days.

On January 23, 1995, Barton's left leg was amputated above the knee. Dr. Reinhart testified that this surgery left enough skin to cover the bone. During this surgery, doctors also filled the gap below Barton's right knee with beads made from bone cement containing antibiotic powder. Later in January, Dr. Gerald Harris removed a strip of muscle from the front of Barton's abdomen, transplanted it to her leg, and **[***14]** transplanted skin grafts from Barton's thigh to cover the muscle.

On March 14, 1995, Dr. Reinhart and his colleagues began to try to rebuild the bone in Barton's right leg, using the bone graft harvested during the initial surgery. In May 1995, Barton's leg was placed in an external device, similar to a cage, to support walking; Barton wore this device for 1 1/2 years. The medical team had intended to add more bone graft in May 1995, but discovered Barton's bone was infected. Dr. Reinhart was concerned that if the infection was severe, Barton's right leg could have to be amputated. Infection also makes later surgeries, such as a total knee replacement, riskier. On October 23, 1995, Barton had more infected material removed.

The infection reoccurred in January 1996, requiring

surgery to remove the infected material. ***Due*** to the recurring infection, Barton's leg was left open to heal naturally, aided by the periodic addition of bone chips and bone substitute. The wound required daily care, including the use of cleansing solutions and antibiotics. The wound was open in varying degrees until December 1996.

[543]** **[****854]** Dr. David Stulberg, an orthopedic surgeon and a board member of the Rehabilitation **[***15]** Institute of ***Chicago*** (RIC), helped found a program for performing artists at RIC in the 1980's. When Dr. Stulberg began seeing Barton in late 1996 or early 1997, Barton had no flexion in her right knee. Dr. Stulberg worked to improve the strength and motion in Barton's right knee through physical therapy and injections of synthetic joint lubricant.

Dr. Stulberg also recommended plastic surgery that could make her knee more pliable and prepare it for probable future procedures. Dr. Gregory Dumanian, a board-certified plastic surgeon, testified that Dr. Stulberg referred Barton to him for procedures (apparently in **[*1016]** 1998) to expand the tissue on her right leg. The tissue expansion involved the surgical insertion of a balloon under the skin on Barton's right leg, which was periodically inflated with injections of a saline solution.

Dr Alice G. Brandfonbrener, the founding director of the program for performing artists at RIC, examined Barton's left wrist when a problem arose as a result of having an intravenous feeding tube inserted there. This problem was resolved. [5] Dr. Brandfonbrener also testified that a violinist does not use just her arms and fingers, but also uses her back and **[***16]** leg muscles.

Barton testified that during the period of 1995-98, she had 25 surgeries, 223 medical appointments, 122 prosthetics appointments and 170 physical rehabilitation sessions. Her medical bills totaled $ 672,570.97.

Dr. Reinhart testified that except for a few steps, Barton would always need the assistance of crutches or a walker to walk. Barton cannot climb or descend stairs. According to Dr. Reinhart, Barton may be able to eat and dress, but for things involving a lot of movement or lifting or carrying, she needs help or to stay in her wheelchair. Dr. Reinhart stated that as Barton matures, she will have less mobility; at some point, she will be in a wheelchair most of the time.

Dr. Stulberg testified that Barton would have to think about stump care issues on a daily basis, as her removable prosthesis depended on **[***17]** her skin for suction and various factors can cause her skin to change or break down. Dr. Brandfonbrener testified that Barton was having problems with skin breakdown. Barton testified that the skin breakdown was painful. Plaintiff's Exhibit No. 176, a photograph of skin breakdown taken the day of Barton's testimony that she described as "one of those embarrassing ones [with] the raw open stuff right in the bikini area," was shown to the

---

[5] Barton testified that the intravenous tube had bruised the nerve of the carpal tunnel during the initial hospitalization. Barton regained her full playing ability in September 1995.

jury.

Dr. Stulberg testified that Barton would eventually need a knee replacement, to regain substantial motion and address pain likely to be associated with Barton's progressive arthritis. Dr. Stulberg opined that Barton would probably require further surgery on the stump of her right foot and possibly her right ankle. Dr. Stulberg further testified that Barton would need supervised physical therapy four days a week, along with a daily program, for the rest of her life. Dr. Stulberg testified that Barton will require assisted care in her activities of daily living for the rest of her life. Dr. Stulberg also testified that as Barton **[*1017]** gets older, she will need emotional support, ideally professional support. Dr. Stulberg expected that Barton would benefit **[***18]** from future developments in prosthetics and in knee surgery techniques.

[544]** **[****855]** Dr. Gary Yarkony, a board-certified specialist in physical medicine and rehabilitation, prepared a future care plan for Barton at counsel's request that included attendant care for various daily activities from a certified nurse's assistant. Dr. Yarkony's plan also included a wheelchair-accessible van and periodic replacement prostheses and wheelchairs. Dr. Yarkony recommended that Barton travel by air in first class. Dr. Yarkony also testified regarding the special performance chair built for Barton by engineers at RIC.

Dr. Reinhart testified that Barton's right leg was forced to stick out from the wheelchair, increasing the risk that other people will run into it and potentially damage it. Barton cannot drive a normal vehicle. Traveling, especially by airplane, is difficult. Barton testified that she can only sit in one seat in coach class on an airplane--the bulkhead with the aisle to her right--to accommodate her right leg. She will board the airplane before most passengers, but this often results in others bumping into her right leg as they board. [6]

[*19]** Barton testified that she has to travel with her companion. Barton cannot engage in her normal daily activities at a hotel, because she does not bring her wheelchair when she travels. Barton was not paying her companion and already felt beholden to him for carrying as many of her belongings as he does. [7] Barton met her companion in **[*1018]** 1995 through her church, initially

---

[6] Although the defendants do not appeal the jury's award of economic damages, the jury heard evidence regarding Barton's career, her disability's impact on her choice of career, and the amount of travel involved in that career. Barton's childhood career goal was to become a soloist, but thought that as a backup position, she could become a concert master for a major orchestra. Barton testified that she now did not believe she could work seven days a week as a concert master.

Richard Corrado, Barton's manager, testified that it is practically impossible for Barton to play successive dates in different cities ***due*** to the travel time she needs. Corrado noted that older concert halls are not very accessible to the disabled; there had been occasions where Barton's traveling companion had to carry her up a flight of stairs at a venue. Barton testified that she went to every engagement she was supposed to have in 1997 and 1998, even when she was in horrible pain, because she needed the money to pay bills and to maintain a professional reputation.

[7] Barton's luggage includes her performance chair, packed in a large cube-shaped case, suitcases for Barton and her companion, the ***violin*** and her companion's brief case. Barton stated that with that luggage, the wheelchair would not fit in any vehicle a concert presenter might use to pick them up at an airport.

striking up a friendship, but now living together. Barton stated that it was nice to have someone to hold her when she would experience "phantom pain" in her missing limb. The phantom pain can be anything from the feeling of an electrical shock, to itching, to the feeling that part of the limb is being slowly sliced or pierced by a million needles.

[*20]** Barton also testified regarding the difficulties and limitations she has regarding any sexual activity with her companion. Barton testified that her injuries, surgical scars, and flab (as she is no longer as physically active as she was) make her resemble "one big Frankenstein's monster." Barton thought that her companion would eventually tire of her difficulties and limitations. Barton testified that even if she could find someone who was willing to be a stay-at-home husband, she did not think she would find someone who would want to take care of all of the domestic activities and care for her also. According to Barton, she is unable to care for herself to the degree that there was no possibility she could care for a child.

[545]** **[****856]** Gregory Larson, who was in charge of commuter service for the Union Pacific and formerly for the CNW, testified that in the late 1950's or early 1960's, the CNW adopted a fail-safe door light system. According to Larson, the train doors must close to create a connection that lights a green light signaling the engineer to proceed. Larson testified that one advantage of this system is that it does not depend on visibility; factors such as inclement weather or **[***21]** a curved track will not defeat the door light. Larson noted that a train may have up to 11 cars, each of which is 85 feet long. Another advantage is that if the door light goes out while the train is moving, the engineer can contact the conductors to investigate whether a door has been opened.

If the door light system malfunctions, a backup procedure known as the "second look system" is used. According to Larson, under the "second look system," the conductor charged with closing the train doors closes all of the doors other than those at his or her location. That conductor then steps off or leans out of the train and looks up and down the length of the train. If the conductor does not see any passenger movement, the conductor closes his or her own door and uses a buzzer to signal the engineer to proceed.

Larson also testified that the train doors are edged with two inches of rubber. According to Larson, this creates a four-inch distance that allows passengers who stick a hand, arm, leg, foot or package into closing doors to remove them. Larson further testified that the train at issue had an event recorder that showed the train had stopped in Winnetka for 27 or 29 seconds.

[*1019] John **[***22]** Deutch, a conductor for the Union Pacific Railroad, worked on the CNW train at issue on January 16, 1995. According to Deutch, the train at issue consisted of a locomotive and four cars, three of which were used for passengers. The front car was being used for mail delivery.

Deutch testified that his job that day was to deliver company mail to the ticket agents up and down the line. Deutch did not look up and down the span of the train when reboarding the train because it was not his job. Deutch stated that the conductors assigned to the passenger cars, Mark Giocamara and Shawn White, also went onto the platform in Winnetka.

Giocamara testified that he had been on the second car from the locomotive. When Giocamara was satisfied that the passengers had safely deboarded, he and White signaled each other to proceed. Giocamara testified as a matter of practice, he would look up and down the train; if he saw anyone other than White on the platform, he would give the signal to stop. Otherwise, Giocamara would reboard the train. According to Giocamara, White had the responsibility for closing the train's doors.

White testified that he was assigned to the trailing passenger car on the day **[***23]** at issue; he and Giocamara would both work the middle passenger car. On January 16, 1995, the weather was a little cloudy; traffic was light. While on the Winnetka platform, White saw Deutch reboard the train, but did not remember whether Deutch closed the door on the mail car.

White testified that one or two seconds would pass between the time the conductors checked for passenger movement and the time it takes him to push the buttons that close the doors. Another one or two seconds might pass before the doors begin to close. According to White, it could take three or four seconds for the doors to close entirely.

White testified that closing all of the doors would activate the door light signal **[**546]** **[****857]** for Perry Goosie, the train's engineer. White closed the doors on the trailing car, then the doors on Giocamara's car, then the doors in the middle car where White was located. White testified that he did not hear any voice outside the train after closing the doors. White believed that if he had looked up and down the exterior of the train before closing his doors, he would have seen someone exiting.

White further testified that when the train stopped, he used the intercom to contact Goosie, **[***24]** who told him buzzers were going off and that he had lost air pressure in the last car. White rushed to the last car, where he saw that the doors had been opened. Passengers told him they had heard screaming. White left the train and headed toward Barton, who was being attended by a passenger.

[*1020] Goosie testified that there was a side mirror on the locomotive which he used to watch passengers and conductors on the platform, but it was not his primary responsibility to look in the mirror before leaving the station.

Barton introduced testimony from 12 witnesses and the files of three claimants regarding prior substantially similar occurrences (SSOs) reported to CNW or Metra between April 1990 and July 1994, in which passengers

had limbs and clothing become stuck in the closing doors of trains. In one case, a child became separated from its mother. Passengers were dragged in three of these incidents. Though some of the passengers were injured in these incidents, none suffered injuries of the magnitude Barton suffered, as the people involved were able to free themselves. Defendants elicited testimony that the train doors were open when the train began to move in some of these cases.

Carl **[***25]** Biron, the former transportation superintendent for CNW, was responsible for the safe and on-time operation of three suburban train lines. Biron testified that prior to January 1995, he was not familiar with the details of any dragging incident. Biron admitted that he had known about an incident introduced into evidence involving Josephine Rose. Robert Szczecinski, who was CNW's special claims counsel and supervised CNW's claims operations for Illinois and Wisconsin from 1990-95, testified that he handled the Josephine Rose case. According to Szczecinski, in May 1990, Rose was dragged by a CNW train after her coat became caught in the train doors. Szczecinski testified that this was a serious event. Szczecinski also testified without objection that it was part of the train crew's responsibility to use the highest degree of care consistent with the mode of conveyance and the practical operation of a common carrier by rail to prevent such incidents.

Biron was also questioned about an incident involving Ted Mizuno. Biron replied that he believed that name came up in his deposition; Biron's deposition testimony was that he did not recall the details, but if it happened, he was sure he **[***26]** knew about it. Mizuno testified that in February 1992, his right arm was trapped up to the shoulder when the doors closed as he was deboarding a CNW train. The train began to leave the station. Mizuno kept up with the train and was able to free his arm after approximately 30 or 40 feet.

Biron testified that he recalled an incident that took place in Norwood Park. Anna Mae Gibson testified that on July 1, 1993, she boarded a CNW train at Norwood Park, along with Rita Pryska, who lived in her building. Gibson took an exterior handle as Pryska boarded the train.

Gibson had placed her right foot on the train stairs when the train **[*1021]** began to move. Gibson stated that she was unable to get **[**547]** **[****858]** her left foot up into the train. Pryska grabbed Gibson's left hand. Gibson stated that she then fell between the platform and the wheels. Gibson testified that she was on her back, being dragged underneath the train. Gibson testified that she kept thinking, "Oh, please, God, don't let her let go of my arm," because Gibson thought that had Pryska let go, she would not have an arm. According to Gibson, she was dragged approximately 100 feet before she was pulled into the train by others. The back of Gibson's **[***27]** clothes were torn. Gibson testified that after the train came to a stop, she asked the conductors whether they could retrieve her shoes. Gibson testified that the doors were open during this

incident; CNW claims investigator Mary Hart testified that there was a problem with the door light in that case. CNW's final report on this incident states in part that the cause of the accident was a "conductor using buzzer because of doors on Car # 7860." Defendants' brief cites CNW's final report in stating that the second look system was in use at the time of the Gibson incident, but defendants' record citation does not support that statement.

Biron further testified that CNW was responsible for developing its own rules and regulations. Biron testified that he had been involved in decisions to change safety rules prior to January 1995.

Larson testified that a change in CNW's rules was not taken lightly and would generally involve input from a number of different departments. According to Larson, CNW had an Operating Safety Steering Committee (OSSC), which consisted of "the senior management of the operating department, vice president of operations, vice president of transportation, engineering, **[***28]** mechanical, the safety department, the rules department, the claims department, [and] the legal department." Larson testified that the OSSC would gather all of their collective information to determine whether a change was warranted. Larson did not believe the SSOs warranted a change in system.

Mark VanCleave, the former Assistant Vice President of CNW's Commuter Operations Department, testified that others, including the claims department, had jobs that involved analyzing the frequency and severity of incidents that occurred in the operation of the railroad. According to VanCleave, he would be notified only when the severity of an incident warranted it, or if there appeared to be an unsafe trend. VanCleave testified that "severity means where someone is physically harmed to a high degree." VanCleave testified that the prior incidents never came to his attention through the railroad's safety group, transportation group, or through his subordinates. VanCleave stated his belief that the people below him handled the SSOs properly.

Dennis Mogan, Metra's Director of Safety and Rules, testified that **[*1022]** Metra owns the cars and engines operated by its purchase-of-service carriers. Mogan also **[***29]** testified that lines operated by Metra used the second look system. When Metra took over the operation of the Illinois Central line (n/k/a the Metra Electric line), Metra required the second look system in addition to the existing door light system. Mogan testified that Metra and CNW had a cooperative effort on safety matters. Mogan stated that if he had been made aware of the SSOs, he would have conducted a safety audit. Mogan stated that a safety audit would have been conducted upon the first such complaint, regardless of whether the person was injured.

Richard Tidwell, Metra's Deputy Executive Director, testified that Metra had the power to make suggestions and recommendations to CNW. When asked whether using **[**548]** **[****859]** the second look system together with the door light system would be safer than

using only one system, Tidwell testified that "intuitively, it would sound that way, but I don't have anything to convince me of that."

Economist Charles Linke, Ph.D., testified regarding the net worth of CNW as of December 3, 1994, and the net worth of the Union Pacific Railroad as of December 31, 1997.

James Finan, a former railroad accident investigator for the National Transportation Safety **[***30]** Board (NTSB), testified for the plaintiff. Finan stated that his prior investigations had not involved door closings. In this case, Finan reviewed the passenger safety rules of the Long Island Railroad, CSX, and the MBT Boston, as well as those of CNW and Metra. Finan spoke to friends who worked for New Jersey Transit and Metro North about the second look system. Finan also examined the train at issue shortly after the accident, along with representatives of CNW. The jury was shown a videotape of the examination of the door light system on the train car at issue. According to Finan, the door light could be activated when the doors on the car at issue were open 9 to 12 inches. Finan opined that this was a cause of the 14 prior incidents introduced into evidence. Finan acknowledged that the time difference resulting from the 9 to 12 inch gap would be only a fraction of a second if someone was not stuck in the doors.

Finan testified that there was no federal, state or industry rule or regulation mandating the second look system. Finan testified that, relative to the custom and practice of passenger railway systems, the second look system was the most prevalent. Finan also stated that **[***31]** the Metra system was his preference, but admitted that other commuter rail systems may have other preferences.

Finan opined that Metra should have known the difference between its rules and CNW's rules, stating that it was like a parent not knowing what the child is doing. Finan also opined that "they have **[*1023]** that degree of responsibility to rec - have the ability - have the hierarchy in place to recognize a problem," but it was not working. Finan further opined that CNW's failure to incorporate the second look system into its door-closing procedure was a cause of the accident. Finan opined that Metra failed to exercise the highest degree of care for Barton's safety by not recommending that CNW incorporate the second look system, stating that Metra "has a relationship to oversee their contractors, to make sure that their contractors are performing in a safe and efficient manner" and was "remiss in their duties as a parent company."

Gary Wolf, President of Rail Sciences, Incorporated, a consulting firm specializing in railway operational matters, testified for the defense. After reviewing 27 other commuter rail agencies, Wolf concluded that each had different door-operating systems. **[***32]** Wolf opined that both Metra and CNW had systems that met the applicable standard of care for a common carrier by rail and that the second look system was not required.

Wolf testified that there were no major similarities among the SSOs introduced into evidence. Wolf stated that there was no pattern in their timing and that none involved a significant injury. Wolf further stated that, based on statistics already introduced into evidence, 14 or 15 incidents out of approximately 224 million ingresses and egresses over the same five-year period meant that there was a six-millionths of one percent chance of such an incident, which was statistically insignificant.

[549]** **[****860]** Wolf was cross-examined regarding the procedures of the railroads he had reviewed. Wolf testified that there were five railroads that had door lights, but no second look system. Wolf also testified that "it is safe to say, in all of these matters, there is some human side of it or some procedure." [8] Wolf testified that the Calgary Transit System, which uses both a door light and a second look system, experienced a fatal dragging incident.

[*33]** Jerry Purswell, a safety and ergonomics consultant, testified that testing of the train at issue showed that it took between 4.6 to 8 **[*1024]** seconds to travel five feet from a stopped position. Purswell also conducted tests designed to replicate someone being caught in a strap in the manner Barton described, determining that it took approximately 1 1/2 to 2 seconds to free oneself from a strap. Purswell opined that Barton should not have had any difficulty freeing herself from the strap as the train as it began to move, had she chosen to do so.

Purswell admitted that he formed his opinions prior to learning of Croghan's testimony. Purswell also admitted that the coat used in his testing had less shoulder padding and was made of more slippery material than the coat used in plaintiff's demonstration to the jury, which he had not seen before. Purswell added that the ***violin*** case strap he used was shorter than the actual strap.

Following jury instructions and closing arguments, the jury deliberated and returned a verdict in favor of Barton on March 1, 1999, in the following amounts: $ 9 million for disability; $ 8 million for disfigurement; $ 8 million for pain in suffering; $ 3 million in **[***34]** future pain and suffering; $ 20,250 in lost wages; $ 104,370 in future lost wages; $ 672,570.97 in medical expenses; and $ 1,293,018 for future medical expenses. The jury allocated 62.5% of the fault to CNW, 33% of the fault to Metra, and 4.5% of the fault to Barton. After the 4.5% reduction, the total verdict was $ 28,736,149.57. The jury also awarded $ 900,000 in punitive damages, which were reduced 4.5% to $ 859,500. On March 3, 1999, the trial court entered a judgment on the verdict.

---

[8] Wolf admitted that Greater Ontario Transit required the crew member controlling the doors to observe the side of the train until it had left the platform, but stated this rule was ***due*** to be superceded. Greater Cleveland is supposed to require the operator to stick his head out the window during boarding and deboarding. Santa Clara required the operator to look out at a mirror after closing the doors to determine whether it is clear. The Tri-County Commuter Rail Authority had a rule stating that the crew should notice whether persons are hanging onto the side of the cars. Wolf admitted that San Diego Trolley had a second look system.

On March 10, 1999, plaintiff filed an emergency motion seeking to have the trial court quash subpoenas believed to have been issued for the deposition of jurors. On March 17, 1999, defendants' response alleged that a juror referred to as Ms. A gave false information on her Juror Information Form and in response to questioning during voir dire as to whether she had ever been a party to any lawsuit, whether she was a party to any case now pending in the Circuit Court of Cook County, and whether she had ever been involved in an accident where people were injured.

As an exhibit to their response, defendants attached a copy of the voir dire transcript. Defendants also attached a copy of a complaint **[***35]** filed in the circuit court on December 10, 1998, naming Ms. A as the plaintiff. This complaint alleged that Ms. A injured her right index finger when she attempted to enter a Kohl's Department Store while a customer was attempting to exit the store through the **[**550]** **[****861]** same door, ***due*** to the alleged negligence of the store in controlling the door, or the negligent failure to inspect or mark the door. Defendants also attached a record from the Illinois Industrial Commission showing that Ms. A filed a worker's compensation claim in December 1986. Defendants sought to depose Ms. A, but were not seeking to depose the jury's foreman at that time.

[*1025] The trial court held a hearing and decided that it would question Ms. A and the jury's foreman. The trial court allowed the parties to submit questions to be asked of the witnesses.

On March 24, 1999, the trial court conducted a hearing in which the trial judge questioned Ms. A and the jury's foreman. The trial court stated that it was not going to allow any of the questions submitted by the parties, but then stated that it might use parts of both parties' questions. When the trial court questioned Ms. A regarding her failure to state during voir dire **[***36]** that she was a party to a pending lawsuit, Ms. A responded that she had not remembered the suit at that time and did not remember it until it was raised in a telephone call from a reporter. After a colloquy with the parties' attorneys, the trial judge asked Ms. A about the answers on her Juror Information Form. Ms. A responded she did not remember the lawsuit because in 1998, her company had gone bankrupt, her daughter was expecting a baby, and her husband had been diagnosed with cancer, which required her to take him places for care and to be trained to administer shot to him. Ms A's husband died in October 1998. Ms. A testified that she had asked her daughter to handle the filing of the lawsuit. After a further colloquy with the attorneys, the trial court asked Ms. A when she had last spoken to her counsel about that lawsuit; Ms. A responded that it would have been before the case was filed. The trial court declined to ask Ms. A any further questions.

The trial court then questioned the jury's foreman, who testified that the jury deliberated for 17 hours and that all of the jurors participated. The foreman opined that had Ms. A not been present, the other 11 jurors would have reached **[***37]** the same result. The foreman also

opined that Ms. A did not have a greater influence than any other juror. The foreman thought the jury followed the jury instructions. The trial court then ended the questioning, stating that the court was "not interested in what exactly each juror said," adding that "as long as it was a unanimous vote, that does it."

The trial court also denied defendants leave to subpoena other jurors and members of the media. On April 29, 1999, the trial court scheduled the filing and hearing of post-trial motions. [9]

On May 17, 1999, defendants filed their post-trial motion, which included issues relating to Ms. A's jury service. Defendants attached an affidavit by Summer Heil, an associate with one of the defense firms in this case. The affidavit states that on March 29, 1999, Heil **[*1026]** contacted three jurors to discuss **[***38]** statements regarding Ms. A's jury service that were attributed to jurors in articles published by the ***Chicago*** Tribune and the ***Chicago*** Sun-Times. Two of the jurors declined to speak to Heil. The third, Martha Mueller, told Heil that she agreed with statements attributed to juror Charlene Wright that Ms. A "was very one-sided" and wanted "more money for Rachel." According to Heil, Mueller stated that Ms. A was "strong-willed," **[**551]** **[****862]** "knew her mind," "stated her mind," and was not easily swayed. Mueller declined to execute a sworn affidavit on the matter.

[9] Defendants' petition for an original writ of mandamus or a supervisory order from the Illinois Supreme Court, seeking depositions of the jurors, was denied on May 7, 1999.

On June 14, 1999, following a hearing on the matter, the trial court denied defendants' post-trial motion. Defendants filed a timely Notice of Appeal to this court.

