

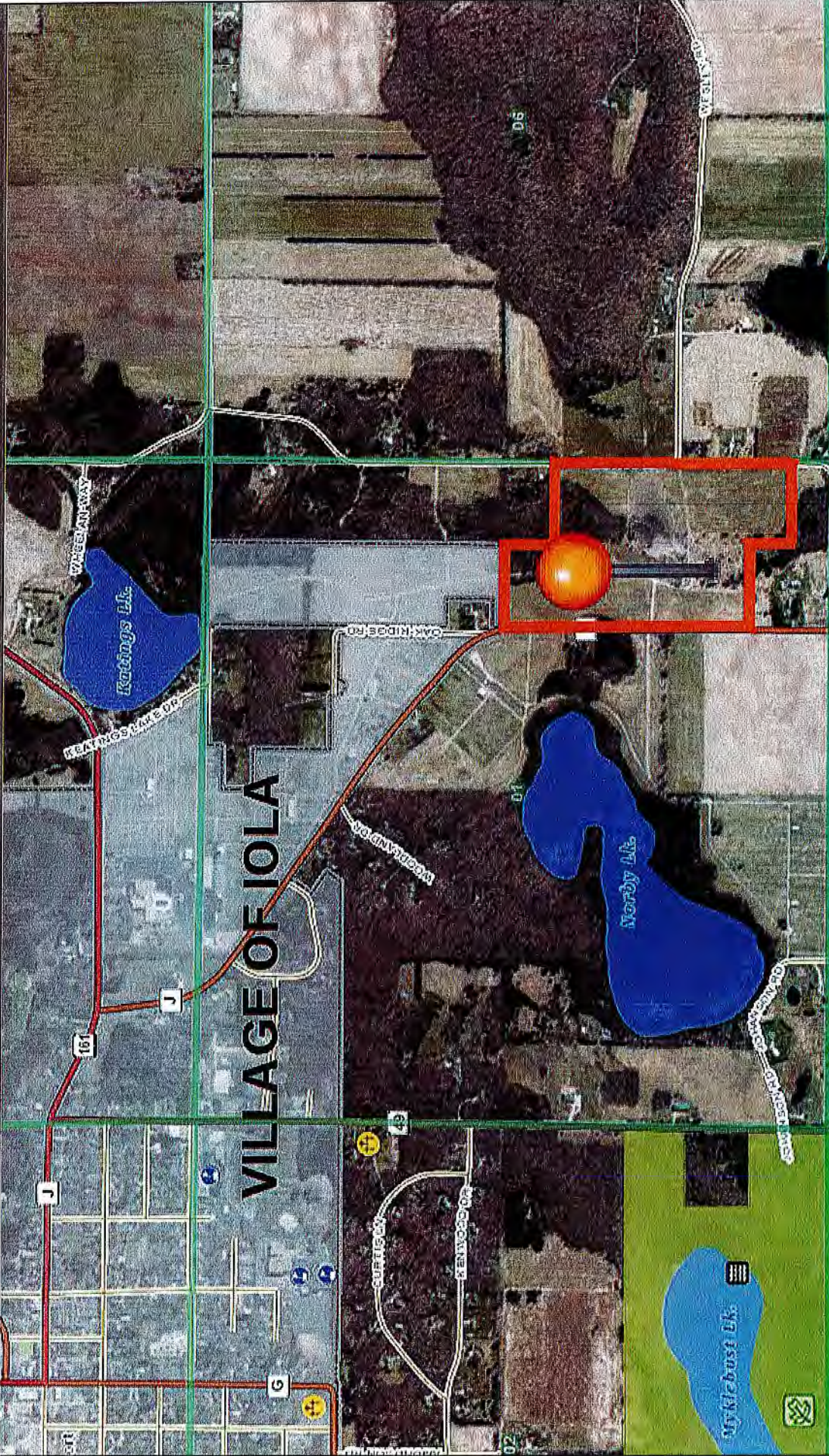
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Waupaca County, WI