I

Defendants first argue that they are entitled to a new trial, claiming that they were denied ***due process*** of law because they were not tried before a properly constituted jury. The standard of review is whether the trial court abused its discretion in granting or denying the motion for a new trial. Pekelder v. Edgewater Automotive Co., 68 Ill. 2d 136, 138, 368 N.E.2d 900, 901, 11 Ill. Dec. 292 (1977). An abuse of discretion occurs when the judge's ruling is **[***39]** arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. People v. Illgen, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519, 164 Ill. Dec. 599 (1991). An application of impermissible legal criteria also justifies reversal. Boatmen's National Bank of Belleville v. Martin, 155 Ill. 2d 305, 314, 614 N.E.2d 1194, 1199, 185 Ill. Dec. 509 (1993).

The Illinois Constitution guarantees the right to trial by a jury of 12 members. See Hartgraves v. Don Cartage Co., 63 Ill. 2d 425, 427, 348 N.E.2d 457, 458 (1976). Plaintiffs and defendants alike have the right to an impartial jury. Smithers v. Henriquez, 368 Ill. 588, 598, 15 N.E.2d 499, 504 (1938). Voir dire protects the right to an impartial jury by exposing possible biases of potential jurors. McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 554, 78 L. Ed. 2d 663, 670,

104 S. Ct. 845, 849 (1984). A new trial is required where the movant establishes that: (1) a juror answered falsely on voir dire; and (2) prejudice resulted therefrom. Pekelder, 68 Ill. 2d at 139, 368 N.E.2d at 901 (1977).

As **[***40]** to the first prong of the Pekelder test, "whether intentional or not," Ms. A falsely answered questions on her form and during voir dire. Pekelder, 68 Ill. 2d at 140-4 1, 368 N.E.2d at 902. Plaintiff argues that intentional dishonesty is required, based on the court's statement in People v. Olinger, 176 Ill. 2d 326, 354-55, 680 N.E.2d 321, 335, 223 Ill. Dec. 588 (1997), that "defendant [had] failed to demonstrate that the juror lied **[*1027]** during her voir dire examination." However, the Olinger court so stated because the defendant had claimed the juror lied; the court also noted that the record did not "demonstrate any falsity in the juror's voir dire testimony." Olinger, 176 Ill. 2d at 354, 680 N.E.2d at 335 (emphasis added). Plaintiff also cites McDonough, in which the Supreme Court stated that to obtain a new trial, a party must demonstrate that "a juror failed to answer honestly a material question on voir dire ***." McDonough, 464 U.S. at 556, 78 L. Ed. 2d at 671, 104 S. Ct. at 850. However, five Justices in McDonough also opined that dishonesty is relevant, but not required in **[***41]** all cases. See McDonough, 464 U.S. at 556-57, 78 L. Ed. 2d at 672, 104 S. Ct. at 850 (Blackmun, Stevens, O'Connor, JJ., concurring); 464 U.S. at 557-59, 78 L. Ed. 2d at 672-74, 104 S. Ct. at 850-51 (Brennan, Marshall, JJ., concurring in the judgment).

As for the second prong of the Pekelder test, defendants claim they have shown prejudice per se because having pending litigation in the same court is sufficient cause for challenging a potential juror under the Jury Act. 705 ILCS 305/14 (West 1998). The Pekelder court was not required to address that argument. Pekelder, 68 Ill. 2d at 141, 368 N.E.2d at 902. However, the Pekelder **[**552]** **[****863]** court noted that this court had rejected similar claims. Pekelder, 68 Ill. 2d at 140, 368 N.E.2d at 902, discussing Kuzminski v. Waser, 314 Ill. App. 438, 41 N.E.2d 1008 (1942), and Maher v. New York, *Chicago* & St. Louis R.R. Co., 290 Ill. App. 267, 8 N.E.2d 512 (1937).

More recently, in Diaz v. Kelley, 275 Ill. App. 3d 1058, 657 N.E.2d 657, 212 Ill. Dec. 456 (1995), a juror stated that he had never **[***42]** been a party to a lawsuit, but was a defendant in two collection actions for medical bills. This court held that the plaintiff had failed to show actual prejudice in favor of the defendant medical provider, regardless of whether the litigation was pending. Diaz, 275 Ill. App. 3d at 1064, 657 N.E.2d at 663. In Mathieu v. Venture Stores, Inc., 144 Ill. App. 3d 783, 797, 494 N.E.2d 806, 814, 98 Ill. Dec. 684 (1986), a juror told the court that, after being sworn, he had been served with a summons as a defendant in a civil suit; this court refused to reverse based on section 14 of the Jury Act, absent a showing of prejudice. It is true that in Mathieu, the statutory condition arose after voir dire, but that fact should not matter if the condition created bias per se.

Defendants note that McDonough held that a new trial is warranted when "a correct response would have provided a valid basis for a challenge for cause." McDonough, 464 U.S. at 556, 78 L. Ed. 2d at 671, 104 S. Ct. at 850. However, when read in context, that condition is linked to a finding of dishonesty. That a true response on voir dire would have been **[***43]** a valid basis for a challenge for cause may be insufficient to warrant a new trial in cases of mistake or forgetfulness.

[*1028] In this case, the trial court ruled that Ms. A's post-trial testimony was truthful. Defendants argue that this ruling was an abuse of discretion because Ms. A persisted in giving false answers. The record shows that Ms. A did not deny past or pending litigation when questioned after the trial. Defendants also argue that Ms. A gave "facile and inconsistent post-trial excuses ***." The transcript shows that Ms. A did not give facile answers; her grammar was consistent with plaintiff's counsel's description of Ms. A having an immigrant background. Nor were Ms. A's answers inconsistent, when read in context. Defendants further argue that "media accounts make plain that Ms. A has demonstrated an over-active penchant for notoriety." However, defendants have not identified evidence showing that Ms. A sought out the media, rather than vice versa. Thus, defendants have failed to show that the trial court's finding was arbitrary, fanciful, or unreasonable.

Nevertheless, even without a finding of dishonesty, there are cases where a presumption of prejudice may arise. **[***44]** See People v. Porter, Ill. 2d 386, 404, 111 Ill. 2d 386, 489 N.E.2d 1329, 1336, 95 Ill. Dec. 465 (1986); see McDonough, 464 U.S. at 556-57, 78 L. Ed. 2d at 672, 104 S. Ct. at 850 (Blackmun, Stevens, O'Connor, JJ., concurring); 464 U.S. at 557-59, 78 L. Ed. 2d at 672-74, 104 S. Ct. at 850-51 (Brennan, Marshall, JJ., concurring in the judgment). The test is whether the probability of prejudice is such that ***due process*** would be deemed inherently lacking. See People v. Holmes, 69 Ill. 2d 507, 514, 372 N.E.2d 656, 659, 14 Ill. Dec. 460 (1978).

Defendants cite federal cases presuming bias where the prospective juror has been in a similar situation or has pending similar litigation. See, Hunley v. Godinez, 975 F.2d 316, 319 (7th Cir. 1992); Consolidated Gas & Equipment Co. of America v. Carver, 257 F.2d 111, 115-16 (10th Cir. 1958). However, Illinois courts are generally not bound to follow federal case law. E.g., People v. Eyler, 133 Ill. 2d 173, 225, 139 Ill. Dec. 756, 549 N.E.2d 268, **[**553]** **[****864]** 291, (1989). Indeed, the Carver court noted that Kuzminski and Maher reached **[***45]** a conclusion contrary to its position. Carver, 257 F.2d at 115.

In sum, this court has never held that circumstances such as those presented here create a presumption of prejudice. Instead, this court has consistently ruled that a party seeking relief based a juror's unintentional failure to disclose prior or pending litigation must show actual prejudice.

Defendants argue that the trial court precluded them from showing actual prejudice. An opportunity to show actual prejudice is required by ***due process*** concerns, but there are few Illinois cases addressing the proper procedures for a hearing on juror bias. It is clear that the burden was on the defendants to support their allegations of **[*1029]** bias; a mere suspicion of bias is not sufficient. Porter, Ill. 2d at 404, 489 N.E.2d at 1336.

Defendants chiefly rely on cases involving juror exposure to extraneous information. A juror may testify as to whether such information was brought to the jury's attention without threatening the jury secrecy courts generally seek to protect. Holmes, 69 Ill. 2d at 516, 372 N.E.2d at 660. A juror's statement that he or she was not influenced is not conclusive. **[***46]** People v. Hryciuk, 184, 5 Ill. 2d 176, 125 N.E.2d 61, 65 (1954). The inquiry may extend to asking jurors whether they were exposed to extraneous information by others and, if so, what information was exchanged. Van Hattem v. Kmart Corp., 308 Ill. App. 3d 121, 130-31, 719 N.E.2d 212, 220-21, 241 Ill. Dec. 351 (1999).

Defendants also cite federal cases, such as U.S. v. Boney, 314 U.S. App. D.C. 287, 68 F.3d 497 (D.C. Cir. 1995), which held that the district court held an inadequate hearing after a juror failed to disclose his prior felony convictions. As is the case in Illinois, the Boney court noted that review of such inquiries tends to be case-specific. See Boney, 68 F.3d at 501. In a given case, examination by counsel may be necessary to probe for a juror's concealed bias. See Boney, 68 F.3d at 502. The Boney court ruled that the juror should have been asked more probing questions, such as whether he disclosed his prior felony convictions to the jury, information he learned from his prosecution and sentencing, or any attitudes he acquired thereby. See Boney, 68 F.3d at 500, 502-03. **[***47]** The Boney court also found error in the trial court's refusal to allow counsel to question the juror, subject to the authority of the trial judge to hear objections. Boney, 68 F.3d at 500, 503.

In this case, the testimony permitted the trial court to infer that Ms. A had not referred to her pending litigation or finger injury during the jury deliberations. The Heil affidavit does not suggest otherwise. Moreover, unlike Boney, the trial court questioned the suspect juror and the foreman.

The fact that the court's inquiry could have been more searching does not require a new trial. See Porter, Ill. 2d at 403, 489 N.E.2d at 1336. Defendants note that they were precluded from asking Ms. A and the jury foreman whether they agreed that Ms. A was very one-sided in the deliberations and had wanted more money for the plaintiff. However, even assuming arguendo that the Heil affidavit's contents were true, the question would remain as to whether Ms. A's positions were subconsciously influenced by her alleged finger injury, or were the product of the evidence presented at trial. See Porter, Ill. 2d at 405, 489 N.E.2d at 1337. Defendants **[***48]** raise no specific objections to the **[**554]** **[****865]** court's refusal to ask the other

questions they submitted, **[*1030]** none of which seem designed to uncover a subconscious bias. [10] The trial court was not required to permit counsel to ask questions that were irrelevant to this issue. Nor was the court required to act as defense counsel by asking the questions defendants could have properly requested. Thus, the trial court, which was in a position to observe the witnesses and their demeanor, could reasonably conclude that defendants failed to carry their burden of showing a probability, rather than a suspicion, of subconscious bias.

Defendants argue that the trial court's analysis **[***49]** of prejudice was solely based on whether the jury would have reached the same verdict without Ms. A, which they claim was error under Van Hattem and Hryciuk, which involved alleged juror exposure to extraneous information. As noted above, the trial court could infer that Ms. A did not disclose such information. Moreover, the transcript shows that the trial court also used the foreman's testimony as a check against the court's assessment of Ms. A's testimony, the truthfulness of which was clearly relevant to the issue of bias.

In sum, defendants have failed to show that the trial court's refusal to grant a new trial based on Ms. A's failure to disclose prior or pending litigation was an abuse of discretion.

---

[10] A review of those questions shows that defendants sought to discover: whether jurors had retained counsel and the terms of any such agreement; whether jurors had spoken to Barton or her attorneys; who, if anyone, jurors contacted after receiving a subpoena from defendants; and what positions Ms. A took during the jury deliberations on various issues.

II

Defendants next argue that the trial court erred in not granting them judgment notwithstanding the verdict (JNOV) on plaintiff's claim of punitive damages to the jury. A motion for JNOV should be entered only when all of the evidence, viewed in the light most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict could ever stand. Pedrick v. Peoria & Eastern R.R. Co., 37 Ill. 2d 494, 511, 229 N.E.2d 504, 513-14 (1967). **[***50]** Defendants also argue that the jury instruction defining willful and wanton conduct was improper.

"It has long been established in this State that punitive or exemplary damages may be awarded when torts are committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others ***." Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 186, 384 N.E.2d 353, 359, 23 Ill. Dec. 559 (1978). As there was no evidence of a deliberate intention to harm Barton, Illinois Pattern Jury **[*1031]** Instructions, Civil, No. 14.01 (3d ed. 1993) (hereinafter IPI Civil 3d) was given to the jury in the following form:

> "When I use the expression 'willful and wanton conduct' I mean a course of action which shows an utter indifference to or conscious disregard for a person's own safety." See IPI Civil 3d No. 14.01, Notes on Use at 14-3.

Defendants argue that Ziarko v. Soo Line R.R. Co., 161 Ill. 2d 267, 641 N.E.2d 402, 204 Ill. Dec. 178 (1994), "stands for the proposition that punitive damages cannot be recovered upon a jury finding rendered in response to the **[***51]** abbreviated form of IPI 14.01," but only for intentional willful and wanton conduct.

[555]** **[****866]** Defendants concede in their brief that "Ziarko did not involve a question of punitive damages." Defendants fail to note that Ziarko produced only a plurality opinion. Poole v. City of Rolling Meadows, 167 Ill. 2d 41, 48, 656 N.E.2d 768, 771, 212 Ill. Dec. 171 (1995). While the Poole court adhered to the ultimate holding in Ziarko, drawing a distinction between intentional and reckless willful and wanton misconduct for the purposes of analyzing principles of contribution and comparative fault, it did not refer to the language in the Ziarko plurality opinion that defendants read as suggesting that punitive damages can only be awarded in cases of intentional willful and wanton conduct. See Poole, 167 Ill. 2d at 48, 656 N.E.2d at 771. Our supreme court has continued to state that punitive damages may be awarded for gross negligence showing a wanton disregard for the rights of others. Cirrincione v. Johnson, 184 Ill. 2d 109, 115, 703 N.E.2d 67, 70, 234 Ill. Dec. 455 (1998). Thus, the jury instruction was properly given.

The question **[***52]** remains as to whether the trial court should have granted JNOV. Whether punitive damages can be awarded for a particular cause of action is a matter of law, but the question of whether a defendant's conduct was sufficiently willful or wanton to justify imposing punitive damages is generally for the jury to decide. Cirrincione, 184 Ill. 2d at 116, 703 N.E.2d at 70.

Evidence of SSOs is admissible to show a conscious disregard for the safety of others. Loitz v. Remington Arms Co., 177 Ill. App. 3d 1034, 1063, 532 N.E.2d 1091, 1109, 127 Ill. Dec. 262 (1988), rev'd on other grounds, 138 Ill. 2d 404, 563 N.E.2d 397, 150 Ill. Dec. 510 (1990). Defendants rely on the supreme court's decision in Loitz, which discussed the probative value of SSOs as notice to a defendant in assessing the propriety of an award of punitive damages. The Loitz court considered the following factors: the ratio of prior SSOs to the total number of products sold and the number of products in use; the ratio of SSOs to the frequency of the product's use; and the product's inherent dangers. See Loitz, 138 Ill. 2d at 419-20, 563 N.E.2d at 404. **[***53]** The Loitz court ruled that notice of **[*1032]** 94 shotgun-barrel explosions similar to the one that injured the plaintiff was insufficient to notify Remington of an alleged defect, given that Remington made three million such barrels and the estimated number of times such shotguns would have been fired. See Loitz, 138 Ill. 2d at 419-20, 563 N.E.2d at 404; see also Kopczick v. Hobart Corp., 308 Ill. App. 3d 967, 721 N.E.2d 769, 242 Ill. Dec. 490 (1999) (hand injuries sustained in using a meat-cutting saw); Dunn v. Illinois Central Gulf R. Co 215 Ill. App. 3d 190, 574 N.E.2d 902, 158 Ill. Dec. 789 (1991) (railroad's failure to install

flashing lights or crossing gates at a crossing).

Defendants believe that the supreme court's decision in Loitz applies here, where the evidence shows that the 14 or 15 SSOs out of approximately 224 million ingresses and egresses was statistically insignificant. Defendants stress that this case is the first to result in a serious injury.

Loitz and its progeny involve inherently dangerous products or situations. As the supreme court noted, "guns are inherently dangerous instrumentalities, and the mere **[***54]** occurrence of other explosions does not, without more, establish outrageous misconduct or some other basis sufficient to warrant the imposition of punitive damages." Loitz, 138 Ill. 2d at 419, 563 N.E.2d at 404. Even Dunn involved a railroad crossing, not a passenger attempting to deboard a train stopped at a **[**556]** **[****867]** station. Railroad crossings are inherently dangerous (Hunter v. ***Chicago*** & North Western Transportation Co., 200 Ill. App. 3d 458, 466, 558 N.E.2d 216, 221, 146 Ill. Dec. 253 (1990)), but defendants cite no authority stating that deboarding a commuter train stopped at a station is inherently dangerous. Thus, the trial court did not err in admitting the evidence of SSOs to show a conscious disregard for the safety of others.

Defendants also note that in Loitz, Remington knew of the SSOs, but claimed that they were all caused by the use of high-pressure shells; the plaintiff did not present any evidence that cast doubt on Remington's good faith in investigating the SSOs. Loitz, 138 Ill. 2d at 426-27, 563 N.E.2d at 407. Defendants claim that this case is similar. However, defendants also suggest that four of the SSOs here **[***55]** were cases where the door light was malfunctioning. Defendants state that the second look system was used in the incident involving Gibson, but their assertion is not supported by their citation to the record. Moreover, defendants have not identified evidence in the record that CNW's agents concluded that the SSOs were solely caused by factors other than reliance on the door light system.

Defendants further claim in passing that James Finan's testimony that "information was stuck in the pipeline" shows an inadvertent failure to correct a problem, not willful and wanton conduct. **[*1033]** Defendants' unstated premise is that CNW is not liable for punitive damages unless officials as senior as Larson and VanCleave were aware of SSOs. However, defendants have failed to cite authority in support of such a proposition, thus waiving the issue on appeal. 177 Ill. 2d R. 341(e)(7). [11]

---

[11] Notwithstanding defendants' waiver, we note that punitive damages may be awarded against a corporation based on vicarious liability where: the principal authorized the doing and the manner of the act or omission; the agent was unfit and the principal was reckless in employing the agent; the agent was employed in a managerial capacity and was acting within the scope of employment; or the principal or a managerial agent thereof ratified or approved of the act. See, e.g., Mattyasovszky v. West Towns Bus Co., 61 Ill. 2d 31, 36-37, 330 N.E.2d 509, 512 (1975). The record shows that trial court refused defendants' instruction listing these circumstances. However, defendants have not appealed that ruling, thus waiving that objection as well. Even so, the evidence adduced at trial meets the Mattyasovszky criteria.

[*56]** In this case, Biron, who was responsible for the safe operation of CNW's suburban train lines and had been involved in CNW's rulemaking ***process***, testified that he knew of at least three of the SSOs. Indeed, Biron did not deny that his department had "actual or paperwork knowledge" of all of them. Szczecinski, who supervised CNW's claims operations for Illinois and Wisconsin, personally handled one of the SSOs, which he described as a serious event of the sort CNW has a duty to prevent. Yet VanCleave testified that he believed that the people below him handled the SSOs properly and Larson stated that he did not believe the SSOs warranted a rule change.

[**868]** Viewing the evidence in the light most favorable to the plaintiff, CNW knew that the door light system was not fail-safe. Responsible CNW officials knew of the SSOs and did nothing, even though adding the second look system would have cost nothing. Other high-level CNW officials approved of their subordinates' failure to notify them of a problem. CNW's officials approved of a system defining the severity of the SSOs in terms of the injuries actually suffered, rather than the injuries that were reasonably foreseeable from such incidents. **[**557]** **[***57]** Viewing the evidence in the light most favorable to the plaintiff, there was evidence of a conscious disregard of passenger safety.

In sum, defendants have failed to show that the trial court erred in respect to the jury instruction or in submitting the claim to the jury. Defendants are not entitled to JNOV.

III

Defendants also argue that Metra owed Barton no duty of care because Metra was not a common carrier as to Barton. Whether **[*1034]** the undisputed facts establish the relationship of common carrier and passenger is a question of law for the court to determine. Burns v. RTA, 112 Ill. App. 3d 464, 469, 445 N.E.2d 348, 352, 67 Ill. Dec. 868 (1982), rev'd on other grounds, Stack v. RTA, 101 Ill. 2d 284, 461 N.E.2d 969, 78 Ill. Dec. 135 (1984). In this case, Mogan testified that Metra owned the train cars and engines operated by its purchase-of-service providers. Metra admitted in its pleadings that it owned the train at issue. Metra admitted in its Fourth Amended Answer that it is a common carrier, but now argues that it was not a common carrier as to Barton because CNW was operating Metra's train.

Illinois law has rejected similar arguments for **[***58]** over a century. E.g., Wabash, St. Louis & Pacific Ry. Co. v. Peyton, 106 Ill. 534 (1883); see also Cobb v. Marshall Field & Co., 22 Ill. App. 2d 143, 153-54, 159 N.E.2d 520, 524-25 (1959) (elevator owner is considered a common carrier, even when the elevator is operated by an independent contractor). A common carrier by rail cannot exonerate itself of its duties by entering into a contract with another. Peyton, 106 Ill. at 540; see also Gordon v. ***Chicago*** Transit Authority, 128 Ill. App. 3d 493, 501, 470 N.E.2d 1163, 1169, 83 Ill. Dec. 743 (1984) (common carrier's duty to passengers is non-delegable). A common carrier may voluntarily place its engine and cars under the control of

employees of another road, but this merely means that those employees are also deemed to be the servants of the first common carrier. Peyton, 106 Ill. at 540-41. There is no rule precluding joint liability in such a case. Peyton, 106 Ill. at 541-42.

Moreover, this court has held that CTA ticket holders had a contractual relationship not only with the CTA, but also with the RTA, where the RTA was statutorily **[***59]** authorized to enter into financial grant agreements with the CTA and had the authority to determine fares. Burns, 112 Ill. App. 3d at 470, 445 N.E.2d at 352, rev'd on other grounds, Stack v. RTA, 101 Ill. 2d 284, 461 N.E.2d 969, 78 Ill. Dec. 135 (1984). In this case, the record shows that the defendants have a similar relationship as existed in Burns. In addition, Mogan testified that Metra and CNW had a cooperative safety effort.

The record also shows that the train cars and the uniforms of the train crews bore Metra insignia. The ticket Barton held was a Metra ticket. Defendants assert that plaintiff avoided any claim of apparent agency, ***due*** to Metra's claim of statutory immunity (which is discussed below). However, the issue of duty is separate from that of immunity. Defendants have not explained why these undisputed facts are not relevant to show that Metra was a common carrier as to Barton.

[*1035] The cases defendants cite in their brief on the question of duty are inapposite. Most of them do not involve common carriers; none overrule Peyton and its **[**558]** **[****869]** progeny. [12] Thus, we conclude that Metra was a common carrier as to Barton and was bound to **[***60]** exercise a high degree of care toward her, including the responsibility to prevent injuries which could have been reasonably foreseen and avoided. E.g., Letsos v. ***Chicago*** Transit Authority, 47 Ill. 2d 437, 441, 265 N.E.2d 650, 653 (1970).

[*61]** Defendants next argue that Metra is immune from liability under section 5.03 of the RTA Act (70 ILCS 3615/5.03 (West 1998)) for acts or omissions of CNW as a result of Metra having a PSA with CNW. [13]

---

[12] Defendants note that the PSA states that CNW is an independent contractor. Although Metra cannot shed its duties as a common carrier, we note that the parties' description of their relationship in a contract is not always controlling. Drivers of taxicabs (which are common carriers) may be employees of the company leasing the taxicabs, given indicia of control and the economic reality of the situation. See, e.g., Morgan Cab Co. v. Industrial Commission, 60 Ill. 2d 92, 324 N.E.2d 425 (1975) (and cases cited therein).

Moreover, an employer of an independent contractor may be held liable if, through the exercise of reasonable care, it should have known that the work was being carried out in a dangerous manner, and had an opportunity to prevent injury by the exercise of the power of control it retained, but took no action. Pasko v. Commonwealth Edison Co., 14 Ill. App. 3d 481, 488, 302 N.E.2d 642, 648 (1973). Exhibit 2-C to the PSA plainly states that the contract services shall be performed in accordance with "any other standards established by the [RTA] pursuant to Section 2.04," despite defendants' omission of that language from the quotations in their briefs. Indeed, Metra is authorized by law to establish, enforce and maintain safety standards for public transportation it provides through PSAs. See 70 ILCS 3615/2.11, 2.20 (West 1998). Metra failed to do so, even though it used the second look system on lines it operated directly.