# IOLA OLD CAR SHOW INC; SECTION 01; TOWN OF SCANDINAVIA



2/20/2023, 10:44:31 AM

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Map Key

● Zoning Collector GPS

Section Lines

— Section Line

— Section Numbers

Map Data Sources -> Waupaca County Land Information

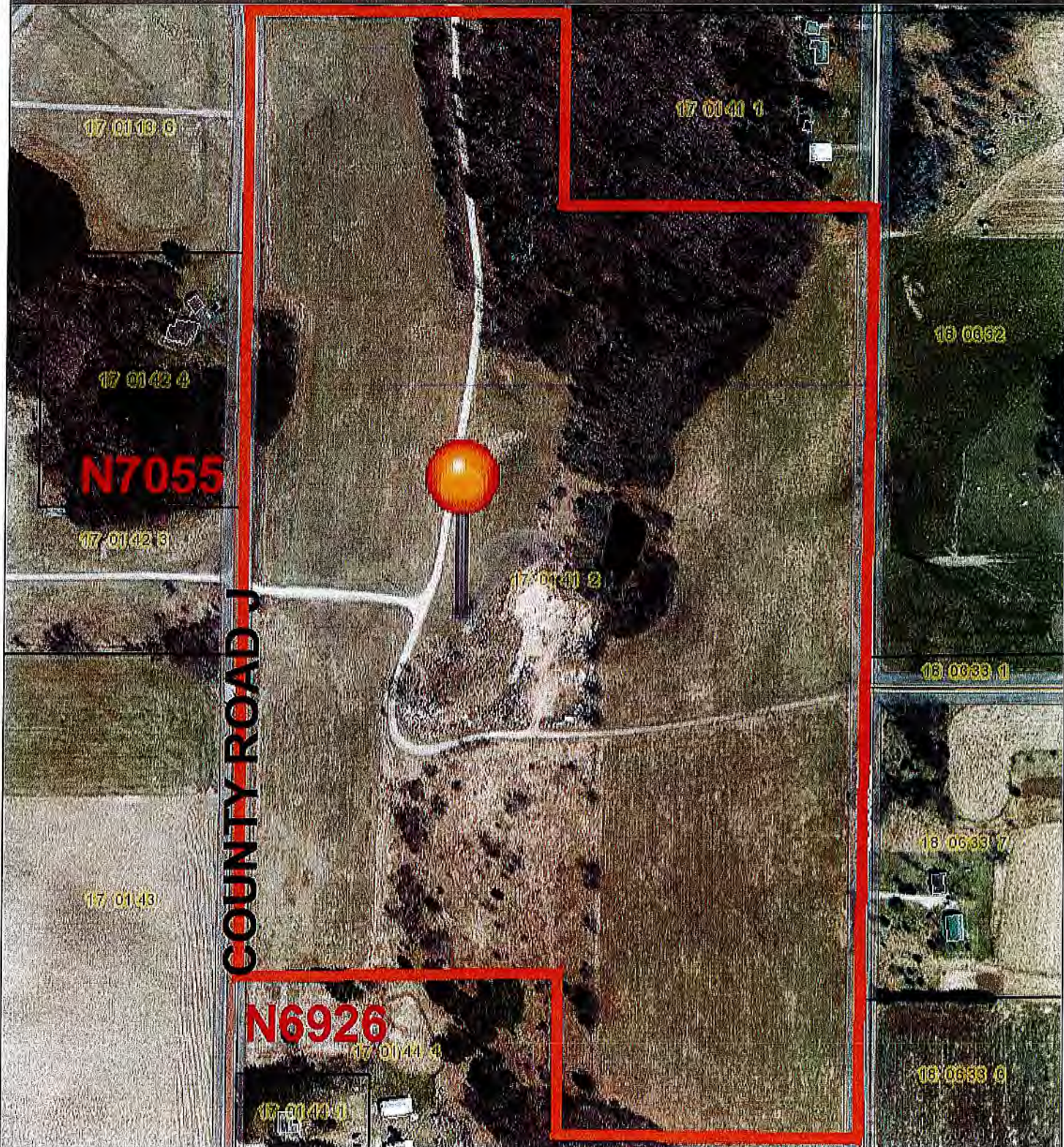


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# IOLA OLD CAR SHOW INC; SECTION 01; TOWN OF SCANDINAVIA



2/20/2023, 10:40:25 AM

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Map Key

Facilities - Building (2018 LiDAR)

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Parcel Numbers

□ Parcel - Local Zoning

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**Waupaca County**  
**Planning & Zoning Office**  
811 Harding St  
Waupaca WI 54981-2087  
Phone: 715-258-6255 Fax: 715-258-6212  
www.co.waupaca.wi.us

## Non-Metallic Mining

### Conditional Use Permit Application Packet

**Conditional Use Packet Includes:**

- Checklist
- Conditional Use Application
- Town Recommendation Form for Conditional Use (2 pages)
- Conditional Use Standards and Diagram of Plans

**PRIOR TO SUBMITTING YOUR CONDITIONAL USE PERMIT APPLICATION:**

- Consult Planning & Zoning Staff regarding your proposal
- Complete the Conditional Use Permit Application with the Waupaca County Planning & Zoning Office and submit the following along with the Application:
  - Detailed explanation and plans showing the location of the proposed area of use. Plans must be drawn to scale showing all dimensions necessary to determine compliance with standards. (i.e. parking spaces, driveway area, building size(s), building height(s), and setbacks from all property lines)
  - Where the property is not owned by the applicant, a letter must be attached giving consent of the owner to apply for the Conditional Use Permit.
  - Application Fee (payable to Waupaca County) "After the Fact" fee is double \*\* check with your Township to see if they require an additional fee \*\*
  - Once the Conditional Use Permit application is complete, the Waupaca County Planning & Zoning Office will forward it to the Town.
- Attend Town Planning Commission Meeting
  - Have Plan Commission complete applicable portions of the Town Recommendation Form
- Attend Town Board Meeting
  - Have Town Board complete applicable portions of the Town Recommendation Form
- After the Town meetings, submit to Waupaca County Planning & Zoning Office
  - Town Recommendation Form

NOTE: This requires a public hearing, which are scheduled as needed, on a Thursday morning. Neighbors within 300' of the property are notified and the Waupaca County official newspaper carries the notice for 2 weeks prior to the hearing, so it can take 3 weeks or more to schedule a hearing. Incomplete applications will not be scheduled.



**A Signed and Notarized Statement.** The applicant must provide a signed and notarized statement which includes:

- A summary describing the nature and scope of the project.
- A general description of the Applicant's interest in the property including ownership, leasehold or any other interest.
- Information explaining the expected total volume of materials to be extracted at the mine.
- Evidence of the Applicant's related activities. This evidence must include a list of currently operating projects and the status of compliance at each project site and any evidence of past compliance issues, and other materials as determined to be necessary by the County.

In addition, please attach the following:

- Proof of application for local, State and Federal permits required to operate the Nonmetallic Mining operation.
- The Name of company, agent, principal officer, principal stockholders or owners, state of incorporation, date of incorporation; copies of articles of incorporation



# Waupaca County

Fee \_\_\_\_\_ Check # \_\_\_\_\_

ATF

## Non-Metallic Mining Conditional Use Permit Application

Certain uses are of such nature or their effects are so dependent upon specific circumstances as to make impractical the determination in advance of where, when, or under what conditions they should be permitted. Conditional uses are land uses listed as such in each zoning district. They may be established only upon approval by the Planning & Zoning Committee. In order to avoid any delays, please complete all parts of this application. Incomplete applications will not be processed.

**Applicant Information**

Company Name: FAULKS BROS. CONSTRUCTION, INC.

**CONTACT PERSON:** Name: Mark Weinreis Phone #: (715) 258-8566

Address: E3481 Royallon St. Waupaca, WI 54981

Fax #: (715) 942-0509 Cell # (715) 281-0959 E-mail: mark@waupacasand.com

➤ **PROOF OF INSURANCE (PLEASE ATTACH A COPY OF THIS AT THE BACK OF THE APPLICATION)** \_\_\_\_\_  
See attached

**Property Information:**

Parcel Number(s): 17 01 41 2

Physical Address: Cty. Rd. J.. (No Fire Number Provided) Iola, WI 54945

Legal Description of land for proposed mine development: SEC1 T23N R11E PRT NESE & PRT SESE

Current Zoning District: PVRF Current Use and Improvements: Agricultural & Car Show Parking

**SURFACE LAND OWNER:** Name Iola Old Car Show Inc.

Address: P.O. Box 1 Iola, WI 54945

**MINERAL RIGHTS OWNER:** Name Same as above

Address: \_\_\_\_\_

**Proposed Project:**

➤ **Type of Mine:**

- Construction Fill (Sand, gravel, aggregate, or clay used in the construction trades).
- Industrial Sand Mine (Used to produce glass, moldings for castings, manufacture of abrasives, or processed into proppant or other industrial uses).
- Other Nonmetallic Mineral.

➤ **Final Destination of mined material:** Sold on-site or transported to other FBC location for processing

➤ **Permits:**

○ Does this mine have a current reclamation permit from Waupaca County to operate?