The right to change safety standards also disposes of the argument that proximate cause was lacking, which was based on the premise that "CNW did not have to take Metra's advice."

[13] As we presume that the legislature did not intend a meaningless act, section 5.03 of the RTA Act suggests that the legislature believed that the RTA otherwise could be held

Section 5.03 immunizes Metra against vicarious liability for claims such as those at issue in Goertz v. ***Chicago*** & North Western Ry. Co., 19 Ill. App. 2d 261, 267-68, 153 N.E.2d 486, 489-90 (1958), which held that the servants in charge of the train were required to exercise ***due*** care to know that a passenger was attempting to deboard the train **[*1036]** before they started it. Metra relies on Rascher v. City of Champaign, 262 Ill. App. 3d 592, 596, 634 N.E.2d 1121, 1123, 199 Ill. Dec. 767 (1994), which rejected a plaintiff's attempt to avoid the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) by pleading that a duty to warn of hazards discovered during an inspection was separate from the duty to inspect. In this case, Metra's liability does not result from omissions by CNW, but from Metra's independent failure to establish the second look system on the CNW line as it had on the lines it operated **[***62]** directly.

Defendants argue that the trial court erred in denying Metra leave to amend its answer to claim that its failure to recommend the second look system was a policy decision or discretionary act protected by the Tort Immunity Act. See 745 ILCS 10/2-109, 2-201 (West 1998). Generally, at any time prior to final judgment, amendments may be allowed to add new defenses on just and reasonable terms. 735 ILCS 5/2-616(a) (West 1998). Whether to allow an amendment is within the discretion of the trial court. Carlisle v. Harp, 200 Ill. App. 3d 908, 915, 558 N.E.2d 318, 322, 146 Ill. Dec. **[**559]** **[****870]** 355 (1990). **[***63]** Where the facts sought to be alleged are known to the party at the time of a prior pleading and no good reason is offered for failing to amend at that time, leave to amend is properly denied. See Carlisle, 200 Ill. App. 3d at 915, 558 N.E.2d at 322. An untimely pleaded defense cannot be considered, even if the evidence suggests it exists. Carlisle, 200 Ill. App. 3d at 916, 558 N.E.2d at 323.

The trial court ruled that Metra had waived the Tort Immunity Act defense, as it was first raised post-verdict. Metra argues that it was responding to plaintiff's Fifth Amended Complaint, which was filed on the day the jury returned its verdict. However, Barton's Third Amended Complaint, filed in October 1998, alleged that Metra failed to adopt the second look system. The Tort Immunity Act could have been asserted at that time. Thus, there was no abuse of discretion.

IV

Defendants also seek a new trial, contending that the verdict was against the manifest weight of the evidence. A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based upon the evidence. **[***64]** Rhodes v. Illinois Central Gulf R.R., 172 Ill. 2d 213, 242, 665 N.E.2d 1260, 1274, 216 Ill. Dec. 703 (1996). In an appeal from a jury verdict, a reviewing court may not reweigh the evidence and substitute its judgment for

liable when providing public transportation by entering into a PSA. Section 5.03 also provides that the RTA is not barred from agreeing to pay such claims, as Metra apparently did in the PSA here.

that of the jury. Rhodes, 172 Ill. 2d at 242, 665 N.E.2d at 1274. **[*1037]**

Defendants assert that "plaintiff necessarily had to have held the doors open as she descended" for the accident to occur, but point to no testimony or evidence in the record to this effect.

Defendants claim that the jury's allocation of fault was against the manifest weight of the evidence because the strap on the ***violin*** case was 45 1/2 inches long. Defendants' brief asserts that "it is uncontroverted that the strap could readily have been removed," but this assertion is blatantly false, given Barton's testimony as recited above. Defendants also state that Barton's counsel acknowledged there was "evidence of 'sufficient slack.'" The record shows that during a sidebar, Barton's counsel accepted that defendants' expert had so opined, which is not a stipulation or judicial admission that there was in fact sufficient slack on the strap for Barton to free herself. **[***65]** The expert testimony may have raised a question of fact, but given Barton's testimony and the demonstrative evidence, we cannot conclude that the verdict was against the manifest weight of the evidence.

The same rule applies to defendants' assertion that Barton had sufficient time to free herself before the train started moving, but chose not to free herself because she did not want to let go of the ***violin***. Defendants' experts opined that Barton had time to free herself. The record disclosed the value of the ***violin***. The record discloses that when McCarthy and Tuck arrived to aid Barton, she asked about the ***violin***. The record contains testimony from an emergency room doctor that Barton said that she went back to get her ***violin*** (and that she was alert when she said it).

However, Barton also testified as to what she did before the train started moving and why she did not feel endangered at that time. Barton testified that after the incident, she kept talking, asking people to call MCNS to say she would not be coming, and so forth, in order to remain calm. McCarthy, who the record shows had the presence of mind to stop the train, open its **[**560]** **[****871]** doors and rush to Barton's aid, testified that **[***66]** he brought the ***violin*** with him. Neither party explains why McCarthy did so. The jury also heard evidence of the Anna Mae Gibson incident, in which, after Gibson was pulled into the train, she asked the conductors if they could retrieve her shoes. The parties do not appear to have focused on the value of Gibson's shoes.

The jury heard this evidence. The jury could reasonably have concluded that the evidence showed that in traumatic episodes like these incidents, the people involved may do or say things which, in hindsight, seem odd. The jury could reasonably have concluded that the victims in such incidents may focus on things that seem unimportant in hindsight, but represent an attempt to regain control over their circumstances, or to fend off hysteria. Barton's comment to the **[*1038]** emergency room doctor that she "went back" to get her ***violin***

implies that it was left behind, which was obviously not the case at the point where Barton was attached to the train. Defendants point to no evidence that she had left the ***violin*** case and reboarded the train to retrieve it. Barton's comment might refer to her initial difficulty when the ***violin*** case became caught on poles at the top of the vestibule, **[***67]** but such speculation only demonstrates the ambiguity that confronted the jury.

In sum, the jury weighed opposing evidence and concluded that Barton was 4.5% at fault. That verdict reflects the jury's judgment that while Barton bore some responsibility, her injuries were not primarily the result of a desire to hang on to the ***violin*** case. Given the record in this case, defendants have failed to show that the jury's conclusion was unreasonable, arbitrary or not based upon the evidence in this respect. The cases defendants cite wherein Illinois courts have found the allocation of fault against the manifest weight of the evidence are factually distinguishable, even from the descriptions provided in defendants' brief See, e.g., Johnson v. O'Neal, 216 Ill. App. 3d 975, 987, 576 N.E.2d 486, 495, 159 Ill. Dec. 817 (1991) (allocation of 72.5% of fault to passenger for failing to leave a speeding vehicle was untenable in light of driver's negligence).

Defendants claim that the allocation of fault must be attributed to trial error. Defendants claim that Barton's expert was not qualified. [14] Defendants cite Jones v. O'Young, 154 Ill. 2d 39, 607 N.E.2d 224, 180 Ill. Dec. 330 (1992), **[***68]** and its progeny, but those cases involve the qualification of medical experts, particularly the "school of medicine" rule, which is not at issue here. An expert witness is a person who, because of education, training or experience, possesses specialized knowledge beyond that of the average person on a factual matter material to a claim or defense in the litigation. Lee v. ***Chicago*** Transit Authority, 152 Ill. 2d 432, 459, 605 N.E.2d 493, 504, 178 Ill. Dec. 699 (1992). Whether a witness is qualified to testify as an expert rests within the sound discretion of the trial court. Schaffner v. ***Chicago*** & North Western Transportation Co., 129 Ill. 2d 1, 36, 541 N.E.2d 643, 658, 133 Ill. Dec. 432 (1989).

The record shows that Finan was a former NTSB **[***69]** accident investigator and was currently certified by the Federal Railroad Administration as an operating practices inspector. Finan testified that he investigated accidents on a number of systems, including the **[*1039]** CTA, the New York subway system, and others that the record **[**561]** **[****872]** shows are commuter rail services. Finan had never investigated a door-closing incident, but this court has not required the degree of specificity in expertise that defendants suggest. See, e.g., Patel v. Brown Machine Co., 264 Ill. App. 3d 1039, 1056, 637 N.E.2d 491, 502, 201 Ill. Dec. 902 (1994). Finan's prior lack of familiarity with door-closing standards goes to the weight of his

[14] Barton claims waiver based on defendants' failure to renew their objection after cross-examining Finan, but the transcript shows that defendants were not permitted to cross-examine Finan on his qualifications before he gave his opinions.

testimony, not his competency. See Buford by Buford v. ***Chicago*** Housing Authority, 131 Ill. App. 3d 235, 244, 476 N.E.2d 427, 435, 86 Ill. Dec. 926 (1985).

Defendants claim that Finan offered no testimony regarding the applicable standards of care and their alleged breach. The record shows that Finan offered such opinions. Indeed, the record shows that the defendants objected to many of them, when directed toward Metra. [15]

[*70]** For example, defendants assert that Finan improperly testified that Metra was like a parent that needed to instruct its child, or was the parent company of CNW. Defendants objected at trial, based on Illinois Supreme Court Rule 213 (177 Ill. 2d R. 213), which generally requires that, upon written interrogatory, a party must disclose the subject matter, conclusions, opinions, qualifications and reports of a witness who will offer any opinion testimony. Department of Transportation v. Crull, 294 Ill. App. 3d 531, 536, 690 N.E.2d 143, 146, 228 Ill. Dec. 834 (1998). Rule 213 establishes stricter standards regarding disclosure than did the now-repealed Rule 220, which formerly governed expert witnesses. Crull, 294 Ill. App. 3d at 538-39, 690 N.E.2d at 148. However, elaborating on a disclosed opinion does not automatically violate Rule 213, where the testimony states logical corollaries to the opinion, rather than new reasons for it. See Seef v. Ingalls Memorial Hospital, 311 Ill. App. 3d 7, 23, 724 N.E.2d 115, 127-28, 243 Ill. Dec. 806 (1999). The trial court's ruling admitting the evidence will not be reversed absent an abuse of discretion. **[***71]** Seef 311 Ill. App. 3d at 22, 724 N.E.2d at 126.

Finan's testimony that Metra had "a relationship to oversee their contractors, to make sure that their contractors are performing in a safe and efficient manner" may not be an opinion; Mogan testified that Metra conducted safety audits in cooperation with CNW. Finan's reference to a parent-child relationship, when read in context, refers to the fact that Metra owns and operates many lines, yet has a PSA with CNW as to this particular line. Finan elsewhere referred to the lines as sisters. Defendants failed to object to Finan's testimony that Metra was "remiss in [its] duties as the parent company" in their **[*1040]** post-trial motion, thus waiving the argument. 155 Ill. 2d R. 366(b)(2)(iii). [16]

---

[15] The record shows that defendants did not object at trial to Finan's alleged assertions that CNW must insure passenger safety, resulting in waiver on appeal.

[16] Notwithstanding defendants' waiver, we note that an error in admitting evidence affecting the allocation of fault may require a new trial where it is probable that excluding it would have caused the jury to find that: (1) the plaintiff was more than 50% negligent, thus barring recovery under 735 ILCS 5/2-1116 (West 1994); (2) a defendant that was not found negligent had some culpability; or (3) a defendant was more than 25% culpable, giving rise to joint liability as to that defendant under 735 ILCS 5/2-1117 (West 1994). See Regala v. Rush North Shore Medical Center, slip op., No. 1-99-4049 (1st Dist. 1st Div., August 10, 2001), slip op. at 6-7 (modified on denial of rehearing); LoCoco v. XL Disposal Corp., 307 Ill. App. 3d 684, 695, 717 N.E.2d 823, 832, 240 Ill. Dec. 474 (1999); Parker v. Illinois Masonic Warren Barr Pavilion, 299 Ill. App. 3d 495, 504-05, 701 N.E.2d 190, 196, 233 Ill. Dec. 547 (1998).

Defendants argue that Regala establishes a per se rule that the admission of an opinion in violation of Rule 213 requires a new trial. However, Regala was based in part on "the effect of the erroneous admission of *** undisclosed opinions," which does not create a per se rule. Regala, No. 1-99-4049, slip op.

[562]** **[***72]** **[****873]** Defendants claim that prior to trial, Finan opined only that the door light procedure was unsafe and that the prior incidents should have alerted defendants that there was a problem. However, Finan's May 21, 1998, report notes his test of the train at issue, which showed that the doors could be open as much as a foot when the door light was activated. Finan's report also states that defendants were aware of the SSOs. Finan's report states that Metra should have known of the difference in door-closing procedures. Finan found it "difficult to believe" that Metra and CNW waited until after the Barton incident to install the second look system, which Finan opined was the industry custom and standard. Finan's report concluded that defendants had **[*1041]** failed to take reasonable measures to ensure passenger safety, because it was known that CNW's procedure was producing injury, yet defendants failed to act.

Given this report, it could be inferred that Finan believed that the SSOs were caused by reliance on the door light system, both in theory and as tested on the train car at issue. It could also be inferred that Finan believed that both defendants had a duty to recognize the problem and breached **[***73]** their duty of care by not implementing the second look system. Thus, the trial court did not abuse its discretion in admitting Finan's testimony.

Defendants object to the admission of videotape, along with stills taken therefrom and Finan's explanatory testimony, of the inspection of the train at issue. Defendants argue that the evidence lacked foundation, because Barton could not show that the train was in the same condition as it was at the time of her injury. At trial, the court overruled the objection, subject to Barton tying up later. Larson later testified that, barring some reported event, he would expect that the train was in the same condition it was at the time of the injury.

Defendants also objected that evidence showing that the door light went on while the doors were open 9 to 12 inches was irrelevant to show causation because the testimony showed that the doors were closed for 10 seconds before the train started to move. However, such evidence was relevant to show whether the defendants breached their duty by relying on the door light system. [17]

[563]** **[***74]** **[****874]** Defendants objected to

---

at 7. Seef 311 Ill. App. 3d at 24, 724 N.E.2d at 128, also cited "the cumulative effect" of admitting the undisclosed opinions. In Adami v. Belmonte, 302 Ill. App. 3d 17, 24, 704 N.E.2d 708, 713, 235 Ill. Dec. 135 (1998), the trial court barred opinions prior to trial; this court affirmed, in part because the admission of the opinions would have prejudiced the defendant. Regala, Seef and Adami rely on Cruil, 294 Ill. App. 3d at 531, 690 N.E.2d at 143, a Fourth District case. The Fourth District requires that a party show prejudice resulting from a Rule 213 violation to obtain a reversal. Linn v. Damiano, 303 Ill. App. 3d 600, 606, 708 N.E.2d 533, 537, 236 Ill. Dec. 947 (1999). The Fourth, First and Second Divisions of the First District also require a showing of prejudice. Mitchell v. Palos Community Hospital, 317 Ill. App. 3d 754, 763-64, 740 N.E.2d 476, 483, 251 Ill. Dec. 395 (2000); Copeland v. Stebco Products Corp., 316 Ill. App. 3d 932, 946, 738 N.E.2d 199, 211, 250 Ill. Dec. 235 (2000); Parker, 299 Ill. App. 3d at 503, 701 N.E.2d at 195. Given the verdict in this case, the alleged errors would not meet the criteria of Regala, LoCoco or Parker.

[17] Goosie later testified that the door light problem did not show up in the pre-trip inspection, but such testimony merely created a question of fact for the jury to resolve.

evidence of the SSOs and CNW's responses to them, which was introduced to support the claim for punitive damages. As the trial court did not err in submitting that claim to the jury, the evidence was properly admitted, with one exception. Evidence that neither defendant disclosed Croghan as a witness is "not proper grist for an award of punitive damages." Kopczick, 308 Ill. App. 3d at 978, 721 N.E.2d at 779. However, Kopczick did not reverse the punitive damage award based on the introduction of evidence of discovery violations. Given the record here, defendants have not shown reversible error. See, e.g., Lee 152 Ill. 2d at 472, 605 N.E.2d at 510; LoCoco, 307 Ill. App. 3d at 695, 717 N.E.2d at 832.

Defendants have not shown that the verdict was against the manifest weight of the evidence.

V

Defendants contend that damages awarded in this case for **[*1042]** pain and suffering, disability, and disfigurement are "excessive to an extreme." The determination of damages is a question generally reserved to the trier of fact; a reviewing court will not lightly substitute its opinion for the judgment rendered in the **[***75]** trial court. Richardson v. Chapman, 175 Ill. 2d 98, 113, 676 N.E.2d 621, 628, 221 Ill. Dec. 818 (1997). In this case, the record discloses that the jury not only observed Barton, but also was shown photographs regarding Barton's surgeries and disfigurement. For example, Dr. Dumanian's videotaped testimony regarding the tissue expansion surgeries apparently included enlarged pre- and post-operative photographs. The jury also was shown a "day in the life" videotape to demonstrate the extent of Barton's injuries and resulting limitations on her normal life activities. The transcript discloses that plaintiff's counsel used such material during closing argument.

Defendants have failed to identify where any of this material appears in the record on appeal. No videotape was included in the record on appeal. The transcript of proceedings reveals almost no detail of the "day in the life" videotape, as it was shown to the jury without sound. Moreover, while defendants have objected to the introduction of still photographs taken from the videotape of the inspection of the train car, and included a copy of one such photographic exhibit in their appendix, they did not identify **[***76]** where the exhibit appears in the record, further supporting the conclusion that the photographic exhibits were not included in the record on appeal.

Defendants, as the appellants, have the burden of presenting the court with an adequate record for review. Haudrich v. Howmedica, Inc., 169 Ill. 2d 525, 546-47, 662 N.E.2d 1248, 1258, 215 Ill. Dec. 108 (1996). Although Barton and others testified on the issue of noneconomic damages, some cases exemplify the cliche that "a picture is worth a thousand words"; much that sounds cold coming from a witness may be better conveyed by a photograph. Parson v. City of ***Chicago***, 117 Ill. App. 3d 383, 390, 453 N.E.2d 770, 775, 72 Ill. Dec. 895 (1983); see Edward Hines Lumber Co. v.

Village of Villa Park, 34 Ill. App. 3d 711, 716, 340 N.E.2d 339, 343 (1976). Accordingly, we conclude that we are foreclosed from addressing defendants' argument by their failure to provide this significant photographic and videotaped material on appeal. Schoonover v. International Harvester Co., 171 Ill. App. 3d 882, 887, 525 N.E.2d 1041, 1044-45, 121 Ill. Dec. 734 (1988) (consideration of adequacy of damages **[***77]** foreclosed where appellant failed to include videotaped evidence depositions of his medical experts); see People **[**564]** **[****875]** ex rel. City of Rockford v. City of Loves Park, 47 Ill. App. 2d 286, 292-93, 198 N.E.2d 133, 137 (1964). The verdict was rendered by a jury which observed all of the evidence at trial. Defendants' post-trial motion failed to convince the trial judge, **[*1043]** who observed all of the evidence. On appeal, defendants cannot expect this court to substitute its opinion for that of the jury absent the photographic and videotaped material that so directly bears on the issue of noneconomic damages.

For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

Buckley, J., concurs.

O'Brien, J., dissents in part and concurs in part.

Concur by: O'Brien (In Part)

Dissent by: O'Brien (In Part)

Dissent

Justice O'Brien dissenting in part, and concurring in part:

What is the appropriate analysis and remedy for a violation of Supreme Court Rule 213?

James Finan, plaintiff's expert, was disclosed and deposed as a former NTSB accident investigator and an operating practices inspector certified by the Federal Railroad Association. His disclosed **[***78]** expertise and opinions concerned the physical capabilities and performance for the train doors in question and the safety rules and practices regarding the doors.

However, at trial Finan testified that Metra was like a parent not knowing what the child is doing, that Metra was "remiss in their duties as a parent company", that Metra had a "relationship to oversee their contractors, to make sure that their contractors are performing in a safe and efficient manner". These opinions, which speak to the relationship between Metra and CNW and to any duties of Metra and CNW, were not disclosed pursuant to Supreme Court Rule 213 and thus, violated Rule 213.

The committee comments to Rule 213 state that, "in order to avoid surprise, the subject matter of all opinions must be disclosed pursuant to this rule * * * and that no new or additional opinions will be allowed unless the interests of justice require otherwise." 177 Ill. 2d R. 213(g), Committee Comments. Upon written interrogatory, a party must disclose the subject matter, conclusions, opinions, qualifications and reports of any

witnesses who will offer any opinion testimony and seasonably supplement any previous answers when additional **[***79]** information becomes known. Department of Transportation v. Crull, 294 Ill. App. 3d at 536-37.

The importance of an expert and the impact that expert has upon the trier of fact in undisputed. An expert is integral to a case because an expert can assist the trier of fact to understand evidence or to decide a fact in issue which is difficult to comprehend or to explain. **[*1044]** See generally: Wojcik v. City of ***Chicago***, 299 Ill. App. 3d 964, 979, 234 Ill. Dec. 137, 702 N.E.2d 303 (1998); Thacker v. UNR Industries, Inc., 151 Ill. 2d 343, 365, 177 Ill. Dec. 379, 603 N.E.2d 449 (1992); ***Chicago*** Title and Trust Co. v. Brescia, 285 Ill. App. 3d 671, 682, 221 Ill. Dec. 709, 676 N.E.2d 230 (1996). Separate and unique discovery rules have been established in recognition of the significance of an expert. If separate and unique discovery exists for the disclosure of experts, should not the analysis and remedy for a violation of that disclosure differ from the analysis and remedy for a violation of other discovery rules?

Rule 213 establishes stricter standards regarding disclosure than did the now-repealed Rule 220. See generally: Seef v. **[**565]** **[****876]** Ingalls Memorial Hospital, 311 Ill. App. 3d at 21; **[***80]** Department of Transportation v. Crull, 294 Ill. App. 3d at 538-39; Adami v. Belmonte, 302 Ill. App. 3d 17, 24, 235 Ill. Dec. 135, 704 N.E.2d 708 (1998). If a stricter Rule 213 replaced Rule 220, should not the analysis and remedy for a violation of Rule 213 require a stricter and different analysis than a violation of Rule 220?

We have answered "yes" in Adami, Seef and Regala v. Rush North Shore Medical Center, slip op., No. 1-99-4049 (1st Dist. August 10, 2001) and have moved from a "harmless" or "no prejudice" analysis employed in Rule 220 violations to a *per se* analysis as exhibited in Regala. And, although the majority cites Regala in a footnote and states that it does not establish a *per se* analysis, the Regala opinion, citing Seef states otherwise. See Regala, No. 1-99-4049, slip op. at 6-8. The Rule 213 disclosure requirements are mandatory and subject to strict compliance by the parties. Seef v. Ingalls Memorial Hospital, 311 Ill. App. 3d at 21; Department of Transportation v. Crull, 294 Ill. App. 3d at 538-39; Adami v. Belmonte, 302 Ill. App. 3d at 24. The testimony **[***81]** of an expert is so powerful that any expert testimony at trial not previously disclosed is itself prejudicial and requires a new trial. See e.g., Regala, No. 1-99-4049, slip op. at 6-8. And, because Finan's testimony impacted upon the allocation of fault between Metra and CNW, a new trial as to both Metra and CNW should be granted.

Admittedly, this analysis is neither facile nor Mosaic but it appears consistent and equal; in Regala, plaintiffs were granted a new trial and here, defendants are requesting a new trial. Recognizing the difficulties with this analysis, the guidance of the Supreme Court is earnestly desired for the intermediate and trial courts so that the last days of Rule 220 and the reasons for its

demise do not return.

Accordingly, I would reverse and remand this cause for a new trial on the Rule 213 issue. On all other issues, I concur.

End of Document

American Public Health Association
Promoting Public Health Research, Policy, Practice and Education
About Us Subscriptions Submissions
PUBLIC HEALTH

Am J Public Health. 2009 March; 99(3): 408–415.
doi: 10.2105/AJPH.2008.136952
PMCID: PMC2661438

The Effect of State Regulations on Truck-Crash Fatalities

Grant W. Neeley, PhD and Lilliard E. Richardson, Jr, PhD

Grant W. Neeley is with the Department of Political Science, University of Dayton, Dayton, OH. Lilliard E. Richardson Jr is with the Truman School of Public Affairs, University of Missouri, Columbia.

Corresponding author.

Requests for reprints should be sent to Grant W. Neeley, Department of Political Science, 300 College Park, University of Dayton, Dayton, OH 45469-1425 (e-mail: Grant.Neeley@notes.udayton.edu).

Peer Reviewed

Contributors

G. W. Neeley and L. E. Richardson Jr contributed equally to the writing of this article.

Accepted September 8, 2008.

Copyright © American Public Health Association

Abstract

Go to:

To improve traffic safety, states limit truck length and weight, and some set lower speed limits for trucks than for other vehicles. We examined the impact of truck-specific restrictions and general traffic-safety policies on fatality rates from crashes involving large trucks.