- Yes
- No



➤ Trucking Operations:

- How many loads per day: varies; Hours trucks will operate: M-F 6am to 6pm Sat 8am to 12pm
- Weight per load: 22 tons
- Type of truck: dump truck
- Which Township and County roads will be used to transport material? Please provide a complete description of all roads to be used to transport and to return to the site. Please see FBC's Iola Non-Metallic Mining Site Operations & Reclamation Plan Appendix A: Map A17 for proposed haul routes from the site.
- What specific contributions will be taken to insure that the Township roads will be maintained to a safe and secure condition? A stone tracking pad of at least 50 feet in length will be installed in accordance with the WI DNR Technical Standard 1057, Tracking Control Practice, to prevent or reduce tracking out of sediment onto the roadway.
- How many acres are planned for mining? ~22 acres of the 59 total acres
- Do you plan on mining below the water table? No
- What is the intended end land use after mining is completed? Back to Parking & Agriculture

**If a conditional use permit is granted, a reclamation permit form and plan will need to be completed and sent to East Central Regional Planning (ECWRPC) for review and approval. Mining activities cannot commence until the reclamation plan is approved and financial assurance is provided to ECWRPC.**

To the best of my knowledge, I certify that the information provided on this application and accompanying documents is complete and accurate. I agree to abide by all of the provisions and requirements of this Ordinance, other County Ordinances, State and Federal laws and any and all permits and licenses granted under such laws and regulations including conditions and all aspects of the Operation Plans. The signing of this application grants permission to allow free and unlimited access to the project site during normal working hours to any Planning & Zoning Office representative acting in an official capacity. Property owner signature is required. You or your agent are required to attend the hearing.

ACKNOWLEDGEMENT

[Signature]  
 Land Owner Name (Signature)  
Joe Opperman c/o Iola Car Show  
 Name (Print)

[Signature]  
 Mining Company Contact Name (Signature)  
JONATHAN FAULKER  
 Name (Print)

Personally came before me this 7<sup>th</sup> day of February, 2023, the above named person(s) to me known to be the persons who executed the foregoing instrument and acknowledged the same.

[Signature]  
 Notary Public,  
Waupaca County, Wisconsin  
 My commission expires 12/2025

Personally came before me this 7<sup>th</sup> day of February, 2023, the above named person(s) to me known to be the persons who executed the foregoing instrument and acknowledged the same.

[Signature]  
 Notary Public,  
Waupaca County, Wisconsin  
 My commission expires 12/2025

Add separate signature page for owner of Mineral Rights if applicable



## CONDITIONAL USE STANDARDS AND DIAGRAM OF PLANS

GENERAL STANDARDS: General performance standards and specific design standards for approval of a conditional use are provided for each zoning district. Below are general standards that the Planning & Zoning Committee will address in review of an application for a conditional use. These conditions include, but are not limited to, specification of:

1. Minimum parcel size
2. Parking availability
3. Minimum setbacks
4. All state approvals required for public buildings and/or made part of the zoning permit
5. Attractiveness or physical appearance
6. Ingress/Egress
7. Maintenance
8. Safety of nearby roads
9. Traffic
10. Waste Management
11. Erosion control standards
12. The period of time in which all or part of the use may be permitted
13. Landscaping and planting screens
14. Operational controls
15. Deed restrictions
16. Location of structure, docks, piers, or signs
17. Type of construction
18. The obtaining of other permits required by the State of Wisconsin, Federal Government Agencies, and any other Waupaca County Ordinances as a condition of the conditional use permit, must be completed prior to the issuance of the Conditional Use Permit.

Please include information in the application on these general standards as they would apply. An applicant must demonstrate that the proposed project complies with the standards noticed for the appropriate zoning district. The decision to grant or deny a conditional use permit is discretionary. (i.e. permit may be denied if the project cannot be tailored to a site without significant harm to ordinance standards and objectives)