We used state-level data from 1991 to 2005 with a cross-sectional time-series model that controlled for several policy measures. We found that higher speed limits for cars and trucks contributed to higher fatality rates, but differential speed limits by vehicle type had no significant impact.

Truck-length limitations reduced fatalities in crashes involving large trucks. Our model estimates suggested that if all states had adopted a speed limit of 55 miles per hour for all vehicles in 2005, an additional 561 fatalities would have been averted.

LARGE TRUCKS ACCOUNT for less than 5% of registered vehicles in the United States and only 8% of the total miles driven, but they are disproportionately involved in passenger vehicle occupant deaths compared with other vehicle types.[1] About 5000 fatalities and 120 000 injuries per year occur in large-truck crashes; 15% of these fatalities occur in large trucks, and 78% occur in the other vehicles involved.[2,3]

The Federal Motor Carrier Safety Administration set a goal of reducing fatalities associated with crashes involving trucks by 41% from 1996 to 2008, and the rate dropped from 2.81 fatalities per 100 million vehicle miles traveled (VMTs) in 1996 to 2.29 in 2004. The federal government regulates truck-driver behavior with required rests and time traveled per day, and the number of on-site safety reviews at trucking companies doubled from 1998 to 2004.[2] The states, however, are primarily responsible for American traffic-safety policy, including licensing guidelines, speed limits, laws concerned with drinking and driving, and seat-belt requirements. Some state policies have been enacted in direct response to federal pressure, such as the adoption of 0.08 blood alcohol content (BAC) laws, but state traffic-safety policies vary considerably.

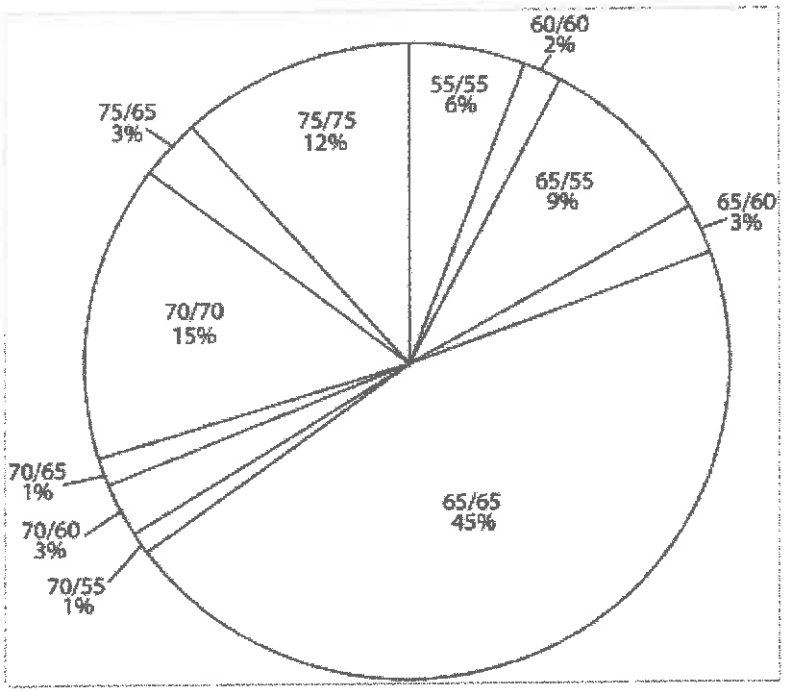
EXHIBIT H-1

State policies often regulate driving behavior without regard to vehicle type (e.g., prohibiting drug use, limiting BAC, setting a minimum legal drinking age, and requiring the use of seat belts). These policies seek to limit injurious and fatal traffic crashes by all drivers. For truck transportation, states not only regulate speed but also limit truck weight, length, and height, and states use scales to detect violations.[4] The federal government has set a standard for truck weight and length on interstate highways, but states set maximum truck lengths and weights for all other state roadways.

States have frequently modified speed limits over recent years as legislators have responded to national regulations, federal financial incentives, interest-group pressure, and constituent preferences. Although there is a spirited ongoing debate on the general impact of speed limits, truck speed limits have received scant scholarly attention. The common assumption is that higher speed limits will pose a greater danger to vehicle occupants, but research on the effect of speed limits on traffic crash fatalities has shown mixed results.[5–14] In addition, studies on the impact of average truck speeds on fatalities show inconsistent results; some studies have shown that speed alone had no impact on fatalities,[15] whereas others have found a significant association between higher speed limits and more fatalities.[16,17]

States often set lower speed limits for large trucks than for other motor vehicles. Differential speed limits by vehicle type have the potential to create 2 streams of traffic flowing at different rates.[18] Studies have shown that differential speed limits resulted in observed speed differences between cars and trucks, but the actual differences were often less than the posted differences.[19–21] Further, studies have found that a greater speed difference was associated with a significant increase in fatalities.[15–17,22]

Since 1995, states have had the freedom to set maximum speed limits. As shown in Figure 1, trucks and cars had the same maximum rural speed limits for a majority of years from 1991 to 2005. The 55-mile-per-hour (mph) speed limit was in force for both passenger vehicles and large trucks 6% of the time. Truck and car speed limits at 60 mph account for 2% of state-year observations, truck and car limits at 65 mph account for 45%, truck and car limits at 70 mph account for 15%, and truck and car limits at 75 mph account for 12%. Differential speed limits account for 20% of observations, with the largest difference at 15 mph (70 for cars and 55 for trucks) in 1% of observations, a 10-mph difference in 15%, and a 5-mph difference in 4%.



Note. **Speed limits are given in miles per hour, with the speed limits for cars listed before those for trucks. The maximum rural speed limit in each state for each year was a state–year observation.**

Figure 2 provides an initial assessment of the relationship between maximum rural speed limits and the traffic-fatality rate. The graph clusters the data by car speed limits; within each cluster, there is a separate bar for each truck speed limit associated with that cluster's car speed limit. Generally, states with higher speed limits have higher fatality rates. The 65-mph and 75-mph clusters have higher fatality rates than do the 55-mph and 60-mph clusters. There is no real difference between the truck speed categories in the lower-speed clusters, but the 70-mph cluster shows a strong positive relationship between higher truck speeds and much higher fatality rates.

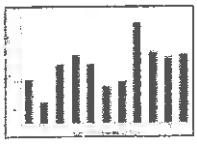


FIGURE 2

Mean number of fatalities in crashes involving large trucks per billion vehicle miles traveled (VMT), by rural interstate speed limits: United States, 1991–2005.

Little research has been conducted on the impact of trucking regulations on traffic safety, but we intended to fill this gap. Our main areas of interest were the maximum speed limits for trucks and passenger vehicles and the differences between the 2 speed limits. Our research focused on whether truck-specific speed limits, length restrictions, and weight limits affected US traffic-fatality rates. We used state-level data to conduct a cross-sectional time-series regression analysis of traffic fatalities from crashes involving large trucks in the United States from 1991 to 2005. We also examined the impact of a number of general traffic-safety policies on fatality rates from crashes involving large trucks.

In addition to speed limits, alcohol laws have long been at the forefront of states' traffic-safety efforts. Studies have shown that the minimum legal drinking age affects passenger vehicle safety,[23,24] but this factor is invariant during our time frame. To test policies seeking to reduce fatalities related to drinking and driving, we dichotomized the presence of a 0.08 BAC state law, and we included the state's alcohol consumption level in our model. Previous research shows that states with higher levels of alcohol consumption experience higher truck-crash fatality rates[25–28] and that 0.08 BAC laws reduce such fatalities.[29]

States also enact passenger-restraint laws to enhance traffic safety, and studies have found a significant fatality-rate reduction associated with laws requiring seat belt use in passenger vehicles.[27,28,30–32] We expected this relationship to hold for fatalities from crashes involving large trucks.

Highway conditions also influence crash fatalities, and our model included funding levels for 3 categories of highway expenditures: capital, maintenance, and police and safety.[27,28,33] We expected capital expenditures to increase roadway mileage and increase traffic flow, which accommodate higher speeds that could contribute to crash fatalities. Maintenance expenditures may eliminate poor road conditions or enhance safety features, thereby lowering fatality rates. We expected higher levels of law enforcement expenditures to increase compliance with safety laws and therefore decrease the fatality rate.

METHODS

Go to:

We tested a cross-sectional time-series regression model of truck-crash fatalities in the United States for 1991 to 2005. The dependent variable was the number of fatalities in vehicle crashes involving a large truck per billion VMTs in the state. We obtained the dependent variable from the Fatality Analysis Reporting System, a dataset maintained by the National Highway Traffic Safety

Administration.[34] We dropped Hawaii from the analysis because (1) there was a low number of fatalities (5 or fewer annually in 10 of the years covered by our analysis), (2) there were few truck registrations, (3) there was no truck traffic from adjoining states, and (4) there was no variation in speed limits, truck length restrictions, or truck weight restrictions during the study period.

Given the dominance of the cross section (49 states) over the time component (15 years), we used generalized least squares regression to estimate models. The states were the unit of analysis, and the model included fixed effects for states and for each year. The state fixed effects accounted for unique circumstances in each state, and the year fixed effects accounted for changes over time in the data set, such as national factors that may have influenced traffic safety across states.

In estimating the models, we tested for random effects in the cross sections. We used the Breusch and Pagan Lagrangian multiplier test,[35] and we found that $\chi^2 = 644$, with $P < .001$. This suggested that we reject the random-effects model and use a fixed-effects specification. Then we conducted the Wooldridge[36] test for autocorrelation in the panel [H_0 - no first-order autocorrelation] and found evidence of a first-order autoregressive structure ($F_{1,48} = 4.09$, with $P = .048$). Therefore, the model relied on a generalized least squares specification with a first-order autoregressive component.

Whereas other studies have examined the relationship between observed speeds and the fatality rate, we focused on speed limits. The only measure consistently available during the time period we studied was the maximum speed limit allowed on any state roadway. Typically, this maximum applies only to rural interstate highways, but some states allow the maximum speed on rural state highways as well. Other states (usually with large urban populations) have no differences between urban and rural speed limits. We used a variety of sources for speed limit data,[37] and when sources conflicted, we confirmed all data by checking state Web sites for relevant statutes, driver's license guides, or highway patrol documents. In some cases, we contacted states to confirm the data.

We obtained data on truck length and weight restrictions from several sources, including the National Automobile Dealers Association,[38] the American Trucking Association, and state agencies. Length and weight restrictions vary by roadway type; for each state we used the highest limit regularly available without a special permit. We obtained data on seat belt laws and 0.08 BAC laws from *Traffic Safety Facts*.[39] We included a dichotomous measure for whether a state had mandatory seat belt legislation in our model. We reported state alcohol consumption in gallons of ethanol per capita as reported by the National Institute of Alcohol Abuse and Alcoholism.[40]

Capital, maintenance, and police and safety expenditures (listed in *Highway Statistics* [41]) included expenditures from all levels of government. To control for inflation, we adjusted dollar values to reflect constant dollars, based on the 1982 to 1984 market basket of the Consumer Price Index for All Urban Consumers from the US Bureau of Labor Statistics.[42] To reduce the effect of short-term fluctuations in budgets or the impact of a single large project, we used the 5-year average of capital expenditures.

We also included several control variables that could influence traffic safety, such as the level of risk associated with the volume of truck traffic. The number of VMTs by trucks would allow a more precise measure of truck traffic, but VMT estimates have only been available since 1994. To extend our time series and capture maximum variation in state policies, we operationalized the amount of truck traffic on a state's roadways as diesel fuel consumption in that state per VMT.[41] For the observed data (1994–2005), the correlation between diesel fuel consumption and truck VMT was 0.97, indicating that the operationalization would be a viable proxy. We expected that as the diesel fuel consumption per VMT in a state increased, the truck-crash fatality rate would increase.

To capture the total amount of traffic on a state's roadways, we included the total VMT by all vehicles per capita.[41] The total VMT reflected underlying trends in population, number of vehicles on the road,

and distances traveled. We expected that total VMT per capita would correlate positively with truck-crash fatality rates, because higher VMT suggests more driving time, implying greater crash risk.

Per capita income (measured in constant dollars, with 1982–1984 = $100) reflects economic factors,[43] but interpretations of its impact vary. Some studies suggest that citizens with higher incomes will demand greater safety,[26] whereas others suggest that drivers with higher incomes will place a higher value on time, thus increasing risky driving behavior.[44,45] Although risk compensation may affect individual behavior, we expected higher average income to contribute to safety in various ways, such as the purchase of newer and generally safer vehicles. Unemployment rates also influence driving habits; periods of high unemployment may suppress driving as citizens economize their leisure activities.[27,28] We obtained data on income and unemployment from the US Census Bureau.[43]

We also included control variables for weather and population density.[43] Severe cold weather may correlate with unsafe road conditions that limit traffic, thus reducing fatalities. Also, whereas precipitation may slow truck traffic, it also increases the likelihood of a driver losing control and experiencing a more severe crash. Population density is a proxy for urban areas,[43] which have lower speed limits and higher levels of congestion that may reduce truck speed and induce truck drivers to seek less traveled routes or travel at less congested times, resulting in lower fatality rates.

RESULTS

Go to:

Our dependent variable was the fatality rate in crashes involving large trucks (fatalities per billion VMT). Because of the high degree of collinearity among our main variables of interest, we used 4 model specifications: maximum speed limit for trucks, maximum speed limit for cars, equal maximum speed limits for both vehicle types, and the total combined speed-limit amount above 55 mph (Table 1). We relied on a dichotomous variable for whether the 2 speed limits were equivalent (1) or not (0), but in unreported models, we observed no differences if the variable was measured as an interval variable.

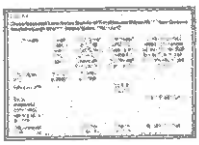


TABLE 1

Cross-Sectional Time-Series Models of Fatalities per Billion VMT From Crashes Involving Large Trucks: United States, 1991–2005

The first model revealed that a higher truck speed limit had a significant positive association with the truck-crash fatality rate. In the second model, when we controlled for the same speed limit for cars and trucks, the truck speed limit parameter estimates was also positive and significant. The equal-speed-limit variable did not approach significance, and the coefficient's sign was counter to expectations, with a positive value (and thus a higher fatality rate) rather than a negative one. A higher speed limit for trucks contributed to significantly higher fatality rates, but differences in speed limits between cars and trucks had no significant impact. The third model showed that car speed limits had similar positive and significant effects on the truck-crash fatality rate, and the equal-speed variable remained nonsignificant. The fourth model showed that the total combined speed-limit amount above 55 mph had a significant effect on the fatality rate; the equal-speed variable was again nonsignificant.

Two safety policies geared toward all vehicles had different effects on the fatality rate from crashes involving large trucks. The adoption of a 0.08 BAC law had no significant impact on truck-crash fatalities, and a seat belt law had a significant negative effect. Although other studies[29] have found safety effects for a 0.08 BAC law, drinking and driving may be more widespread in urban areas or on rural arterials than on highways with a high truck volume. Studies have demonstrated that seat belt laws significantly reduce all traffic fatalities,[27,28,30–32] and we found that seat belt laws were associated with reduced fatality rates in crashes involving large trucks.

Truck-specific regulatory policies governing maximum length and maximum weight showed mixed effects on truck-crash fatalities. A higher maximum truck length was significantly associated with a higher fatality rate, but the effect of a higher maximum truck weight was nonsignificant and not in the hypothesized direction. There are several ways to explain the null finding on maximum weight. First, a large proportion of truck traffic occurred on interstate highways, which have a consistent federal standard of 80 000 pounds in maximum weight and 65 feet in maximum overall length. Second, there were numerous exceptions to the weight limits, such as permits for manufactured homes and large, nonseparable loads. Third, studies suggest that a small fraction of trucks exceed 80 000 pounds.[16] Fourth, in a 2002 study, less than 1% of fatalities involved trucks that weighed more than 100 000 pounds, and less than 1% of fatalities involved trucks longer than 80 feet in combined length.[3] Finally, the low variance in the weight limit variable may have limited the results, because 34 states had a truck weight limit of 80 000 pounds in 2005.

Of the expenditure variables, only capital expenditures attained significance. Generally, states that spent more on expanding highway capacity had significantly higher truck-crash fatality rates. Higher capital expenditures may increase capacity, allowing higher speeds that contribute to more-severe crashes. On the other hand, maintenance expenditures and police and safety expenditures were not significantly related to truck-crash fatality rates. Such expenditures may focus on roadways not heavily used by large trucks or may be used for features that increase safety for cars but not trucks.

The control variables generally performed as expected. Diesel fuel consumption per VMT, as a proxy for truck travel, had a strong positive parameter estimates. As truck traffic increased, the truck-crash fatality rate also increased. The total VMT per capita variable, however, was significant and negative (contrary to expectations). In other words, the greater the mileage driven by the average state driver, the lower the state's truck-crash fatality rate. Of the remaining control variables, only income and unemployment rates attained significance; alcohol consumption, temperature, precipitation, and population density were nonsignificant.

DISCUSSION

Go to:

Our results agreed with previous research that found a significant association between speed limits and fatalities,[16,17] but our results contradicted studies finding a positive relationship between differential speed limits and fatalities.[15–17,22] Our results suggest that states can reduce traffic fatalities from crashes involving large trucks by lowering speed limits for all drivers and that setting lower limits for trucks than for cars will not mitigate the safety effects. Overall, higher speed limits for all vehicles appeared to be a major factor in the fatality rate from crashes involving large trucks, and a speed-limit difference between cars and trucks was not a significant issue. Research has shown that differences in actual speeds are often smaller than differences in posted speeds,[19–21] which may explain this finding of nonsignificance.

To add context to the interpretation of the results, Table 2 presents the estimated change in the annual number of fatalities for each state based on the fourth model in Table 1. With the parameter estimates for the total combined speed-limit amount above 55 mph (0.0078) and all other variables held constant at 2005 state levels, we predicted the number of fatalities in 2 scenarios: a state adopting a 55-mph speed limit for cars and trucks and a state adopting a 75-mph speed limit for all vehicles. We then used these values to estimate the expected change in fatalities relative to the actual 2005 fatalities. For example, in 2005, California's speed limit for cars was 70 mph and for trucks was 55 mph, and the state had 428 traffic fatalities. The model predicted that if California had adopted a 75-mph speed limit for all vehicles in 2005, the state would have had 64 more traffic fatalities than it did. Alternatively, if Texas had reduced its 2005 speed limits of 75 mph for cars and 65 mph for trucks to 55 mph for all

vehicles, the model predicted that there would have been 54 fewer fatalities than the 502 observed in the state that year.

TABLE 2

Predicted Annual Change in Truck-Crash Fatalities per State in 2005 Based on Hypothetical Adoption of 55-mph and 75-mph Speed Limits

Overall, the model predicted that if all states had changed their actual 2005 speed limits to a 75-mph limit, 362 more fatalities would have occurred. Alternatively, if all states had dropped their 2005 speed limits to 55 mph, 561 fewer fatalities would have occurred. The potential annual total shift of 923 fatalities created by the change from 55 mph to 75 mph represents almost 18% of the actual 5200 fatalities from crashes involving large trucks in 2005, suggesting that higher speed limits have contributed to thousands of additional fatalities from truck crashes over the past decade.

States have an array of policy tools they can use to reduce the fatality rate from crashes involving large trucks. Our results suggested that truck speed limits, car speed limits, seat belt laws, and truck-length limits are significant predictors of fatality rates in crashes involving large trucks. Differential speed limits for trucks and cars did not affect safety, and truck weight limits were not significantly associated with fatality rates from crashes involving large trucks.

Human Participant Protection

Go to:

No protocol approval was needed for this study.

References

Go to:

1. Lyman S, Braver ER. Occupant deaths in large truck crashes in the US: 25 years of experience. Accid Anal Prev 2003;35:731–739 [PubMed]

2. Large Truck Safety. Washington, DC: US Government Accountability Office; 2006. GAO publication 06–156

3. Matteson A, Blower D, Woodrooffe J. Trucks Involved in Fatal Accidents, Factbook 2002. Ann Arbor, MI: Transportation Research Institute; 2004

4. Teske P, Best S, Mintrom M. Deregulating Freight Transportation: Delivering the Goods Washington, DC: AEI Press; 1995

5. Meier KJ, Morgan DR. Speed kills: a longitudinal analysis of traffic fatalities and the 55 mph speed limit. Rev Policy Res 1981;1:157–167

6. Kamerud DB. Evaluating the new 65 mph speed limit. : Graham JD, editor. , ed Preventing Automobile Injury: New Findings from Evaluation Research. Dover, MA: Auburn House; 1988

7. Garber S, Graham JD. The effects of the new 65 mile-per-hour speed limit on rural highway fatalities: a state-by-state analysis. Accid Anal Prev 1990;22:137–149 [PubMed]

8. Baum HM, Wells JK, Lund AK. Motor vehicle crash fatalities in the second year of 65 mph speed limits. J Safety Res 1990;21:1–8

9. Baum HM, Wells JK, Lund AK. The fatality consequences of the 65mph speed limits, 1989. J Safety Res 1991;22:171–177

10. Chang GL, Paniati JF. Effects of 65 mph speed limit on traffic safety. J Transp Eng 1990;116:213–226

11. Wagenaar AC, Streff FM, Schultz RH. Effects of the 65 mph speed limit on injury morbidity and mortality. Accid Anal Prev 1990;22:571–585 [PubMed]

12. Pant PD, Adhami JA, Neihaus JC. Effects of the 65-mph speed limit on traffic accidents in Ohio. Transp Res Rec 1992;1375:53–60

13. Lave C, Elias P. Did the 65 mph speed limit save lives? Accid Anal Prev 1994;26:49–62 [PubMed]

14. Houston DJ. Implications of the 65-mph speed limit for traffic safety. Eval Rev 1999;23:304–315 [PubMed]

15. Lave CA. Speeding, coordination, and the 55 mph limit. Am Econ Rev 1985;75:1159–1164

16. Levy DT, Asch P. Speeding, coordination, and the 55 mph limit [comment]. Am Econ Rev 1989;79:913–915

17. Fowles R, Loeb PD. Speeding, coordination, and the 55 mph limit [comment]. Am Econ Rev 1989;79:916–921

18. Johnson SL, Pawar N. Cost-Benefit Evaluation of Large Truck–Automobile Speed Limit Differentials on Rural Interstate Highways. Fayetteville, AR: Mack-Blackwell Transportation Center; 2005

19. Baum HM, Esterlitz JR, Zador P, Penny M. Different speed limits for cars and trucks: do they affect vehicle speeds? Transp Res Rec 1991;1318:3–7

20. Mace DJ, Heckard R. Effect of the 65 mph Speed Limit on Travel Speeds and Related Crashes. Washington, DC: US Dept of Transportation; 1991

21. Harkey DL, Mera R. Safety Impacts of Different Speed Limits on Cars and Trucks. Washington, DC: Federal Highway Administration; 1994. FHWA publication RD-93-161

22. Garber NJ, Gadiraju R. Impact of differential speed limits on the speed of traffic and the rate of accidents. Transp Res Rec 1992;1375:44–52

23. Saffer H, Grossman M. Beer taxes, the legal drinking age, and youth motor vehicle fatalities. J Legal Stud 1987;16:351–374

24. O'Malley PM, Wagenaar AC. Effects of minimum drinking age laws on alcohol use, related behaviors and traffic crash involvement among American youth: 1976–1987. J Stud Alcohol 1991;52:478–491 [PubMed]

25. Asch P, Levy DT. Does the minimum drinking age affect traffic fatalities? J Policy Anal Manage 1987;6:180–192

26. Legge JS, Jr, Park J. Policies to reduce alcohol-impaired driving: evaluating elements of deterrence. Soc Sci Q 1994;75:594–606

27. Houston DJ, Richardson LE, Jr, Neeley GW. Legislating traffic safety: a pooled time series analysis. Soc Sci Q 1995;76:328–345

28. Houston DJ, Richardson LE, Jr, Neeley GW. Mandatory seat belt laws in the states: a study of fatal and severe occupant injuries. Eval Rev 1996;20:146–159 [PubMed]

29. Tippetts AS, Voas RB, Fell JC, Nichols JL. A meta-analysis of.08 BAC laws in 19 jurisdictions in the US. Accid Anal Prev 2005;37:149–161 [PubMed]

30. Chorba TL, Reinfurt D, Hulka BS. Efficacy of mandatory seat-belt use legislation. JAMA 1988;260:3593–3597 [PubMed]

31. Wagenaar AC, Maybee RG, Sullivan KP. Mandatory seat belt laws in eight states: a time-series evaluation. J Safety Res 1988;19:51–70

32. Houston DJ, Richardson LE., Jr Traffic safety and the switch to a primary seat belt law: the California experience. Accid Anal Prev 2002;34:743–751 [PubMed]

33. Zlatoper TJ. Determinants of motor vehicle deaths in the United States: a cross-sectional analysis. Accid Anal Prev 1991;23:431–436 [PubMed]

34. US National Highway Traffic Safety Administration. Fatality Analysis Reporting System Web site. Available at: http://www-fars.nhtsa.dot.gov/Main/index.aspx. Accessed September 7, 2008

35. Breusch TS, Pagan AR. A simple test for heteroscedasticity and random parameter estimates variation. Econometrica 1979;47:1287–1294

36. Wooldridge JM. Econometric Analysis of Cross Section and Panel Data Cambridge, MA: MIT Press; 2002

37. Accident Facts. Chicago, IL: National Safety Council; 1990–2006

38. Title and Registration Book: A Summary of Motor Vehicle Laws and Regulations. Costa Mesa, CA: National Automobile Dealers Association; 1990–2002

39. Traffic Safety Facts. Washington, DC: US National Highway Traffic Safety Administration; 1990–2006

40. US National Institute on Alcohol Abuse and Alcoholism Web site. Available at: http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm. Accessed October 14, 2007

41. Highway Statistics. Washington, DC: US Federal Highway Administration; 1990–2006

42. US Bureau of Labor Statistics. Consumer Price Index Web site. http://www.bls.gov/cpi. Accessed September 7, 2008

43. Statistical Abstract of the United States. Washington, DC: US Census Bureau; 1990–2006

44. Peltzman S. The effects of automobile safety regulation. J Polit Econ 1975;83:677–725

45. Graham JD, Garber S. Evaluating the effects of automobile safety regulation. J Policy Anal Manage 1984;3:206–224

46. *Trucks and Transportation*. Lansing: Michigan Dept of Transportation. 1998. Available at: http://web.archive.org/web/20070310171845/http://www.michigan.gov/documents/truckinfo_16563_7.pdf. Accessed September 2, 2008

Articles from American Journal of Public Health are provided here courtesy of **American Public Health Association**

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement"), is made and entered into this __ day of _____, 2017, by and between the Village of Sugar Grove, an Illinois municipal corporation ("Village") and HEARTLAND RECYCLING - SUGAR GROVE CCDD, LLC, an Illinois limited liability company ("HEARTLAND") individually referred to as "Party" and collectively referred to as "Parties."