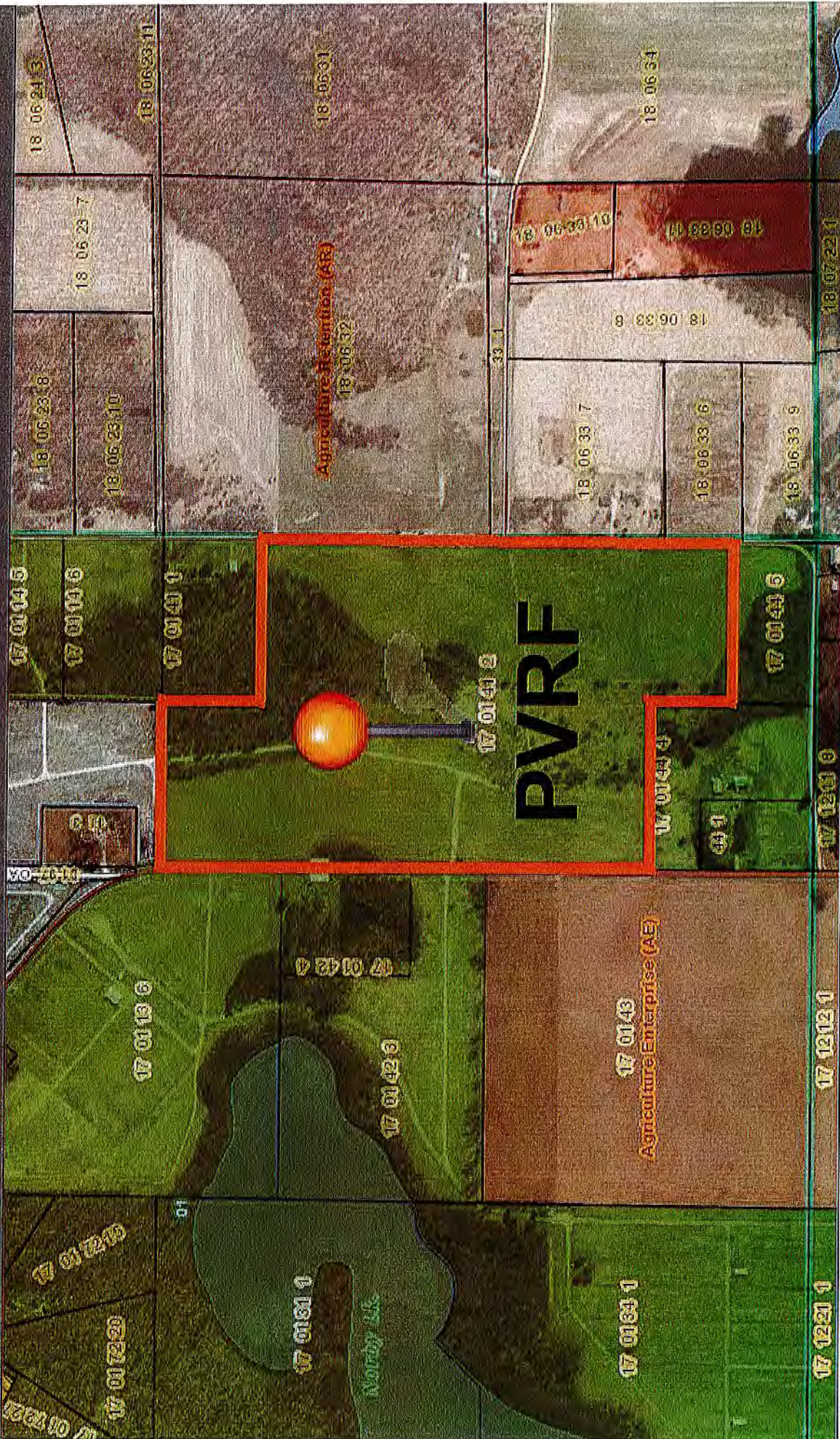
Where the zoning district contains no standards unique to that district or use, the following standards shall apply:

1. That granting of a conditional use will not violate the spirit or intent of the zoning ordinance.
2. That the use allowed would not be contrary to the public health, safety, general welfare, or which would be substantially adverse to property values in the neighborhood affected.
3. That the use shall not constitute a nuisance by reason of noise, dust, smoke, odor, or other similar factors.

Once the complete application has been received by the Waupaca County Planning & Zoning Office and processed, the applicant and/or agent will be notified of the date and time that the Planning & Zoning Committee will conduct an inspection of the property and hold the subsequent hearing at the Waupaca County Courthouse. The applicant or your agent are required to attend both the on-site and hearing.



# CURRENT ZONING DISTRICT: PRIVATE RECREATION AND FORESTRY (PVRF)



2/20/2023, 10:49:04 AM

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[www.co.waupaca.wi.us/departments/and\\_informat/on/index.php](http://www.co.waupaca.wi.us/departments/and_informat/on/index.php)  
Map Key

- Zoning Collector GPS
- Parcel - County Zoning
- Parcel - Local Zoning
- Parcel Numbers
- Parcel Changes (Splits-Combos etc)
- Section Lines
- Section Line
- Section Numbers

Map Data Sources -> Waupaca County Land Information



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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/20/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER R & R Insurance Services, Inc N14 W23900 Stone Ridge Drive Waukesha WI 53188		CONTACT NAME: Ericka Berceau PHONE (A/C, No, Ext): (262) 574-7000 E-MAIL ADDRESS: Ericka.Berceau@rrins.com		FAX (A/C, No): (262) 574-7060
INSURED Faulks Bros Construction Inc Faulks Bros Trucking Inc E3481 Royalton Street Waupaca WI 54981		INSURER(S) AFFORDING COVERAGE INSURER A: Sentry Insurance		NAIC # 24988
		INSURER B:		
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES CERTIFICATE NUMBER: 23-24 Liability Cert REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
	<input checked="" type="checkbox"/> Blkt AI PNC WOS CG7125 6/22			A0091808005	1/1/2023	1/1/2024	MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> Blkt WOS CG2404 12/19			Blkt AI CG2037 12/19			PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:				Blkt AI CG2010 12/19			GENERAL AGGREGATE \$ 3,000,000
<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				Blkt PNC CG2001 12/19			PRODUCTS - COMP/OP AGG \$ 2,000,000
OTHER:							Electronic Data Liability \$ 1,000,000
A	AUTOMOBILE LIABILITY			A0091808001	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO			Blkt AI PNC CA7601 6/15			BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/>		Blkt WOS CA0444 10/13			BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/>		A0091808007	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> EXCESS LIAB			Blkt AI PNC EU7091 5/15			AGGREGATE \$ 10,000,000
	DED <input type="checkbox"/> RETENTION \$ 0						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)	Y/N		A0091808006	1/1/2023	1/1/2024	E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A				E.L. DISEASE - EA EMPLOYEE \$ 500,000
A	Rented/Leased Equipment			A0091808003	1/1/2023	1/1/2024	E.L. DISEASE - POLICY LIMIT \$ 500,000
							Limit 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER Waupaca County Zoning Administration 811 Harding St Waupaca, WI 54981	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Brad Stehno/EB633 
---	--



# Iola Non-Metallic Mining Site Operations & Reclamation Plan

Town of Scandinavia  
Waupaca County



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## 1 Purpose, Mining Method & Executive Summary

The purpose of this report is to provide the information required for both the Conditional Use Permit and the Reclamation Plan for the Faulks Bros. Construction Inc.'s (FBC) proposed Iola Non-Metallic Mining Site (Iola Site). All information contained herein is the best information available to FBC at the time of writing the plan.

The proposed Iola site is currently used by the Iola Old Car Show (Car Show) for parking and agricultural purposes (Public Parking Lot numbers 4,5,6 and 7). The purpose of the surface non-metallic open pit sand and gravel mine will be to extract sand and aggregate to produce products for various uses. Front end loaders will excavate the raw bank material and transport it to the screening operation where it will be separated and stockpiled. The processed materials will then be sold directly out of the pit or transported to other FBC locations for further processing. No well is planned on the site at this time. If large boulders are encountered during extraction and cannot be removed using heavy equipment, blasting will be required. Depending upon the consistence of the sand and gravel encountered, rock crushing may also be employed on location.

The mining activity area will be approximately 22 acres out of a total of 59 acres. The proposed mine is entirely in the Town of Scandinavia. The mining activity will be carried over a period of 10 to 15 years depending upon market conditions.

The proposed boundaries of the active mine site were determined based on geology, soil type, locations of buildings, and surface water features. Setbacks from each feature as well as roadways were considered while determining the activity area.

The planned excavation depth will be approximately to 940 feet above sea level. Because of the topography of the site, the depth from ground level will average 26 feet. The depth to bedrock in the area has been determined to be 50 to 100 feet below ground level. The depth to water table in the area has been determined to be 20 to 50 feet below ground level.

More than 56,000 cubic yards (75,000 tons) of material is planned to be extracted per year, depending upon market conditions. The estimated total production over the life of the site will be from 660,000 to 734,000 cubic yards of material extracted.