WITNESSETH

WHEREAS, the Property (48.69 Acres MOL at the northwest corner of Harter Road and Route 47, the legal description for which and the Parcel Identification Numbers for which are contained on Exhibit Legal Description) is situated in the unincorporated area of Kane County, and is, or will soon be contiguous to, the incorporated territory of the VILLAGE; and,

WHEREAS, HEARTLAND is the owner of the Property; and,

WHEREAS, it is the desire of HEARTLAND to annex to and develop the Property as a mixed development named HEARTLAND of SUGAR GROVE in accordance with the terms of this Agreement and the ordinances of the VILLAGE; and,

WHEREAS, it is the desire of the VILLAGE to annex the Property and to facilitate its development pursuant to the terms and conditions of this Agreement and the ordinances of the VILLAGE; and,

WHEREAS, HEARTLAND has or will perform all acts required by law to effectuate such annexation; and,

WHEREAS, the Parties wish to zone the Property under the terms of this Agreement; and,

WHEREAS, all notices required by law relating to this Agreement have been given to the persons or entities entitled to such notice pursuant to the applicable provisions of the Illinois Compiled Statutes; and,

WHEREAS, the Corporate Authorities of the Village have duly affixed the time for a public hearing on this Agreement and pursuant to legal notices have held such hearing thereon all as required by the provisions of the Illinois Compiled Statutes; and,

WHEREAS, the Corporate Authorities and the Plan Commission of the VILLAGE have duly held all public hearings relating to zoning and Preliminary Plan approval and variations pursuant to public notices thereof, all as required by the provisions of the VILLAGE'S ordinances and the Illinois Compiled Statutes; and,

WHEREAS, the VILLAGE and HEARTLAND agree that the Property shall be developed in general in accordance with CONCEPT PLAN, attached hereto and incorporated herein as Exhibit CP; and,

Blumberg No. 5208
EXHIBIT
I-1

WHEREAS, in reliance upon the development of the Property in the manner proposed, HEARTLAND and the VILLAGE have executed all petitions and other documents that are necessary to accomplish the annexation of the Property to the VILLAGE; and,

WHEREAS, it is the desire of the VILLAGE and HEARTLAND that the development of the Property proceed, subject to the ordinances, codes and regulations of the VILLAGE, as amended; and,

WHEREAS, in accordance with the powers granted to the VILLAGE by the provisions of 65 ICLS 5/11-15.1 through 15.1-5 inclusive, relating to Annexation Agreements, the Parties hereto wish to enter into a binding Agreement with respect to the Property and to provide for various other matters related directly or indirectly to the annexation of the Property as authorized by the provisions of said statutes; and,

WHEREAS, pursuant to due notice and publication in the manner provided by law, the appropriate zoning authorities of the VILLAGE have had such public hearing and have taken all further action required by the provisions of 65 ILCS 5/11-15.1-3 and the ordinances of the VILLAGE relating to the procedure for the authorization, approval and execution of this Annexation Agreement by the VILLAGE.

NOW THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the Parties agree as follows:

I. ANNEXATION

HEARTLAND has filed with the Clerk of the VILLAGE a duly executed verified petition pursuant to, and in accordance with, 65 ILCS 5/7-1-1 *et. seq.* to annex the Property and any adjacent highways to the VILLAGE subject to the approval of this Agreement. The VILLAGE shall adopt any ordinances with regard to the zoning of this Property contemporaneously with this Agreement.

II. ZONING AND PLANNING

A. Zoning Map.

Contemporaneously with the annexation of the Property, the VILLAGE shall adopt an ordinance amending the provisions of the Sugar Grove Zoning Map so as to provide that the Property shall be classified as M-1 (Industrial) District, with a special use for Mining of sand, gravel and other clean fill material, permitting development with the variances, densities, and bulk restrictions set forth in Exhibit LROIP, Land Reclamation, Operations and Implementation Plan, attached and incorporated herein.

Mining shall be conducted to extract, clean, process and sell the reserves that are located on the Property. These activities shall be conducted simultaneously with the conduct of the Clean Construction and Demolition Debris filling operation. The CCDD Program will be the process

used in the Operations Plan, Exhibit 3 hereto, to conduct Land Reclamation. Exhibit 4 hereto, the Heartland Recycling Facility and Land Reclamation Project Preliminary Stormwater Management Analysis & Report and SWPP Implementation Plan, and specifically Exhibit LROIP thereto, the Land Reclamation, Operations and Implementation Plan, reflects how the Property will be brought to the final subgrade contemplated by this Agreement.

Due to the *de minimis* amount of mining to be conducted, and because minimg will be done in close conjunction with the filling and reclamation , the screening requirement for mining of Section 11-4-23 A are waived. The existing vegetation in the fifty foot (50') set back shall be maintained while the mining and mine reclamation activities are being conducted.

The Emergency Management Plan required by Section 11-4-23 B is attached as Exhibit EMP.

Because the amount of the mining to be conducted is *de minimis*, and because it will be done in close conjunction with the filling and reclamation, the set back requirement of Section 11-4-23 C is reduced to fifty feet (50').

Per Section 11-4-23 D. All equipment for the crushing, washing, mixing or storage of mined materials are located not less than two hundred feet (200') from any property line.

Upon completion of the Mining and Land Reclamation, the Property will be redeveloped as an M-1 use. If a part of the Property may be redeveloped prior to completion of the entire Mining and Land Reclamation, HEARTLAND may apply to redevelop the property in phases on such terms and conditions as the Village and HEARTLAND determine.

B. Preliminary Plat and Plan

It is the intention of the Parties that the Property shall be reclaimed and redeveloped under the provisions set forth on the Operations Plan which is attached and incorporated herein including all of its exhibits, including Exhibit 4, the Heartland Recycling Facility and Land Reclamation Project Preliminary Stormwater Management Analysis & Report And SWPP Implementation Plan, and all of the Exhibits to it including Exhibit EC, Existing Conditions; Exhibit EU, Existing Utilities, Exhibit CSDP, Conceptual Site Development Plan, and Exhibit LROIP, Land Reclamation, Operations and Implementation Plan prepared by CEMCON, last revised on October 11, 2017. The Property is contemplated to be developed in accordance with the Concept Plat prepared by CEMCON and last revised on October 11, 2017. The development of the Property after completion of the Land Reclamation, Operations and Implementation Plan shall be the subject of plans and submittals

C. Comprehensive Plans

Contemporaneously with the annexation of the Property, the VILLAGE shall, if necessary, amend its Comprehensive Plan to provide for the uses on the Property that are reflected in this Agreement.

D. Village Codes and Ordinances

The VILLAGE and HEARTLAND agree that except as specifically modified in this Agreement and attached drawings and exhibits, the Property shall be developed in compliance with all ordinances, codes and regulations of the VILLAGE, as amended from time to time.

E. Grading and Site Development

Upon completion of the Mining and CCDD program contemplated by the Operations Agreement as reflected in the Land Reclamation, Operations and Implementation Plan, HEARTLAND shall be permitted to apply to the Village for redevelopment as permitted in the M-1 District under the Sugar Grove Zoning Ordinance.

The Operations of the Clean Construction and Demolition Debris portion of the Land Reclamation, Operations and Implementation Plan shall not commence until the Illinois Environmental Protection Agency issues a CCDD Permit, provided that HEARTLAND may accept Uncontaminated Soil Fill as soon as it registers as a Soils Only Site with the IEPA.

F. Other Zoning/Planning Issues

III. ROADS AND HIGHWAYS

A. Right-of-Way

HEARTLAND shall dedicate, free of cost to the VILLAGE or to the appropriate government authority, rights-of-way located within the Property necessary to complete development of Local Roads necessary to serve the Property.

B. Contribution

No Roads and Highway contributions are required to complete the Land Reclamation, Operations and Implementation Plan phase of the Project.

C. Improvements

No Improvements are required to complete the Land Reclamation, Operations and Implementation Plan phase of the Project.

IV. FEES, DONATIONS, AND CONTRIBUTIONS

Annexation and Development Related Fees

1. HEARTLAND shall pay the Village Professional fees set forth in the attached Exhibit F according to the schedule set forth in Exhibit F. The VILLAGE makes no representation or commitments as to fees charged or imposed by any other governmental or private entity having jurisdiction over the subject Property. The parties further acknowledge and agree that the fees listed on Exhibit F are being donated to the VILLAGE, and the method, manner, timing, and

distribution of any subsequent distributions by the VILLAGE to other governmental entities shall be solely controlled by the VILLAGE. The PARTIES further acknowledge that the intent of this Agreement is that the donations be utilized for projects within the boundaries of Sugar Grove, subject to the discretion of the VILLAGE.

2. All fees and charges set forth on Exhibit F shall be paid at the times designated on Exhibit F.

V. PARK LAND, MUNICIPAL SITES, AND SCHOOL DISTRICTS

A. Park Contribution

HEARTLAND and the VILLAGE agree that to comply with the VILLAGE'S Land-Cash Ordinance, as modified by this Agreement no Land-Cash contribution of Park Land or Cash shall be required to be contributed.

B. School Contribution

HEARTLAND and the VILLAGE agree that to comply with the VILLAGE'S School Land-Cash Ordinance donations, no Land-Cash contribution of School Land or Cash shall be required to be contributed.

C. Host Fees.

HEARTLAND will conduct limited mining of sand and gravel to maximize the amount of CCDD that can be economically placed on the property pursuant to the Land Reclamation, Operations and Implementation Plan phase of the Project.

HEARTLAND will pay the VILLAGE a host fee of 2% of the revenue collected from sales of Mined Materials from the Project, based on the Mined Materials receipt journal and Yard Tickets it maintains to charge customers for Mined Materials that it sells. HEARTLAND will give the VILLAGE an accounting of the total volume of Mined Materials sales received each quarter no later than the 15th day of the next month, and this accounting shall be accompanied by payment of the Host Fee calculated in accordance with this paragraph. The Village may audit these accountings not more frequently than annually. HEARTLAND will provide access to the VILLAGE to its Yard Tickets and it receipts journal for sales of Mined Materials, and such other documents as the VILLAGE reasonably requires to conduct its accounting.

D. Use of CCDD Facility for Village of Sugar Grove Construction Projects.

The Village of Sugar Grove may take its CCDD material from Village of Sugar Grove municipal construction projects self performed by the Village of Sugar Grove to the site without disposal fee, subject to the Operations Plan.

VI. SIGNAGE

A. Signage

The VILLAGE agrees to the following signage to be used in the development only on private property approved by the VILLAGE Board and Community Development Department:

During the Land Reclamation, Operations and Implementation Plan phase of the Project. HEARTLAND may maintain a Project Sign at the intersection of Route 47 and Harter Road. Directional signs and Entrance Sign at or about the entrances on Harter Road will be used to direct mining and CCDD traffic.

It is contemplated by the parties that upon completion of the Land Reclamation, Operations and Implementation Plan phase of the project, Monument Signage will be required for the M-1 redevelopment of the project at Route 47 and Harter Road. Appropriate Entry Monuments, Signs, Directional Signs and a Street Signage Plan will be submitted for approval based on the VILLAGE sign ordinance in place at the time of the M-1 redevelopment.

B. Construction Trailer. During the Land Reclamation, Operations and Implementation Plan phase of the project, the mining, recycling, and CCDD activities will be administered from a construction trailer with temporary toilet facilities and bottled water for drinking and sanitation. This will be installed and moved as per the Operations Plan which is made a part of this Agreement.

C. Extension of all Public Improvements

HEARTLAND shall extend all required public improvements to the borders of its Property and off-site when the use of the adjoining property is the same as on HEARTLAND and as requested by the VILLAGE.

VII. BUILDING AND OCCUPANCY PERMITS

A. Building Permits

The VILLAGE agrees to issue each building permit for which HEARTLAND applies within a reasonable period of time following the date of application therefore or to advise said applicant of objections to such issuance, designating in writing the ordinances, rules, and/or regulations relied upon by the VILLAGE in so objecting. The VILLAGE agrees to issue such building permits upon the applicant's compliance with those provisions of the ordinances, rules, and regulations so designated by the VILLAGE. No building permits will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

B. Occupancy Permits

The VILLAGE shall issue occupancy permits within a reasonable period of time following application thereof or post a notice of denial informing the applicant specifically as to the corrections necessary as a condition precedent to the issuance of an occupancy permit and designating the section of the Code of Ordinances relied upon by the VILLAGE in its request for correction. VILLAGE agrees to issue temporary occupancy permits in accordance with VILLAGE Ordinances, good for six (6) months, between November 1, and April 15 of each year, when final grading work, landscaping, and pavement installation cannot be completed.

No occupancy permits will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

VII. SANITARY AND STORM SEWER

A. Annexation to Fox Metro Water Reclamation District

The Property is located in the Fox Metro Water Reclamation District ("Fox Metro") FPA. Only Fox Metro has the present ability to provide sanitary services to the Property. Upon completion of the Mining and Reclamation Phase of the Project HEARTLAND agrees to file the necessary petitions to request annexation of the Property to Fox Metro. VILLAGE shall use its best efforts to assist HEARTLAND in the annexation process.

B. Easements

No easements will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

C. Sanitary and Storm Sewer Oversizing

No Sanitary and Storm Sewer Oversizing will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

D. Storm Water Release Rate

1. HEARTLAND shall comply with all United States Army Corps of Engineers and Illinois Department of Transportation District 1, Division of Water Resources, and Kane County Storm Water Department requirements in connection with any wetland areas located on the Property and shall obtain permits from such agencies before construction begins on wetland areas to be granted by the VILLAGE. HEARTLAND shall copy the VILLAGE with any plans, applications for permits, and issued permits relating to such wetland areas.

2. HEARTLAND shall provide for the handling of storm water in accordance with the applicable Rules and Regulations of the United States Army Corps of Engineers, the Illinois Department of Transportation, Division of Water Resources, Kane County Storm water Department, and any Village Ordinances now or hereafter in effect. The storm water facilities shall also include

construction by HEARTLAND of storm drainage retention/detention facilities as may be required by such agencies and the Village Engineer. The size, depth, and outlet of the storm water detention areas is to be determined by final engineering plans based upon a controlled release rate of storm water runoff which shall not exceed the rate allowed by the Village Subdivision Ordinance.

3. Storm water management will be conducted in compliance with the SWPP which is incorporated into this Agreement during the Land Reclamation, Operations and Implementation Plan phase of the Project.

VIII. WATER SUPPLY

A. Looping of Water Mains

No Looping of Water Mains will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

B. Water Main Oversizing

No Water Main Oversizing will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

C. Capacity and Connection to Village Water Main System

No connection to the Village Water Main System will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

IX. CONSTRUCTION DELIVERY AND STREET AND SITE CLEAN-UP

A. Street and Site Clean Up

HEARTLAND acknowledges that, depending on weather conditions, CCDD deliveries, recycling deliveries, mining deliveries , and construction traffic entering and leaving the site creates debris, especially dirt and mud clods on streets and roadways adjacent to the site. HEARTLAND agrees that it shall inspect and clean the streets and roadways adjacent to and within 100 feet of the entrance to HEARTLAND's construction site as needed during each morning and evening while construction is occurring on said site. HEARTLAND further agrees to periodically mow weeds, pick up trash and debris, and repair and replace soil erosion control fencing so as to comply with applicable ordinances of the VILLAGE.

B. Construction Delivery Standards

CCDD, recycle material, and mining deliveries, construction material and equipment deliveries shall only occur on the following roads within the subdivision: Harter Road.

X. APPEARANCE STANDARDS

DRAFT

A. No appearance standards will be required for the activities described in the Operations Plan during the Land Reclamation, Operations and Implementation Plan phase of the project.

XI. DISCONNECTION

HEARTLAND agree that the Property shall be developed into an M-1 development in accordance with the final plat and final engineering approved by the VILLAGE in accordance with the terms hereof after the Land Reclamation, Operations and Implementation Plan phase of the project, and HEARTLAND shall not petition to disconnect any portion or all of said Property from the VILLAGE.

XII. SECURITY AND PAYMENTS

A. Letter of Credit or Bond

HEARTLAND shall post the appropriate letter of credit or bond as provided by state law and the Village's Subdivision Control Ordinance for public improvements prior to the construction of any such public improvements when redevelopment is approved after the Land Reclamation, Operations and Implementation Plan phase of the project.

B. Release or Reduction

HEARTLAND and VILLAGE agree that upon completion and inspection of all public improvements, and in a condition acceptable by the VILLAGE (as reviewed by the Village Engineer and approved by the Board), HEARTLAND shall be entitled to a release and/or reduction of any Letter of Credit or Subdivision Control Performance Bond, subject to a Maintenance Bond remaining in place for 12 months from the date of acceptance by the VILLAGE, in conformance with the VILLAGE Subdivision Control Ordinance. Reductions of Letters of Credit or Subdivision Performance Bonds may be authorized by the VILLAGE when public improvement components are substantially completed. Said subdivision security shall not be used for payment of contractors and the VILLAGE makes no representation or guarantee of the timelines of any Letter of Credit or Subdivision Performance Bond reductions.

C. Acceptance of Improvements

No Public Improvements are required to complete the Land Reclamation, Operations and Implementation Plan phase of the Project.

D. Municipal Consultants' Fees

HEARTLAND and VILLAGE agree that for the costs of review by experts and other consultants necessary for the review of the development of the Property, HEARTLAND shall reimburse the VILLAGE as required in the Village Ordinances per Schedule F.

E. Staff Time

HEARTLAND and VILLAGE agree that for the costs of review by staff necessary for the review of the development of the Property, HEARTLAND shall reimburse the VILLAGE as required in the Village Ordinances. This obligation shall commence upon the Village's approval of this Agreement.

XIII. Special Service Area

No Special Service Area is required to complete the Land Reclamation, Operations and Implementation Plan phase of the Project.

XIV. VARIANCES

The VILLAGE hereby approves such variances as are expressed in this Agreement or reflected on the Exhibits hereto.

XV. GENERAL OBLIGATIONS

A. Successor Owner and/or Developer

If the Property, or any portion thereof, is transferred from HEARTLAND both the fee obligation and any further development obligations under this Agreement shall transfer and be binding and become the exclusive obligation of any successor OWNER and/or DEVELOPER of the Property, or any portion of the Property.

B. Recording

This Agreement shall be recorded in the Office of the Recorder of Deeds of Kane County.

C. Term of Agreement

The term of this Agreement shall be for twenty (20) years from the date of execution hereof. All amendments to ordinances, codes, and regulations required pursuant to this Agreement, shall remain in effect during the term of this Agreement.

D. Time is of the Essence

It is understood and agreed by the Parties that time is of the essence in this Agreement and that all Parties will make every reasonable effort to expedite the subject matter hereof. It is further understood and agreed by the Parties that the successful consummation of this Agreement requires their continued cooperation.

E. Binding Effect and Term

DRAFT

This Annexation Agreement shall be binding upon and insure to the benefit of the Parties hereto, their successors and assigns, including, but not limited to, successor owner of record, successor developers, lessees and successor lessees, and upon any successor municipal authority of the VILLAGE and successor municipalities for a period of twenty (20) years from the later of the date of execution hereof and the date of adoption of the ordinances pursuant hereto.

F. Breach of Agreement

1. Remedy

This Agreement and the covenants and undertakings made hereunder are performable in Kane County, Illinois, and shall be governed by the laws of the State of Illinois. Any legal proceedings of any kind arising from this Agreement shall be filed in the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois.

2. Notice Required

Before any failure of any Party to this Agreement to perform its obligations under this Agreement shall be deemed a breach of this Agreement, the Party claiming such failure shall notify, in writing, by certified mail, return receipt requested, the Party alleged to have failed to perform, state the obligation allegedly not performed, and the performance demanded.

3. Addresses

Notice shall be provided to the following addresses:

To VILLAGE: Village of Sugar Grove
10 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Village Administrator

Copy to: Mickey, Wilson, Weiler, Renzi & Andersson
140 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Laura Julien & Steve Andersson

To PARTY: HEARTLAND RECYCLING - SUGAR GROVE CCDD, LLC
213 METTEL ROAD
AURORA, IL 60504
Attn: Joseph A. Volini

Copy to: John Duggan
181 S Lincolnway
North Sugar Grove, Illinois 60542

DRAFT

F. Agreement to Prevail Over Ordinances

In the event of any conflict between this Agreement, which incorporates the Exhibits to this Agreement by reference, and any ordinances of the VILLAGE in force at the time of execution of this Agreement or enacted during the pendency of this Agreement, the provision of this Agreement shall prevail to the extent of any such conflict or inconsistency.

G. Partial Invalidity of Agreement

If any provision of this Agreement or its application to any person, entity, or property is held invalid, such provision shall be deemed to be excised herefrom and the invalid thereof shall not affect the application or validity of any other terms, conditions, and provisions of this Agreement and, to that end, any terms conditions and provisions of this Agreement are declared to be severable. If for any reason during the term of this Agreement any approval or permission granted hereunder regarding plans or plats of subdivision or zoning is declared invalid, the VILLAGE agrees to take whatever action is necessary to reconfirm such plans, plat approvals, or zoning ordinances effectuating the zoning, variations, and plat approvals proposed herein.

H. Headings

The article headings are for convenience only, and in no way define, limit or describe the scope or intent or any article or section of this Agreement.

I. Counterparts

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Annexation Agreement the day and year first above written.

VILLAGE:
VILLAGE OF SUGAR GROVE

By: _____
Village President

Attest: _____
Village Clerk

STATE OF ILLINOIS)
COUNTY OF _____) SS
)

DRAFT

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Village President and _____, Village Clerk, personally known to me to be the same persons whose names are subscribed on the foregoing instruments, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument as Village President and Village Clerk and caused the corporate seal of said Village to be affixed thereto, pursuant to the authority, given by the Village of Sugar Grove Board of Trustees as a free and voluntary act and deed of said Village for the uses and purposes set forth.

Given under my hand and official seal this ____ day of _____, _____.

Notary Public

HEARTLAND RECYCLING -- SUGAR GROVE CCDD, LLC

By: _____
Its: Manager

STATE OF ILLINOIS)
COUNTY OF KANE) SS
)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me as the _____ of _____, a _____, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ he signed and delivered the said instrument and caused the corporate seal to be affixed thereto, as the free and voluntary act for the use and purposes set forth.

Given under my hand and official seal this ____ day of _____, _____.

Notary Public

DRAFT

LIST OF EXHIBITS

Exhibit	Description
1.	The Plat of Annexation
2.	The Plat of Survey
3.	The Operations Plan
EMP	Heartland Sugar Grove Emergency Management Plan
4	Heartland Recycling Facility and Land Reclamation Project Preliminary Stormwater Management Analysis & Report And SWPP Implementation Plan
EC	Existing Conditions
EU	Existing Utilities
CSDP	Conceptual Site Development Plan,
LROIP	Land Reclamation, Operations and Implementation Plan
Legal Description	Legal Description
SP	Sign Plan

DRAFT

Gmail by Google

Michael Coghlan <attorney@lompc.com>

Submission: Freedom of Information Request (re: 11551621515)

noreply@egovlink.com <noreply@egovlink.com> Mon, Nov 6, 2017 at 2:15 PM
To: attorney@lompc.com

This automated message was sent by the Village of Sugar Grove Action Line. Do not reply to this message. Follow the instructions below for inquiries regarding this email.

Thank you for submitting your information to Village of Sugar Grove on 11/6/2017 3:15 PM.

To check the status, please follow this link to the Village of Sugar Grove web site at...
http://www.sugar-grove.il.us//citizen-action-line/#trackingnumbersearch/216/11551621515/0
Make sure that the entire URL appears in your browser's address field.

TRACKING NUMBER: 11551621515

CATEGORY: Freedom of Information Request

SUGGESTION/ISSUE:

Please describe the information you are requesting. In order to assist you in providing the correct information, please be as specific as possible
All records relating to Heartland Sugar Grove Recycling and Land Reclamation Project by this name or other name(s) including Annexation Agreement records, staff reports and recommendations, staff research and communications including emails, list of property owners, contact information and communications relating to all property owners within 250 feet, reasons for scheduling November 7th annexation agreement hearing with notice from November 3rd. Please provide the records and information electronically to attorney@lompc.com. Any fee will be paid immediately. Please note the 1 business day notice between Friday Nov 3rd and Tuesday Nov 7th. I am seeking to enforce the statutory words of FOIA requiring immediate compliance under these circumstances "... full and complete information fundamental obligation of government to to operate openly and provide public records AS EXPEDIENTLY AS POSSIBLE...AS EXPEDIENTLY AND EFFICIENTLY AS POSSIBLE ... presumed to be open to inspection and copying."

We will evaluate this request and take action as appropriate.

Thank you for using the Village of Sugar Grove Action Line. We want to understand what you want and expect, make it easier for you to do business with us, and to respond as quickly as practical to your requests.

Copyright 2004 - 2017. *Electronic Commerce* Link, Inc. dba *EC* Link.

EXHIBIT J-1

Search...

0 | Departments Residents Business

Citizen Action Line

Contact Bill Pay

15

Overnight Parking
Vacation Watch Requests
Public Works – Trees, Signs, Street Lights, Roads, Plowing Etc.
Special Refuse Pickup
All other requests please see below .
To view the status of a submitted request please enter request tracking number number:

Action Line Status

The following information relates to the Tracking Number you searched for in our online service request system. This system allows you to request information, submit requests for service, or submit comments for review. If you wish to add additional information to this request or ask questions, you can enter that information in the field below.

Tracking Number: 11551621515

Details:

Freedom of Information Request

Submitted: 11/6/2017

Please describe the information you are requesting. In order to assist you in providing the correct information, please be as specific as possible
All records relating to Heartland Sugar Grove Recycling and Land Reclamation Project by this name or other name(sl including Annexation Agreement records,

staff reports and recommendations, staff research and communications including emails, list of property owners, contact information and communications relating to all property owners within 250 feet, reasons for scheduling November 7th annexation agreement hearing with notice from November 3rd. Please provide the records and information electronically to attorney@lompc.com. Any fee will be paid immediately. Please note the 1 business day notice between Friday Nov 3rd and Tuesday Nov 7th. I am seeking to enforce the statutory words of FOIA requiring immediate compliance under these circumstances "... full and complete information fundamental obligation of government to to operate openly and provide public records AS EXPEDIENTLY AS POSSIBLE...AS EXPEDIENTLY AND EFFICIENTLY AS POSSIBLE ... presumed to be open to inspection and copying."

Post a response/question:

POST MESSAGE

Activity:

Status *(Sub-Status)* - Date of Activity

INPROGRESS - 11/07/2017 10:16 AM

[Village of Sugar Grove]: Thank you for writing to the Village of Sugar Grove with your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. Your request for information has been received. While every attempt is made to respond to requests as quickly as possible please be aware that some requests may take longer. You will receive a response no later November 10, 2017. This request will be responded to electronically. Occasionally, when responding electronically items can be lost or misdirected. Should you not receive a transmission on the above date please contact me at 630-391-7206 so that we can arrange an alternate form of document transmission.

Michael Coghlan <attorney@lompc.com>

Freedom of Information Request

Renee Hanlon <rhanlon@sugargroveil.gov> Tue, Nov 7, 2017 at 4:34 PM
To: attorney <attorney@lompc.com>
Cc: Cindy Galbreath <cgalbreath@sugargroveil.gov>

Good Afternoon, Mr. Coghlan

Attached, please find a cover letter along with information that you requested on November 6, 2017.

If you have questions, please do not hesitate to contact me.

Sincerely,

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083| E: rhanlon@sugargroveil.gov

FOI11551621515.pdf
1177K

VILLAGE PRESIDENT
P. Sean Michels

VILLAGE ADMINISTRATOR
Brent M. Eichelberger

VILLAGE CLERK
Cynthia Galbreath

SUGAR GROVE
INCORPORATED 1957

COMMUNITY DEVELOPMENT DEPARTMENT

VILLAGE TRUSTEES

Sean Herron
Mari Johnson
Ted Koch
Rick Montalto
David Paluch

November 7, 2017

Michael Coghlan
Law Office Michael P Coghlan
444 E Hillcrest Drive #330
Dekalb, IL 60115

Sent Via Email: attorney@lompc.com

RE: Freedom of Information Request Received November 6, 2017

Dear Mr. Coghlan:

Please consider this as formal response to your Request for Information received submitted via the Village of Sugar Grove website yesterday, November 6, 2017. The following addresses each item that you have requested.

- "annexation agreement records" This document is available on the Village of Sugar Grove website http://www.sugargroveil.gov/heartland-recycling-harter-road-annexation-request/ Please note that this document was prepared by the applicant, Heartland Recycling Sugar Grove CCDD, LLC. This Draft Annexation Agreement was submitted by the applicant, Heartland Recycling Sugar Grove CCDD, LLC, and is currently under review by Village Staff. This document has not been forwarded to the Village of Sugar Grove Board of Trustees for review.
- "staff reports and recommendations" No documents exist at this time.
- "staff research and communications including emails" No research documents exist at this time. Emails will require more time to gather.
- "list of property owners, contact information and communications relating to all property owners wthin 250 feet" Attached, please find *Neighbor Notification Letter*, 1 page and *Adjoining Owners Mailing Labels*, 1 page. Please be advised that these documents were drafted by Village Staff for use by the Applicant in notifying property owners of Rezoning and Special Use Public Hearing before the Planning Commission on November 15, 2017. The applicant has the option of using this letter or their own letter for notification.
- "reasons for scheduling November 7th annexation agreement hearing with notice from November 3rd" Attached, please find *Certification of Publication*, 1 page, dated October 17, 2017. This certifies the publication of the required notice of public hearing for consideration of annexation to be held November 7, 2017. It is unclear why the November 3rd date is mentioned in this request.

These documents are being sent to you via email. No hard copies have been requested.

You will be contacted when the remaining information is available.

Sincerely,

Renee Hanlon, AICP
Planning and Zoning Administrator

Attachments

601 Heartland Drive
Sugar Grove, Illinois 60554-9545

www.sugargroveil.gov

Phone 630.391.7220
Facsimile 630.391.7245

Notice of Public Hearing

Via Certified Return Receipt Mail

Dear Neighbor:

Please accept this letter as notification of a public hearing to be held by the Village of Sugar Grove Planning Commission on **Wednesday November 1, 2017** at 7:00 p.m. at the Sugar Grove Village Hall, 10 S. Municipal Drive, Sugar Grove, Illinois. The purpose of this public hearing is to consider a request for zoning the property M-1 Limited Manufacturing District with a Special Use Permit to allow for the establishment of a mining and mine reclamation operation of a CCDD (Clean Construction or Demolition Debris facility and concrete crushing. Please see the location map above.

Since your property is located within two hundred fifty feet (250') of the property in question, you are being notified of this proposal and public hearing. You are invited to attend the hearing to be heard.

If you have any questions, please do not hesitate to contact the Sugar Grove Community Development Department at 630-931-7220.

BDM Holdings LLC
25 Forestwood Drive
Romeoville, IL 60446-1343

Peter Andriopoulos
Mario Zapata
2340 N Farnsworth Avenue
Aurora, IL 60502

Kaneland Comm. Unit School 302
Board of Education
47W326 Keslinger Road
Maple Park, IL 60151

Robert F Mathews
Brandon R Mathews
Terri S Mathews
4S916 IL RT 47
Sugar Grove, IL 60554

Spencer & Mary Ann Rees Trust
4S800 RT 47
Sugar Grove, IL 60554

Waubonsee Comm College
David Quillen, VP of Fin & Oper
S RT 47 at Waubonsee Drive
Sugar Grove, IL 60554

Jay & Jane Spoden
43W615 Old Oaks Road
Sugar Grove, IL 60554

Michael & Kimberly Paulus
43W579 Old Oaks Road
Sugar Grove, IL 60554

James & Lisa Marie Leader
43W555 Old Oaks Road
Sugar Grove, IL 60554

Old National Bank Aurora Trust
37 S River Street
Aurora, IL 60506

Old National Bank & Trust
Daniel Leuer
04S787 Harter Road
Sugar Grove, IL 60554

PUBLIC HEARING NOTICE

Notice is hereby given to all interested persons that the Sugar Grove Village Board will hold a public hearing at 6:00 pm., or as soon after as possible, on November 7, 2017 in the Village Hall Boardroom, 10 S. Municipal Drive, Sugar Grove, Illinois to consider an annexation agreement by Heartland Recycling—Sugar Grove CCDD, LLC pertaining to the use and development of certain property that may be annexed to the Village of Sugar Grove.

The subject property is legally described as follows:

THAT PART OF THE SOUTH ONE-HALF OF SECTION 5 AND THE NORTH ONE-HALF OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SECTION 8, OF AFORESAID TOWNSHIP AND RANGE; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, 862.62 FEET; THENCE NORTHEASTERLY AT AN ANGLE OF 102 DEGREES 19 MINUTES 47 SECONDS, MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG AN OLD CLAIM LINE, 3245.35 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF HARTER ROAD; THENCE NORTH 34 DEGREES 14 MINUTES 19 SECONDS EAST, A DISTANCE OF 200.00 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 34 DEGREES 14 MINUTES 19 SECONDS WEST ALONG THE LAST DESCRIBED COURSE, A DISTANCE OF 200.00 FEET TO THE NORTH LINE OF HARTER ROAD; THENCE NORTH 51 DEGREES 24 MINUTES 20 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 860.27 FEET; THENCE NORTH 28 DEGREES 33 MINUTES 13 SECONDS EAST, A DISTANCE OF 409.26 FEET TO A POINT KNOWN AS A LARGE TREE; THENCE NORTH 29 DEGREES 08 MINUTES 46 SECONDS EAST, A DISTANCE OF 928.0 FEET TO THE SOUTHWEST CORNER OF LEUER FARM VIEW SUBDIVISION; THENCE SOUTH 60 DEGREES 52 MINUTES 28 SECONDS EAST ALONG THE SOUTH LINE OF SAID SUBDIVISION, A DISTANCE OF 279.36 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 15 DEGREES 07 MINUTES 04 SECONDS WEST, A DISTANCE OF 624.51 FEET; THENCE SOUTH 34 DEGREES 14 MINUTES 19 SECONDS WEST, A DISTANCE OF 34.05 FEET TO A POINT LOCATED NORTH 34 DEGREES 14 MINUTES 19 SECONDS EAST, 542.25 FEET FROM THE POINT OF BEGINNING; THENCE SOUTH 52 DEGREES 32 MINUTES 35 SECONDS EAST, A DISTANCE OF 1169.63 FEET; THENCE SOUTH 82 DEGREES 04 MINUTES 52 SECONDS EAST, A DISTANCE OF 32.63 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 47, AS SHOWN ON THE RIGHT OF WAY PLANS OF ILLINOIS ROUTE 47 RECORDED IN DOCUMENT #1172190 IN BOOK 47 OF PLATS ON PAGES 59 AND 60; THENCE SOUTHERLY ALONG SAID RIGHT OF WAY LINE, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2764.43 FEET, A DISTANCE OF 475.94 FEET TO A POINT WHOSE CHORD BEARS SOUTH 11 DEGREES 50 MINUTES 20 SECONDS EAST, 475.18 FEET; THENCE SOUTH 29 DEGREES 18 MINUTES 08 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 133.16 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY FOR HARTER ROAD AS SHOWN ON THE SAID RIGHT OF WAY PLANS ON PAGE 61; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1342.39 FEET, A DISTANCE OF 562.31 FEET WHOSE CHORD BEARS NORTH 74 DEGREES 21 MINUTES 40 SECONDS WEST, A DISTANCE OF 558.21 FEET; THENCE NORTH 62 DEGREES 41 MINUTES 29 SECONDS WEST ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 492.22 FEET;

THENCE NORTH 56 DEGREES 00 MINUTES 21 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 78.74 FEET; THENCE NORTH 34 DEGREES 31 MINUTES 01 SECONDS EAST, A DISTANCE OF 200.25 FEET; THENCE NORTH 54 DEGREES 35 MINUTES 53 SECONDS WEST PARALLEL WITH FORMER CENTER LINE OF HARTER ROAD, A DISTANCE OF 456.16 FEET TO THE POINT OF BEGINNING ALL IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

PINs: 14-05-300-017 14-05-400-004 14-05-400-015 14-08-100-017 14-08-200-029 14-08-200-030 14-05-300-026

And is commonly known as the 48 acres more or less of the northwest corner of Harter Road and Sugar Grove Parkway (State Route 47).

All interested persons are invited to attend and to be heard. Interested persons may present either written or verbal comment at the Public Hearing. You are further advised the Public Hearing may be adjourned to dates certain without further notice.

A copy of the annexation agreement is available for public inspection at the Village Clerks' office or the Community Development Department office. If you have questions concerning this matter you may direct them to the Community Development Department, 601 Heartland Drive, Sugar Grove, Illinois 60554. Normal business hours are between the hours of 8:00 am and 4:30 pm, Monday through Friday.

Cynthia Galbreath, Village Clerk

October 13, 2017 Petition 17-022

Published in Daily Herald October 17, 2017 (4484949)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DAILY HERALD**. That said **DAILY HERALD** is a secular newspaper and has been circulated daily in the Village(s) of Addison, Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Bartlett, Batavia, Bensenville, Bloomingdale, Buffalo Grove, Burlington, Campton Hills, Carol Stream, Carpentersville, Cary, Deer Park, Des Plaines, East Dundee, Elburn, Elgin, Elk Grove Village, Elmhurst, Fox Lake, Fox River Grove, Geneva, Gilberts, Glen Ellyn, Glendale Heights, Glenview, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Itasca, Keeneyville, Kildeer, Lake Barrington, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Lisle, Lombard, Long Grove, Medinah, Mt. Prospect, Mundelein, Naperville, North Aurora, North Barrington, Oakbrook, Oakbrook Terrace, Palatine, Prospect Heights, Rolling Meadows, Roselle, Schaumburg, Sleepy Hollow, South Barrington, South Elgin, St. Charles, Woodridge, Streamwood, Tower Lakes, Vernon Hills, Villa Park, Volo, Warrenville, Wauconda, Wayne, West Chicago, West Dundee, Wheaton, Wheeling, Wildwood, Winfield, Wood Dale, Round Lake Park, Pingree Grove, Sugar Grove

County(ies) of Cook, DuPage, Kane, Lake, McHenry

and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published October 17, 2017 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Paula Baltz
Authorized Agent

Control # 4484949

Gmail by Google

Michael Coghlan <attorney@lompc.com>

Submission: Freedom of Information Request (re: 11570451117)

noreply@egovlink.com <noreply@egovlink.com> Wed, Nov 15, 2017 at 10:17 AM
To: attorney@lompc.com

This automated message was sent by the Village of Sugar Grove Action Line. Do not reply to this message. Follow the instructions below for inquiries regarding this email.

Thank you for submitting your information to Village of Sugar Grove on 11/15/2017 11:17 AM.

To check the status, please follow this link to the Village of Sugar Grove web site at...
http://www.sugar-grove.il.us//citizen-action-line/#trackingnumbersearch/216/11570451117/0
Make sure that the entire URL appears in your browser's address field.

TRACKING NUMBER: 11570451117

CATEGORY: Freedom of Information Request

SUGGESTION/ISSUE:

Please describe the information you are requesting. In order to assist you in providing the correct information, please be as specific as possible
Please provide all correspondence between the Village of Sugar Grove and Heartland Recycling. For purposes of this request, "the Village of Sugar Grove" includes all present and former employees, staff, and elected/non-elected officials of the Village. For purposes of this request, "Heartland Recycling" includes any current/former employees or staff of Heartland Recycling Sugar Grove CCDD, LLC and Heartland Recycling Aurora CCDD, LLC. This request includes any employees/former employees of the above listed entities. Please provide the records and information electronically to attorney@lompc.com. Any fee will be paid immediately. I am seeking to enforce the statutory words of FOIA requiring immediate compliance under these circumstances "... full and complete information fundamental obligation of government to operate openly and provide public records AS EXPEDIENTLY AS POSSIBLE...AS EXPEDIENTLY AND EFFICIENTLY AS POSSIBLE ... presumed to be open to inspection and copying."

We will evaluate this request and take action as appropriate.

Thank you for using the Village of Sugar Grove Action Line. We want to understand what you want and expect, make it easier for you to do business with us, and to respond as quickly as practical to your requests.

Copyright 2004 - 2017. *Electronic Commerce* Link, Inc. dba *EC* Link.

EXHIBIT J-2

Search...

D I Departments Residents Business

Citizen Action Line

Contact Bill Pay

15

Overnight Parking
Vacation Watch Requests
Public Works – Trees, Signs, Street Lights, Roads, Plowing Etc.
Special Refuse Pickup
All other requests please see below .
To view the status of a submitted request please enter request tracking number number:

Action Line Status

The following information relates to the Tracking Number you searched for in our online service request system. This system allows you to request information, submit requests for service, or submit comments for review. If you wish to add additional information to this request or ask questions, you can enter that information in the field below.

Tracking Number: 11570451117

Details:

Freedom of Information Request

Submitted: 11/15/2017

Please describe the information you are requesting. In order to assist you in providing the correct information, please be as specific as possible
Please provide all correspondence between the Village of Sugar Grove and Heartland Recycling. For purposes of this request, "the Village of Sugar Grove"

includes all present and former employees, staff, and elected/non-elected officials of the Village. For purposes of this request, "Heartland Recycling" includes any current/former employees or staff of Heartland Recycling Sugar Grove CCDD, LLC and Heartland Recycling Aurora CCDD, LLC. This request includes any employees/former employees of the above listed entities. Please provide the records and information electronically to attorney@lompc.com. Any fee will be paid immediately. I am seeking to enforce the statutory words of FOIA requiring immediate compliance under these circumstances "... full and complete information fundamental obligation of government to operate openly and provide public records AS EXPEDIENTLY AS POSSIBLE...AS EXPEDIENTLY AND EFFICIENTLY AS POSSIBLE ... presumed to be open to inspection and copying."

Post a response/question:

POST MESSAGE

Activity:

Status *(Sub-Status)* - Date of Activity

Privacy Policy

Gmail by Google

Michael Coghlan <attorney@lompc.com>

Village of Sugar Grove FOIA Response

Wed, Nov 15, 2017 at 4:03 PM

Laura Julien <lmj@mickeywilson.com>
To: attorney@lompc.com
Cc: Cindy Galbreath <cgalbreath@sugargroveil.gov>

Dear Mr. Coghlan:

This letter is being sent on behalf of Village Clerk/ FOIA Officer Cynthia Galbreath, as she is out of the office this afternoon. She has been copied on this e-mail in case you should have further questions.

On November 6, 2017, the Village received your request, filed pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq.), for the following records:

All records relating to Heartland Sugar Grove Recycling and Land Reclamation Project by this name or other name(s) including Annexation Agreement records, staff reports and recommendations, staff research and communications, including emails, list of property owners, contact information and communications relating to all property owners within 250 feet, reasons for scheduling November 7th annexation agreement hearing with notice from November 3rd. Please provide the records and information electronically to attorney@lompc.com. Any fee will be paid immediately. Please note the 1 business day notice between Friday Nov 3rd and Tuesday Nov 7th. I am seeking to enforce the statutory words of FOIA requiring immediate compliance under these circumstances "…full and complete information fundamental obligation of government to operate openly and provide public records AS EXPEDIENTLY AS POSSIBLE…AS EXPEDIENTLY AND EFFICIENTLY AS POSSIBLE…presumed to be open to inspection and copying."

This letter serves as a supplement to the response previously provided by FOIA Officer and Village Clerk Cynthia Galbreath, and pursuant to the extension granted with regard to your request for "e-mails". The specified materials, to the extent that there are responsive and non-exempt documents, are attached to this response for your review. As a preliminary matter, you will note that the names "Steve Andersson" and "Laura Julien" appear at the top of the e-mails. Please note that these names only indicate the individual who printed the documents following the Village's search of its server.

Please be advised that redactions have been made to remove personal e-mail addresses pursuant to 5 ILCS 140/7(b) (which exempts private information, unless disclosure is required by another provision of the Act, a state or federal law, or court order) and 5 ILCS 140/7(c) (which exempts information which is "personal" in nature, such that "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;"). Additionally, documentation has been withheld that is exempt under Section 7(1)(f) (preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated…) and 7(1)(m) (communications between a public body and an attorney or auditor representing the public body…).

To the extent that you believe this to be a denial of your request, you have a right to have this decision reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to: Public Access Counselor

Office of the Attorney General

500 South 2nd Street

Springfield, Illinois 62706

Fax: 217-782-1396

E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Sincerely,

Laura M. Julien

Attorney

Mickey, Wilson, Weiler, Renzi & Andersson, P.C.

140 S. Municipal Drive

Sugar Grove, Illinois 60554

Phone: (630) 801-9699 Ext. 102

Fax: (630) 801-9715

lmj@mickeywilson.com

FOIA 111517.pdf
6266K

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Thursday, August 31, 2017 2:41 PM
Subject: RE: Development opportunity

VB,

FYI – This project continues to move forward. The potential owners received the OK from KDOT to use the existing access for mining and reclamation activities. We anticipate a formal application to the Village in the next 2-3 weeks.

Brent

Virus-free. www.avast.com

On Fri, Jul 14, 2017 at 3:30 PM, Walter Magdziarz <wmagdziarz@sugargroveil.gov> wrote:

VB,

Brent and I met with the principals from Heartland Recycling about their interest in 40-some acres located at the NWC of Harter and Sugar Grove Parkway (map attached). Heartland Recycling is a subsidiary of Aurora CCDD and recycles construction material, specifically road construction material such as asphalt pavement, concrete, curbs and sidewalks.

As you may or may not know, the property on the north side of Harter Road is an old sand and gravel strip mine, and in the not too distant past had a concrete batch mixing plant located on it at Harter and IL 47. The property is zoned for mining and the batch plant in the County. The property is effectively screened from view from Harter and IL 47 by the soil stockpiles from the strip mining operation. There is a large pond on the property that will be filled. There are existing stockpiles of sand, gravel and pavement millings on the property Heartland would sell. Heartland also would like to continue mining some of the areas as the quality of the material is quite good. The mining would not be the dominant use of the property. The mining and reclamation operations would use the existing driveway on Harter Road situated 400 feet west of IL 47.

Heartland wants to reclaim the property and prepare it for commercial and industrial development in the future, probably 6 to 7 years from now. Currently sanitary sewer is nowhere near the property, making development in the near term economically unfeasible. They're betting that by the time the mining and reclamation process is complete sanitary sewer will be closer.

Given that the property has not been reclaimed, its present condition will be a hindrance to future development, regardless of the end land use. So, there may be a benefit to collaborate with Heartland to prepare the property for future development.

There are several areas of concern readily apparent with Heartland's proposal. First, the proximity of the middle school and the impact of truck traffic with school traffic (Harter is a County highway). Second, the impact of the mining and reclamation operations on adjacent residents (there are four). Lastly, the lack of proximity for sanitary sewer (water is on the opposite side of Harter Road). We're of the opinion these areas of concern need to be addressed but are not deal killers.

EXHIBIT J-3

If the Village Board desires to proceed with Heartland there would be an annexation agreement spelling out expectations for the mining and reclamation operations, as well as the future development land uses and development standards, including utility expectations.

Heartland has a short due diligence period in their contract. If we should drop our interest in the proposal, we should advise them quickly. Please let Brent or me know whether we should pursue this.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9594

T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From:	rhanlon@sugargroveil.gov
Sent:	Thursday, September 07, 2017 3:01 PM
To:	wmagdziarz@sugargroveil.gov
Subject:	Downtown Overlay Draft
Attachments:	Chapter 18.docx

Attached, per your request

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From: wmagdziarz@sugargroveil.gov
Sent: Friday, September 08, 2017 4:36 PM
To: beichelberger@sugargroveil.gov; aspeciale@sugargroveil.gov; manastasia@sugargroveil.gov; prollins@sugargroveil.gov; cgalbreath@sugargroveil.gov
Subject: Development Opportunity

VB,

There have been a number of questions concerning the Heartland Recycling mining and reclamation proposal on Harter Road and Sugar Grove Parkway. Here are responses to your questions.

Heartland Recycling development proposal FAQs

Mining Operations

No blasting. This is a continuation of the original strip mining operation that began in the 1930's and was in operation as late as the 2000's.

No asphalt plant

No concrete ready-mix batch plant

No new soil stripping as property has been previously stripped. Applicant will remove exposed sand and gravel material and regrade existing soil stockpiles.

The proposed operation is small-scale. Applicant estimates there is 150,000 tons of usable material on the property. They figure they will sell roughly 30,000 tons of material per year. By comparison, 150,000 tons is what LaFarge (Elburn) or Elmhurst Chicago Stone (Kaneville) sells in one month.

Reclamation Operations

Reclamation of the property will involve dumping, compacting and leveling clean fill consisting of soil, clay and recycled construction (road) debris. The applicant expects much of the serviceable material (sand and gravel) to be trucked out by trucks coming to deposit clean fill, further reducing truck traffic.

Equipment

Applicant intends to use a portable screen/wash plant for material removed from site. There also will be a portable crusher on the property for recycling purposes. The crusher is not expected to be operational every day. Rather it will operate only 5 to 7 days during the month. A scale also will be utilized on the property. All mining and reclamation operations will utilize ordinary bull dozers, front-end loaders and excavators.

Truck Traffic

The applicant estimates truck traffic entering and leaving the site will be approximately 50 per day. This translates to an average of 6 trucks an hour over an eight-hour period. Activity at the mine will generally occur between April and October. Between November and March the site will be open by appointment only. The normal hours of operation will be 7:00 am to 3:30 pm.

The absence of an asphalt plant and a concrete ready-mix batch plant greatly reduces the amount and frequency of truck traffic.

Environmental Impacts

Environmental impacts from a strip mine activity of the scale proposed will be limited. The applicant is required to obtain a permit from IEPA to operate the mine and the reclamation operation. Both operations are highly regulated by the IEPA. There are requirements for particulate matter, as well as, other forms of air pollution with which the applicant will need to comply.

Since there is no blasting associated with the proposed mining, no vibration nuisance is expected.

Since there is no asphalt plant or ready-mix batch plant operation associated with the proposal, heat, fumes, odor and particulate matter associated with these types of uses will be non-existent.

The washer and the crusher will generate noise. How much is not known at this time but it is unlikely the noise will be at such a level at the property line so as to be considered a nuisance.

There is an eight acre pond on the property created by the mining activity. This pond will be filled as part of the reclamation plan. The pond is exposed subsurface ground water and provides no hydraulic value, that is, it performs no storm water control benefit. Since the open water is a creation of the mining activity the pond is not a regulated feature on the property.

The mining activity, other than the existing pond, did not interfere with subsurface groundwater table. To the best of our knowledge, private wells in the area are drawing from formations far below the naturally occurring seasonal water table which was exposed by the previous mining operations.

The stripped soil on the property was stockpiled in berms up to 35-feet tall along IL 47 and Harter Road. This has effectively screened the business end of the mining from public view over the years. While the property may appear to be heavily forested, the reality is the property is largely open disturbed ground. Additionally, much of the vegetation that is established on the periphery of the property is volunteer material deposited by birds or plants that survived the stripping operation and left to grow unchecked for decades. It is the applicant's intention to remove the vegetation and berms as part of the reclamation plan. Therefore, eventually, the property will be opened up to view as roads and utilities and future buildings are constructed as part of the reclamation of the property.

Other

Since there has been no activity on the property for at least a decade, and given the open water, the stockpiles of aggregate, the remoteness and concealed nature of the property it presents itself as an attractive nuisance.

Laura Julien

From:	Randy Bus <RandyB@Cemcon.com>
Sent:	Friday, September 15, 2017 11:21 AM
To:	dburroughs@eeiweb.com
Cc:	John Savage; Joe Volini; Phil Bus; John Duggan; wmagdziarz@sugargroveil.gov
Subject:	Heartland Recycling Facility RT.47 and Harter Road 904.223 Task 00200

Dave,

As one of the supporting exhibits to the petition for annexation of the two parcels aggregating about 50± acres at the N.W. corner of RT 47 and Harter Rd., the Village would like to see an "Existing Utilities Exhibit" to show sanitary sewer collection ands water distribution systems in proximity to the site. Your transmittal of this information in the form of Plans or Utility Atlases is appreciated.

Randall W. Bus, P.E.
CEO

CEMCON, Ltd.
CONSULTING ENGINEERS, LAND SURVEYORS & PLANNERS
2280 White Oak Circle, Suite 100, Aurora, Illinois 60502-9675
TEL: (630) 862-2100 FAX: (630) 862-2199
randyb@cemcon.com

CEMCON Ltd. 45 YEARS 1972-2017

Laura Julien

From:	Michele Piotrowski <MPiotrowski@eeiweb.com>
Sent:	Friday, September 15, 2017 1:01 PM
To:	RandyB@Cemcon.com
Cc:	David Burroughs; john.savage34@gmail.com; josephvolini@gmail.com; busphillip@gmail.com; dugganjpd@aol.com; Walter Magdziarz; SG1700
Subject:	RE: Heartland Recycling Facility RT.47 and Harter Road 904.223 Task 00200
Attachments:	HeartlandRecycling-AtlasMaps.docx

Randy,

Per Dave's request, please see attached for excerpts from the water and sanitary utility atlas maps for the Village. If you have any questions, please contact me.

Thank you,

Michele L. Piotrowski, P.E., LEED AP
Senior Project Manager

Engineering Enterprises, Inc.
52 Wheeler Road
Sugar Grove, IL 60554
T: (630) 466-6724 F: (630) 466-6701
www.eeiweb.com
mpiotrowski@eeiweb.com

Supporting the Communities We Work and Live In

From: David Burroughs
Sent: Friday, September 15, 2017 11:29 AM
To: Michele Piotrowski <MPiotrowski@eeiweb.com>
Subject: FW: Heartland Recycling Facility RT.47 and Harter Road 904.223 Task 00200

Michele,

Can you get Randy what he needs.

Thanks,

David R. Burroughs, P.E.
Senior Vice President

Engineering Enterprises, Inc.
52 Wheeler Road
Sugar Grove, IL 60554
Tel. (630) 466-6700
Dir. (630) 466-6725
Fax (630) 466-6701
www.eeiweb.com
dburroughs@eeiweb.com

Supporting the Communities We Work and Live In

From: Randy Bus [mailto:RandyB@Cemcon.com]
Sent: Friday, September 15, 2017 11:21 AM
To: David Burroughs <dburroughs@eeiweb.com>
Cc: John Savage <john.savage34@gmail.com>; Joe Volini <josephvolini@gmail.com>; Phil Bus <busphillip@gmail.com>; John Duggan <dugganjpd@aol.com>; wmagdziarz@sugargroveil.gov
Subject: Heartland Recycling Facility RT.47 and Harter Road 904.223 Task 00200

Dave,

As one of the supporting exhibits to the petition for annexation of the two parcels aggregating about 50± acres at the N.W. corner of RT 47 and Harter Rd., the Village would like to see an "Existing Utilities Exhibit" to show sanitary sewer collection ands water distribution systems in proximity to the site. Your transmittal of this information in the form of Plans or Utility Atlases is appreciated.

Randall W. Bus, P.E.
CEO
CEMCON, Ltd.
CONSULTING ENGINEERS, LAND SURVEYORS & PLANNERS
2280 White Oak Circle, Suite 100, Aurora, Illinois 60502-9675
TEL: (630) 862-2100 FAX: (630) 862-2199
randyb@cemcon.com

CEMCON Ltd. 45 YEARS 1972-2017

This message may contain confidential information and is intended only for the original recipient. The views or opinions presented in this message are solely those of the sender and do not necessarily represent those of the company, unless specifically stated. If you are not the intended recipient you should not disseminate, distribute or copy this message. If verification is required please request a hard-copy version. Engineering Enterprises, Incorporated 52 Wheeler Road, Sugar Grove, IL., 60554 Warning: This message was scanned for viruses, vandals and malicious content. However, we cannot guarantee that the integrity of this e-mail has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

Laura Julien

From: wmagdziarz@sugargroveil.gov
Sent: Tuesday, September 26, 2017 11:55 AM
To: josephvolini@gmail.com
Cc: john.savage34@gmail.com; dugganjpd@aol.com; busphillip@gmail.com
Subject: Heartland Recycling-Sugar Grove annexation

Good morning, Joe.

We're approaching the deadline for getting public hearing notices to the newspaper for the October 18 Planning Commission meeting which got me to wondering about the progress with your annexation agreement submittal.

If you're not ready to submit, today, from here on out, we'll need to be thinking about a special meeting for the zoning public hearing with the Planning Commission if we're going to get to the Village Board for a decision within your timeframe.

If you need anything from me, please don't hesitate to contact me.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Thursday, October 12, 2017 9:31 AM
To: wmagdziarz@sugargroveil.gov
Subject: RE: Heartland Recycling annexation hearings schedule

Sounds good

From: Walter Magdziarz
Sent: Thursday, October 12, 2017 9:30 AM
To: Brent Eichelberger <beichelberger@sugargroveil.gov>
Subject: Heartland Recycling annexation hearings schedule

Brent,

I can get a quorum for a special meeting of the PC for the zoning public hearing as early as November 1.

This would enable the PC recommendation to get to the VB on November 7 which could be the date for the annexation agreement public hearing.

If we're not ready to bring the zoning or the annexation agreement forward on these dates we can always continue the respective hearings to another date. Holding the hearing dates on November 1 and 7 also gives the VB plenty of options for special meeting dates in November, even with the holiday.

Unless I hear otherwise from you, I'll publish and schedule the zoning public hearing for November 1.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From:	manastasia@sugargroveil.gov
Sent:	Thursday, October 12, 2017 1:09 PM
To:	saa@mickeywilson.com
Cc:	wmagdziarz@sugargroveil.gov; beichelberger@sugargroveil.gov; lmj@mickeywilson.com
Subject:	Re: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement

The escrow does exist, we received the check today in Finance.

Thanks,

Matt Anastasia

Please excuse any typos, this message was sent via mobile device.

On Oct 12, 2017, at 1:06 PM, Steven Andersson <saa@mickeywilson.com> wrote:

> I've accepted the meeting. If the escrow doesn't exist and this needs to change, just let me know.
>
> Steve
>
> **From:** Matt Anastasia [mailto:manastasia@sugargroveil.gov]
> **Sent:** Thursday, October 12, 2017 10:53 AM
> **To:** Walter Magdziarz <wmagdziarz@sugargroveil.gov>; Brent Eichelberger <beichelberger@sugargroveil.gov>
> **Cc:** Andersson, Steve (saa@mickeywilson.com) <saa@mickeywilson.com>; Laura Julien <lmj@mickeywilson.com>
> **Subject:** RE: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement
>
> Walter,
>
> I am just verifying the escrow deposit, but can't find it in the "Other Deposits" account. Can you let me know when it was deposited and under what name? We would like to set them up in Misc. Receivables as well and would need all of their contact information.
>
> Thanks,
>
> ***Matthew Anastasia***
> Finance Director
> 10 S. Municipal Dr.
> Sugar Grove, IL 60554
> Direct: (630) 391-7215
> Fax: (630) 391-7210
> manastasia@sugargroveil.gov
> <image001.jpg>

The information contained in this email message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any review, dissemination, distribution or copying is strictly prohibited. If you have received this email message in error, please notify the sender by reply mail or phone and delete the message and any attachments

From: Walter Magdziarz
Sent: Thursday, October 12, 2017 9:43 AM
To: Brent Eichelberger <beichelberger@sugargroveil.gov>; Matt Anastasia <manastasia@sugargroveil.gov>
Cc: Andersson, Steve (saa@mickeywilson.com) <saa@mickeywilson.com>; Laura Julien <lmj@mickeywilson.com>
Subject: RE: Heartland Recycling -- Sugar Grove CCDD LLC LAnd Development Application and Annexation Agreement

We received $10,000 for the application review escrow.

From: Brent Eichelberger
Sent: Thursday, October 12, 2017 9:41 AM
To: Matt Anastasia <manastasia@sugargroveil.gov>; Walter Magdziarz <wmagdziarz@sugargroveil.gov>
Cc: Andersson, Steve (saa@mickeywilson.com) <saa@mickeywilson.com>; Laura Julien <lmj@mickeywilson.com>
Subject: FW: Heartland Recycling -- Sugar Grove CCDD LLC LAnd Development Application and Annexation Agreement
Importance: High

Matt/Walter,

Do we have an adequate escrow deposit from them?

If yes, we need to get MW and EEI doing whatever review they need to do, right away.

If no, we need to put this on hold until we get the escrow.

Brent

From: John Duggan [mailto:dugganlpd@aol.com]
Sent: Wednesday, October 11, 2017 1:16 PM
To: Walter Magdziarz <wmagdziarz@sugargroveil.gov>; Brent Eichelberger <beichelberger@sugargroveil.gov>
Cc: josephvolini@gmail.com; john.savage@aonhewitt.com; judy@dugganlaw.us; randyb@cemcon.com; phillipbus@gmail.com
Subject: Heartland Recycling -- Sugar Grove CCDD LLC LAnd Development Application and Annexation Agreement

Ladies and gentlemen,

Attached please find a directory of the electronic copies of the Heartland Recycling -- Sugar Grove CCDD, LLC Land Development Application which will be filed today, consisting of the following documents:

Z: \ My Documents \ Heartland, Volini etc \ harter & 47 \ Annexation to Sugar Grove \ 171004 Land Use Application Assembly \ 171011 email to Sugar Grove re Filing
Name Size Type Last Modified
1. Heartland Sugar Grove Land Development Application 171011.pdf 1,860KB Adobe Acrobat Document 10/11/2017 12:47 PM
2. Heartland Sugar Grove Annexation Agreement.pdf 31MB Adobe Acrobat Document 10/11/2017 1:01 PM

3. Heartland Sugar Grove Annexation Agreement.docx 55KB Microsoft Word Document 10/11/2017 12:48 PM
4. Standards for Special Use.docx 13KB Microsoft Word Document 10/11/2017 12:49 PM
5. Heartland Sugar Grove Legal Description and PINS.docx 14KB Microsoft Word Document 10/11/2017 12:26 PM
6. 171011 Checks to Village of Sugar Grove re Fees on Schedule F to Land Development Application.pdf 521KB Adobe Acrobat Document 10/11/2017

Joseph Volini, one of Heartland's Managers, will be bringing the CD and the paper copies of all of the application documents with the filing.

I am attaching PDFs of the Land Development Application and Fee Payment Checks, and the Microsoft Word version of the Annexation Agreement, the Standards for Special Use, and the Legal Description to this email. The PDF of the Annexation Agreement was too large to attach with my email server due to the size of the document.

We anticipate the Land Use Opinion from the Kane - DuPage Soil and Water Conservation District after its meeting on October 12, 2017. We have attached Heartland's application to the KDSWCD and its payment to the Land Development Application. Heartland will file the Land Use Opinions as soon as it is received.

We look forward to working with you on the excellent project

John P. Duggan
181 S. Lincolnway
North Aurora, Il 60542
630-264-7893; mobile: 630-222-2223
Computer FAX 877-300-7451

Laura Julien

From: wmagdziarz@sugargroveil.gov
Sent: Thursday, October 12, 2017 3:44 PM
To: MPiotrowski@eeiweb.com
Subject: RE: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement

Off course!

From: Michele Piotrowski [mailto:MPiotrowski@eeiweb.com]
Sent: Thursday, October 12, 2017 3:21 PM
To: Walter Magdziarz <wmagdziarz@sugargroveil.gov>
Subject: RE: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement

Sounds good...I am available at that time. Would you like me to attend I presume?

Michele L. Piotrowski, P.E., LEED AP
Senior Project Manager

Engineering Enterprises, Inc.
52 Wheeler Road
Sugar Grove, IL 60554
T: (630) 466-6724 F: (630) 466-6701
www.eeiweb.com
mpiotrowski@eeiweb.com

Supporting the Communities We Work and Live In

From: Walter Magdziarz [mailto:wmagdziarz@sugargroveil.gov]
Sent: Thursday, October 12, 2017 2:53 PM
To: Michele Piotrowski <MPiotrowski@eeiweb.com>
Subject: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement
Importance: High

Michele,

We are going to meet on **Friday October 20 at 1 o'clock** at VH to discuss the annexation agreement and development proposal.

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

This message may contain confidential information and is intended only for the original recipient. The views or opinions presented in this message are solely those of the sender and do not necessarily represent those of the company, unless specifically stated. If you are not the intended recipient you should not disseminate, distribute or copy this message. If verification is required please request a hard-copy version. Engineering Enterprises, Incorporated 52 Wheeler Road, Sugar Grove, IL., 60554 Warning: This message was scanned for viruses, vandals and malicious content. However, we cannot guarantee that the integrity of this e-mail has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Friday, October 13, 2017 10:14 AM
Subject: FW: Development opportunity

VB,

The project is scheduled to go before the Plan Commission on November 1 and before you on November 7 for discussion. The developer has offered to meet with any of you and staff over the next couple of weeks if you have preliminary questions. Let me know if you are interested in meeting.

Brent

From: Brent Eichelberger
Sent: Thursday, August 31, 2017 2:40 PM
Subject: RE: Development opportunity

VB,

FYI – This project continues to move forward. The potential owners received the OK from KDOT to use the existing access for mining and reclamation activities. We anticipate a formal application to the Village in the next 2-3 weeks.

Brent

Virus-free. www.avast.com

On Fri, Jul 14, 2017 at 3:30 PM, Walter Magdziarz <wmagdziarz@sugargroveil.gov> wrote:

VB,

Brent and I met with the principals from Heartland Recycling about their interest in 40-some acres located at the NWC of Harter and Sugar Grove Parkway (map attached). Heartland Recycling is a subsidiary of Aurora CCDD and recycles construction material, specifically road construction material such as asphalt pavement, concrete, curbs and sidewalks.

As you may or may not know, the property on the north side of Harter Road is an old sand and gravel strip mine, and in the not too distant past had a concrete batch mixing plant located on it at Harter and IL 47. The property is zoned for mining and the batch plant in the County. The property is effectively screened from view from Harter and IL 47 by the soil stockpiles from the strip mining operation. There is a large pond on the property that will be filled. There are existing stockpiles of sand, gravel and pavement millings on the property Heartland would sell. Heartland also would like to continue mining some of the areas as the quality of the material is quite good. The mining would not be the dominant use of the property. The mining and reclamation operations would use the existing driveway on Harter Road situated 400 feet west of IL 47.

Heartland wants to reclaim the property and prepare it for commercial and industrial development in the future, probably 6 to 7 years from now. Currently sanitary sewer is nowhere near the property, making development

in the near term economically unfeasible. They're betting that by the time the mining and reclamation process is complete sanitary sewer will be closer.

Given that the property has not been reclaimed, its present condition will be a hindrance to future development, regardless of the end land use. So, there may be a benefit to collaborate with Heartland to prepare the property for future development.

There are several areas of concern readily apparent with Heartland's proposal. First, the proximity of the middle school and the impact of truck traffic with school traffic (Harter is a County highway). Second, the impact of the mining and reclamation operations on adjacent residents (there are four). Lastly, the lack of proximity for sanitary sewer (water is on the opposite side of Harter Road). We're of the opinion these areas of concern need to be addressed but are not deal killers.

If the Village Board desires to proceed with Heartland there would be an annexation agreement spelling out expectations for the mining and reclamation operations, as well as the future development land uses and development standards, including utility expectations.

Heartland has a short due diligence period in their contract. If we should drop our interest in the proposal, we should advise them quickly. Please let Brent or me know whether we should pursue this.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9594

T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From: wmagdziarz@sugargroveil.gov
Sent: Monday, October 16, 2017 9:24 AM
To: rhanlon@sugargroveil.gov
Subject: Heartland Recycling application

Renee,

Did you receive copies of the exhibits to the annexation agreement?

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From: Michele Piotrowski <MPiotrowski@eeiweb.com>
Sent: Tuesday, October 17, 2017 3:42 PM
To: Walter Magdziarz
Subject: RE: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement

Sounds good...I will need to leave at 2:00 pm.

Michele L. Piotrowski, P.E., LEED AP
Senior Project Manager

Engineering Enterprises, Inc.
52 Wheeler Road
Sugar Grove, IL 60554
T: (630) 466-6724 F: (630) 466-6701
www.eeiweb.com
mpiotrowski@eeiweb.com

Supporting the Communities We Work and Live In

From: Walter Magdziarz [mailto:wmagdziarz@sugargroveil.gov]
Sent: Tuesday, October 17, 2017 3:35 PM
To: Michele Piotrowski <MPiotrowski@eeiweb.com>
Subject: FW: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement
Importance: High

CORRECTION: Thursday 10/19 at 1:00 pm.

From: Walter Magdziarz
Sent: Thursday, October 12, 2017 2:53 PM
To: Michele Piotrowski (mpiotrowski@eeiweb.com) <mpiotrowski@eeiweb.com>
Subject: Heartland Recycling -- Sugar Grove CCDD LLC Land Development Application and Annexation Agreement
Importance: High

Michele,

We are going to meet on **Friday October 20 at 1 o'clock** at VH to discuss the annexation agreement and development proposal.

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594

T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

This message may contain confidential information and is intended only for the original recipient. The views or opinions presented in this message are solely those of the sender and do not necessarily represent those of the company, unless specifically stated. If you are not the intended recipient you should not disseminate, distribute or copy this message. If verification is required please request a hard-copy version. Engineering Enterprises, Incorporated 52 Wheeler Road, Sugar Grove, IL., 60554 Warning: This message was scanned for viruses, vandals and malicious content. However, we cannot guarantee that the integrity of this e-mail has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

Steven Andersson

From:	John Savage <john.savage34@gmail.com>
Sent:	Friday, October 20, 2017 5:56 PM
To:	John Duggan
Cc:	wmagdziarz@sugargrovell.gov; josephvolini@gmail.com; lmj@mickeywilson.com; judy@dugganlaw.us
Subject:	Re: Heartland Recycling--Sugar Grove annexation agreement

John

Thanks for pulling this together and I will review. I can make a public hearing on Tuesday, November 7 but I am out of town the eighth, ninth and 10th.

If the seventh doesn't work we would need to look to the following week.

Thanks,

John

On Oct 20, 2017, at 5:49 PM, John Duggan <dugganjpd@aol.com> wrote:

> Ladies and gentlemen,
>
> I talked to Laura who sent an Exemplar of your Notice to Adjacent Owners. I adapted it with the information details required in your Notice Ordinance.
>
> We understand that the Mail Notice has not been accomplished by Petitioner and the Posting of the site has not occurred, so we understand that the November 1, 2017 hearing cannot go forward.
>
> John Savage cannot be a hearing on November 7, 2017, and that may also be very close to get the publication and posting completed. Is November 15, 2017 available?
>
> I am attaching the Notification Letter we have prepared and an exhibit to it, the Conceptual Site Development Plan (which was Exhibit 4 to the Draft Annexation Agreement:
>
> **Z: \ My Documents \ Heartland, Volini etc \ harter & 47 \ Annexation to Sugar Grove \ Notice to Adjacent Owners of Plan Commission Hearing \ 171020 email to Walter**
>
> Name Size Type Last Modified
> 171020 Heartland Recycling notification letter 17KB Microsoft Word Document 10/20/2017 5:25 PM
> 171020 Heartland Recycling notification letter 2,900KB Adobe Acrobat Document 10/20/2017 5:33 PM
> Exhibit CSDP to Ex 4, Conceptual Site Development Plan 2,617KB Adobe Acrobat Document 10/20/2017 5:32 PM
>
> John Savage will finalize the Notice after Walter has reviewed and approved and has confirmed the date. If there are any changes you require, please notify John Savage and Judy Glenn of my office.
>
> John Savage, Judy will prepare the envelopes for you from the List of Adjacent Owners that Walter provided. We have rechecked them with the Treasurer's information from the Kane County Web Site. We can also print out the Notice letters and help you staple, fold and insert them in the envelopes.
>
> Sugar Grove's ordinance provides that the Notice to Adjacent Owners letters mailing shall be by registered mail, return receipt requested. That is different than certified mailing. John Savage, the only practical way to do it is to take the sealed letters to the Aurora Post Office and counter file them. Please pay with a credit card so you have a receipt that the mailings have been completed. Judy will give you a certificate of mailing that the Post Office Clerk will file stamp.
>
> Thank you all for your help with and work on this application.

John P. Duggan
181 S. Lincolnway
North Aurora, Il 60542
630-264-7893; mobile: 630-222-2223
Computer FAX 877-300-7461

---Original Message---
From: Walter Magdziarz <wmagdziarz@sugargroveil.gov>
To: John Savage <john.savage34@gmail.com>
Cc: Joe Volini <josephvolini@gmail.com>; John Duggan <dugganiod@aol.com>; Laura Julien (lmj@mickeywilson.com) <lmj@mickeywilson.com>
Sent: Fri, Oct 20, 2017 4:18 pm
Subject: RE: Heartland Recycling--Sugar Grove annexation agreement

John,

I was afraid of that since we had not discussed it.

Getting the notification letters mailed today won't help as we are already less than 15 days before the hearing date (November 1). If you can get the letters mailed before Tuesday October 24 we can hold the hearing on November 8. We'll open the public hearing and continue it to November 8 so that we don't need to re-publish and push the public hearing date deeper into November. The Village Board was not going to take any action on the annexation agreement on November 7, so we don't lose any time by delaying the rezoning hearing one week.

The notification is required whether the adjacent properties are in the Village or not.

I drafted a letter for your use and obtained the mailing addresses of the adjacent property owners for your use, as well. It's not required, but I recommend including a location map so the persons receiving the letter are clear where the property is located. One other thing we require for notification is posting a public hearing sign on the property. We have a generic sign for this purpose and we'll post the property.

<image003.jpg>**Walter J. Magdziarz** | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

---

From: John Savage [mailto:john.savage34@gmail.com]
Sent: Friday, October 20, 2017 3:42 PM
To: Walter Magdziarz <wmagdziarz@sugargroveil.gov>
Cc: Joe Volini <josephvolini@gmail.com>; John Duggan <dugganiod@aol.com>
Subject: Re: Heartland Recycling--Sugar Grove annexation agreement

Walt

We were not aware that we needed to send our notification notices as you didn't bring hat up in our meeting and that wasn't on the check list (or we missed it) to the property owners and did not do that.

Is that required as none are in the Village of Sugar Grove? We could still get that out today.

If we get them out today will we need to reschedule the hearing. Is there a format required for the notice and specifics as to which properties?

Please let me know ASAP.

Thanks,

John

On Oct 20, 2017, at 2:24 PM, Walter Magdziarz <wmagdziarz@sugargrovell.gov> wrote:

> John/Joe,
>
> The Village Attorney will prepare a mark-up of the draft annexation agreement with our comments and questions. I don't believe any of our comments are deal killers, but I'll let you decide.
>
> During our meeting the question of notification came up. I know well that we discussed the publication of the hearing notices for the zoning and annexation public hearings but I do not recall ever discussing the written notice required for adjacent property owners for the zoning and Special Use permit. As the notification requirement is the responsibility of the applicant, hopefully, you undertook the task. If not, we'll need to reschedule the zoning/Special Use hearing date since today would be too late to notify the adjacent property owners (if you did not send the notification letters).
>
> If you sent the notification letters—great, one less thing to worry about—don't forget to collect the green card receipts and provide them to me at or before the public hearing. Either way, let me know.
>
> <image001.jpg>**Walter J. Magdziarz** | Community Development Director
> Community Development Department | Village of Sugar Grove
> 601 Heartland Drive, Sugar Grove, IL 60554-9594
> T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargrovell.gov

<171020 Heartland Recycling notification letter.docx>

<171020 Heartland Recycling notification letter.pdf>

<Exhibit CSDP to Ex 4, Conceptual Site Development Plan.pdf>

Steven Andersson

From: rhanlon@sugargrovell.gov
Sent: Friday, October 20, 2017 1:24 PM
To: reneehanlon@comcast.net
Subject: FW: Heartland Recycling
Attachments: Neighbor Notification Letter.pdf; Adjoining Owners Mailing Labels.doc

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargrovell.gov

---

From: Renee Hanlon
Sent: Friday, October 20, 2017 12:41 PM
To: Walter Magdziarz <wmagdziarz@sugargrovell.gov>
Subject: Heartland Recycling

Attached is the neighbor notification letter for Heartland Recycling along with a mailing list of properties within 250'. If they get these in the mail today, they will not meet the noticing requirement. If postmarked before midnight tonight, they will have provided less than the requisite 15 day minimum notice for a November 1 public hearing.

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargrovell.gov

Laura Julien

From:	wmagdziarz@sugargroveil.gov
Sent:	Thursday, October 26, 2017 3:07 PM
To:	rhanlon@sugargroveil.gov
Subject:	Website material
Attachments:	Heartland Recycling project description for website.docx

We should provide some description of the Heartland rezoning hearing on the website now that the signs are posted.

Please review and feel free to mark-up. If you want to add a location map, feel free. Work with Holly to get it on the website.

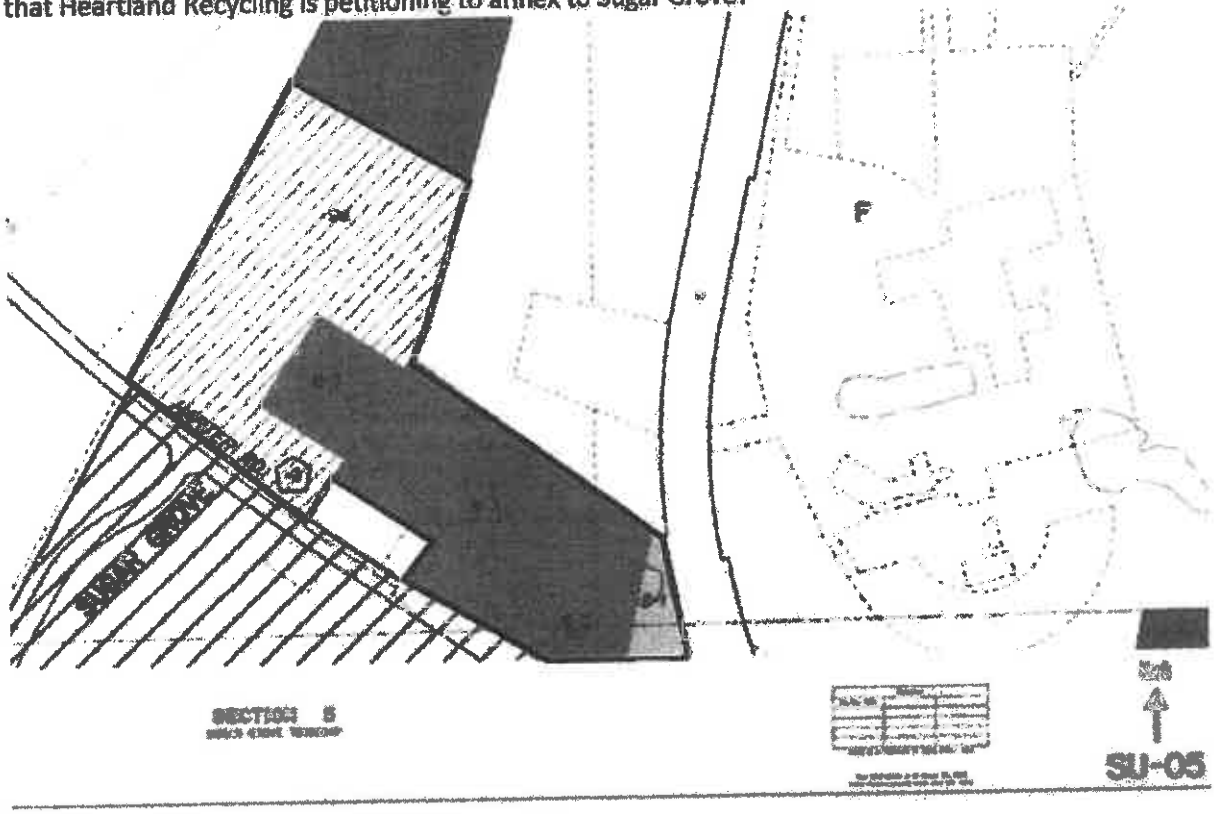
Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From: rhanlon@sugargroveil.gov
Sent: Monday, October 30, 2017 10:30 AM
To: BerkhoutKeith@co.kane.il.us
Subject: Heartland Recycling

Good Morning, Keith

I know you are busy. If possible, when you get a chance, will you send me the Special Use Ordinances for the property that Heartland Recycling is petitioning to annex to Sugar Grove?



This is going to public hearing before the Planning Commission on November 15, 2017. If at all possible , I would like to have the information prior to the hearing.

Thanks much,

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083| E: rhanlon@sugargroveil.gov

Laura Julien

From:	wmagdziarz@sugargroveil.gov
Sent:	Monday, October 30, 2017 3:11 PM
To:	rhanlon@sugargroveil.gov
Subject:	Heartland Recycling
Attachments:	2017-08-29 Access Letter.pdf

Renee,

Sorry, I've been sitting on this for a while.

For your files. Also include with Advisory Report.

SUGAR GROVE

Walter J. Magdziarz | Community Development Director
Community Development Department | Village of Sugar Grove
601 Heartland Drive, Sugar Grove, IL 60554-9594
T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

Laura Julien

From:	rhanlon@sugargroveil.gov
Sent:	Tuesday, October 31, 2017 10:06 AM
To:	hbaker@sugargroveil.gov
Subject:	PC Agenda for Website
Attachments:	2017 110117.pdf

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From: rhanlon@sugargroveil.gov
Sent: Tuesday, October 31, 2017 10:10 AM
To: gregorywilson0864@sbcglobal.net; hlendi@att.net; oxie519@sbcglobal.net; james.eckert@exeloncorp.com; sgr1@att.net; larryjones@gmail.com; sabo.b8110@gmail.com
Cc: wmagdziarz@sugargroveil.gov
Subject: November 1, 2017 Special Meeting Agenda
Attachments: 2017 110117.pdf

Good Morning, All

Attached, please find the agenda for tomorrow night's special meeting.

If you have any questions, please do not hesitate to contact me.

Thank you,

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From: Victoria Delmer <Victoria.Delmer@wedevag.com>
Sent: Wednesday, November 01, 2017 9:54 AM
To: Renee Hanlon
Subject: RE: Harter Road Land Annexation Inquiry

Thank you! I greatly appreciate your help.

Best regards/ Med vänling hälsning,

Victoria Delmer

Inside Sales & Service

Wedevåg Tools, Inc.

From: Renee Hanlon [mailto:rhanlon@sugargrovell.gov]
Sent: Wednesday, November 1, 2017 9:53 AM
To: Victoria Delmer <[redacted]>
Subject: RE: Harter Road Land Annexation Inquiry

No charge for PDFs. Just go to our website, http://www.sugargrovell.gov/village-government-and-functions/foia-information/ . Under information requested, request a PDF copy of application, attachments, and soils report for zoning petition #17-022. Once the clerk send me the request, I will get it right out to you.

Thanks,

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargrovell.gov

---

From: Victoria Delmer [[redacted]
Sent: Wednesday, November 01, 2017 9:46 AM
To: Renee Hanlon <rhanlon@sugargrovell.gov>
Subject: RE: Harter Road Land Annexation Inquiry

Good Morning,

A PDF would be wonderful. Is there a charge? I know the city charged per page for prints.

Best regards/ Med vänling hälsning,

Victoria Delmer

Inside Sales & Service

Wedevåg Tools, Inc.

From: Renee Hanlon [mailto:rhanlon@sugargroveil.gov]
Sent: Wednesday, November 1, 2017 9:44 AM
To: Victoria Delmer <[redacted]
Subject: RE: Harter Road Land Annexation Inquiry

Good Morning, Victoria

Thank you for your response. Do you want copies of the information we have? If so, I can send PDFs or print paper copies for you.

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

From: Victoria Delmer [[redacted]
Sent: Tuesday, October 31, 2017 1:53 PM
To: Renee Hanlon <rhanlon@sugargroveil.gov>
Subject: RE: Harter Road Land Annexation Inquiry

Thank you so much for your quick reply! I appreciate your diligence. I look forward to the hearing.

Again, thank you for the information.

Best regards/ Med vänling hälsning,

Victoria Delmer

Inside Sales & Service

Wedevåg Tools, Inc.

From: Renee Hanlon [mailto:rhanlon@sugargroveil.gov]
Sent: Tuesday, October 31, 2017 1:44 PM
To: Victoria Delmer [redacted]
Cc: Walter Magdziarz <wmagdziarz@sugargroveil.gov>
Subject: RE: Harter Road Land Annexation Inquiry

Good Afternoon, Victoria

You have reached the right entity.

Heartland Recycling has applied for annexation and M-1 zoning with a special use for mining. The Community Development Department received their application on October 11, 2017.

The first step in this process is a public hearing before the Village of Sugar Grove Planning Commission to gather information from the applicant and from interested members of the public. This public hearing is set for November 15, 2017 at 7:00p.m. at Village Hall.

After closing the public hearing, the Planning Commission will make a recommendation of approval or denial to the Village of Sugar Grove Board of Trustees. There have been no discussions of this request by either the Planning Commission or the Village Board to date.

We can make the Land Development Application and attachments available to you. They can be sent as PDFs or you may pick up paper copies at our office at 601 Heartland Drive. Please let me know how you would like to receive those documents.

As part of the application process, the applicant was required to apply to the Kane Dupage Soil and Water Conservation District for a Land Use Opinion. That report is complete and I can give you a copy of that document as well.

The applicant has not submitted an Environmental Impact Study nor an Endangered Species Report, as neither has been required by the Village.

Please let me know how you would like to receive the requested information.

Thank you,

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

From: Victoria Delmer [redacted]
Sent: Tuesday, October 31, 2017 11:48 AM
To: Renee Hanlon <rhanlon@sugargroveil.gov>

Subject: Harter Road Land Annexation Inquiry
Importance: High

Good Morning,

I am unsure if I am reaching out to the right entity. I am a resident of Sugar Grove living at 4s501 Harter Road. I am planning on attending your upcoming Public Hearing on the Harter Road project along with several of my neighbors. We would like to know if there will be any Environmental Impact studies available before and at the Hearing. The property I live on has the sister quarry to the one that is up for proposal as concrete reclamation site. I understand this is a quarry. However, it is a very old quarry that is now a pond and is home to Great Horned Owls, Peregrine Falcons, Red Tailed Hawks, as well as countless other species. Has any time been spent on the environmental impact of this proposal during the closed sessions when this was discussed? According the geographical research I've done, these ponds are linked via a natural gravel aggregate which runs underground along both properties. It is part of the same vein as the existing gravel pit on Main road. Has any looked into how filling up the pond will affect those with ponds that are connected?

I have looked for minutes to meetings concerning this proposal. Would you have the dates it was discussed by the Village Board available for me? I would like to pull the minutes for these meetings. As of now I have been unable to find mention of since the sale of the land in 2013. Might I have to go back farther to find mention of this? We were aware the land had sold. However, the use of the land comes as news to many of the people I have spoken with. Harter Road Middle School houses students from many neighboring cities, such as Kaneville, and Elburn. Were the plans to put a concrete crushing facility discussed with the cities whose students attend this school? Was it brought up to the school board in any kind of public meeting where parents and constituents could look over the plans? I know not all the parents are voters in Sugar Grove. But they have a stake in this. Traffic concerns, air quality concerns, Noise concerns and property value concerns seem to be the general vein of what I've been hearing. Any information would be invaluable for myself and the other concerned parties I have spoken with. We thank you in advance.

I am eager to hear more and look into the research the city put in to this project. Thank you for your service. Please respond via this email or my personal email:

[redacted]

Either is fine. Thank you for your service

Best regards/ Med vänling hälsning,

Victoria Delmer
Inside Sales & Service
Wedevåg Tools, Inc.
WEDEVÅG.
WEDEVÅG TOOLS, INC.
800 Hicks Dr. Elburn, IL 60119-0984 USA
[redacted]

Laura Julien

From: rhanlon@sugargroveil.gov
Sent: Wednesday, November 01, 2017 10:00 AM
To: cgalbreath@sugargroveil.gov
Subject: FOIA

Hi, Cindy

There should be an incoming FOIA from Victoria Delmar requesting information about the Heartland Recycling petition. I know what she is looking for, so if you want to send it to me, I will respond to her.

Thanks,

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From: Joseph Volini <josephvolini@gmail.com>
Sent: Wednesday, November 01, 2017 11:59 AM
To: John Savage
Cc: Walter Magdziarz
Subject: Re: Heartland Recycling--Sugar Grove, environmental concerns
Attachments: EcoCAT_1803689.pdf

Walter:

Here is the receipt for the Eco Cat submission. I will provide the full response, once received.

Thank you,

Joe Volini

On Wed, Nov 1, 2017 at 9:06 AM, John Savage <john.savage34@gmail.com> wrote:
Walt

Thanks for a heads up. What is the status of getting your comments on he annexation agreement?

Thanks,

John

On Oct 31, 2017, at 1:49 PM, Walter Magdziarz <wmagdziarz@sugargroveil.gov> wrote:

Joe & John,

Another area of concern I forgot to mention in my previous email is environmental, particularly endangered species. Have you initiated the EcoCAT process with IDNR? If not, it's fairly easy to do at their website, http://dnr.illinois.gov/EcoPublic/EcoPublicHome.aspx , and it would provide you with a response to potential objections. That's assuming there are no endangered species calling the property home, of course.

We've received the Kane-DuPage Soil & Water Conservation District's Land Use Opinion Report and the EcoCAT report would provide many answers to environmental concerns.

<image002.jpg>**Walter J. Magdziarz** | Community Development Director

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9594

T: 630.391.7225 | F: 630.391.7245 | E: wmagdziarz@sugargroveil.gov

--
Joseph Volini
Tel. 630-330-3615

Laura Julien

From:	rhanlon@sugargroveil.gov
Sent:	Wednesday, November 01, 2017 12:39 PM
To:	[redacted]
Cc:	cgalbreath@sugargroveil.gov
Subject:	FOIA Request 1
Attachments:	Land Development Application.pdf; Exhibit 1 Plat of Annexation.pdf; Exhibit 2 Plat of Survey.pdf

Good Afternoon,

Attached, please find the information that you requested. Attached are PDFs of the Land Development Application with Attachments and the Land Use Opinion of the Soil and Water Conservation District. Due to the size of the attachments, this information will be sent in multiple emails.

If you have any questions, please do not hesitate to contact me.

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From:	rhanlon@sugargroveil.gov
Sent:	Wednesday, November 01, 2017 12:40 PM
To:	[redacted]
Subject:	FOIA Request 2
Attachments:	Exhibit 3 Operations Plan.pdf; Exhibit 4 Preliminary Stormwater Mgmt.pdf; Exhibit CSDP Conceptual Site Development.pdf

Attachements

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Wednesday, November 01, 2017 2:16 PM
To: cgalbreath@sugargroveil.gov; wmagdziarz@sugargroveil.gov
Subject: RE: Heartland Recycling

Probably. Can you email us the FOIA request and the response?

Brent

From: Cindy Galbreath
Sent: Wednesday, November 01, 2017 1:33 PM
To: Walter Magdziarz <wmagdziarz@sugargroveil.gov>; Brent Eichelberger <beichelberger@sugargroveil.gov>
Subject: Heartland Recycling

A FOIA request was responded to which contains a lot of information regarding this application. As the requestor is a resident on Harter Road I was wondering if I should put the information on the web at this time?

Cynthia Galbreath, Village Clerk
10 S. Municipal Drive
Sugar Grove, IL 60554
p-630-391-7206 f-630-391-7210
vclerk@sugargroveil.gov

Laura Julien

From: beichelberger@sugargroveil.gov
Sent: Wednesday, November 01, 2017 2:31 PM
Subject: Heartland Recycling Proposal

VB,

Representatives of Heartland Recycling are willing to meet with any interested Board members on an individual basis, along with staff, to provide any background information that you may desire prior to their proposal ben presented a Board meeting.

The Public Hearing before the Board is scheduled to be opened at next Tuesday's meeting. As the Plan Commission will not have completed their review, the PH will need to be continued to the November 21 Board meeting, after taking any comment on Tuesday. The proposal will not be on the agenda for discussion on Tuesday, but should be on the 21st, assuming the Plan Commission is done. Therefore it would be appropriate to allow the applicant to make a statement or respond to any public comments, if they want to, but you as the Board should not plan to respond or discuss the proposal.

Let me know if you want to meet with Heartland in advance.

Sincerely,

Brent

SUGAR GROVE

Brent M. Eichelberger, Administrator
Village of Sugar Grove
10 S. Municipal Drive, Sugar Grove, IL 60554
T: 630.391.7200 ext. 7205 | F: 630.391.7210
beichelberger@sugargroveil.gov

Proud Partner of the Sugar Grove Sugar Grove EDC and Chamber of Commerce

Laura Julien

From: Joseph Volini <josephvolini@gmail.com>
Sent: Friday, November 03, 2017 8:09 AM
To: Walter Magdziarz
Cc: John Savage
Subject: Re: Heartland Recycling--Sugar Grove update
Attachments: image001.jpg; image002.jpg

That is fine with us Walter.

I will let Julie-Ann Fuchs from the School District know that you may be attending.

Thank you,

Joe Volini

Laura Julien

From: wmagdziarz@sugargroveil.gov
Sent: Friday, November 03, 2017 11:44 AM
To: beichelberger@sugargroveil.gov
Cc: cgalbreath@sugargroveil.gov
Subject: Board meeting material--Department Report
Attachments: CD Monthly report OCT 2017 part 1.pdf

For your review and comment.

Laura Julien

From: Lance Leader <[redacted]>
Sent: Sunday, November 05, 2017 6:09 PM
To: mjohnson@sugargroveil.gov; sherron@sugargroveil.gov; tkoch@sugargroveil.gov; rmontalto@sugargroveil.gov; dpaluch@sugargroveil.gov
Subject: Heartland Recycling rezoning

Dear Trustee,

I am a resident of the village and would like to know your position on the matter of annexation and rezoning of the property for Heartland Recycling Center. As it appears the public hearing has been moved from 11/15 to 11/7, a prompt response would be appreciated.

Regards,
Jim Leader

Steven Andersson

From: rhanlon@sugargroveil.gov
Sent: Tuesday, November 07, 2017 3:52 PM
To: cgalbreath@sugargroveil.gov
Subject: More Heartland Recycling
Attachments: Exhibit 3 Operations Plan.pdf; Exhibit 4 Preliminary Stormwater Mgmt.pdf; Exhibit CSDP Conceptual Site Development.pdf; Traffic Memorandum.pdf

Attached are more documents from the file. I don't know why these weren't passed on to you? I think the operations plan and the traffic memo are important to have up.

Does Brent want us to start putting all the zoning petitions and attachments on the website from now on?

SUGAR GROVE

Renee Hanlon, AICP | Planning & Zoning Administrator

Community Development Department | Village of Sugar Grove

601 Heartland Drive, Sugar Grove, IL 60554-9454

T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov

Steven Andersson

From: Natalie Juns <nataliejuns@gmail.com>
Sent: Wednesday, November 08, 2017 12:29 PM
To: Walter Magdziarz
Subject: Contacts Request

Hi Walter,

Would you be able to send me contact information for Heartland Recycling, Anytime Fitness and the proposed senior center?

Thank you!

Natalie

Steven Andersson

From: James White <jwhite@white-ekker.com>
Sent: Friday, November 10, 2017 8:36 AM
To: Renee Hanlon
Cc: gregorywilson0864@sbcglobal.net; oxie519@sbcglobal.net; james.eckert@exeloncorp.com; sgr1@att.net; larryljones@gmail.com; sabo.b8110@gmail.com; reneehanlon@comcast.net; wmagdziarz@sugargroveil.gov
Subject: Re: Planning Commission Packet for November 15, 2017 Part 3

Renee,

Good morning.

I did not see the Heartland recycling application or petition for rezoning in the packet you sent over. Can you please forward that as well?

I will be sending out my comments and questions later today.

Thank you.

James F. White, Esq.
White & Ekker, PC
WE Can Help

Sent from my iPhone

On Nov 9, 2017, at 4:05 PM, Renee Hanlon <rhanlon@sugargroveil.gov> wrote:

> Attached is Part 3
>
> <image001.jpg>**Renee Hanlon, AICP** | Planning & Zoning Administrator
>
> Community Development Department | Village of Sugar Grove
>
> 601 Heartland Drive, Sugar Grove, IL 60554-9454
>
> T: 630.391.7226 | F: 630.466.1083 | E: rhanlon@sugargroveil.gov
>
> <PC 2017 1115 pack3.pdf>

FREEDOM OF INFORMATION ACT
Excerpts:

(5 ILCS 140/1) (from Ch. 116, par. 201)

Sec. 1. "Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act."

. . .

"Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act."

Blomberg No. 6203
EXHIBIT
J-4