## 2 Site Information

### 2.1 Property Owner

Name: Iola Old Car Show Inc.  
Executive Director: Joe Opperman  
Address: P.O. Box 1  
Iola, WI 54945  
Phone: (715) 445-4000

See C1:Letter of Consent from Joe Opperman on page 34 for a signed letter authorizing FBC to obtain a conditional use permit for these properties.

### 2.2 Operator

Name: Faulks Bros. Construction, Inc.  
Address: E3481 Royalton St.  
Waupaca, WI 54981  
Contact: Mark Weinreis  
Phone: (715) 258-8566

### 2.3 Location

The Iola site is in the Town of Scandinavia, Waupaca County, Wisconsin, on the east side of County Highway J. The subject property includes the Iola Car Shows Public Parking Lot numbers 4,5,6 and 7.

See Map A1:General Location Map on page 15 and Map A2:Specific Location Map on page 16 for the general and specific location of the Iola Site.

#### 2.3.1 Property Information

Municipality: Town of Scandinavia  
Legal Description: SEC1 T23N R11E PRT NESE & PRT SESE  
DAF LT5 CSM V11P300 EX CSM V14P222 V528P233 V551P556 V552P741 V596P86 V600P689 V604P534  
V656P887 V716P921  
Street Address: Cty. Rd. J., Iola, WI 54945 (No Fire number provided)  
Parcel #: 17 01 41 2  
Parcel Size: 59.18 acres  
Mining Activity: 21.83 acres  
Zoning District: Private Recreation and Forest (PVRF)



### 3 Existing Conditions

The site currently used as parking for the Car Show. Most of the property is mowed grass with some wooded areas. See Map A3:Satellite Imagery 2020 on page 17 for satellite imagery of the area created from National Agriculture Imagery Program<sup>1</sup> from August of 2020.

#### 3.1 Land Use

According to analysis ran on the “Model My Watershed”<sup>2</sup> website the surrounding ¼ mile of land currently has the following land uses:

Type	Acres	%
Cultivated Crops	197	41.6%
Forest	128	27.1%
Pasture/Hay/Grasslands	68	14.3%
Open Space	59	12.5%
Developed Area	13	2.7%
Wetlands	6	1.3
Open Water	2	0.4%
<b>Total</b>	<b>473</b>	<b>100%</b>

#### 3.2 Ownership, Buildings and Wells

The Waupaca County Open GIS “Tax Parcels”<sup>3</sup> was used to determine the parcel number and ownership for the tables and maps.

##### 3.2.1 Ownership within ¼ mile

Table B1: Adjacent Property Ownership on page 32 includes the names and addresses of the owners of property within ¼ mile the proposed mine activity site. See map A4:Parcels Map on page 18 for map of area with the names & parcel numbers of the properties.

##### 3.2.2 Buildings with in ¼ mile

There is not a reliable GIS source for buildings in the area. FBC has done their best to identify buildings that are within ¼ mile of the proposed mine activity site by reviewing aerial photos of the area. Buildings that are owned by the Iola Car Show were not mapped. Table B2:Buildings with ¼ Mile on page 33 shows the buildings that FBC has detected. Those highlighted in red are structures that are within 500 ft of the proposed mine site. No mining activity will occur within 500 feet of these structures. Those not highlighted are not within 500 ft or further away than buildings that have already been considered for setbacks. See A5:Buildings Map on page 19 for locations.

##### 3.2.3 Wells within ¼ mile

The Wisconsin DNR “Wisconsin Wells”<sup>4</sup> was used create the following table and map to determine the location of wells within the vicinity of the mine site. Table B3:Adjacent Properties with Wells on page 33 shows all properties that have wells that are within ¼ mile of the parcel boundary of the proposed mine site. See Map A6:Wells Map on page 20 for location of these wells.

<sup>1</sup> <https://apps.nationalmap.gov/downloader/>

<sup>2</sup> <https://modelmywatershed.org>

<sup>3</sup> <https://data2017-04-05t135915451z-waupacacounty.opendata.arcgis.com/maps/tax-parcels>

<sup>4</sup> <https://data-wi-dnr.opendata.arcgis.com/maps/wisconsin-wells>



### 3.3 Geology

#### 3.3.1 Topography

This property is split by a slope that runs from the north-east to the south-west. The higher area is on the west side of the property and that is where most of the mining activity will take place.

A topographical map of the area was created using Digital Elevation Model from the USGS “The National Map”<sup>5</sup> data. See Map A7:5 Ft Contour Map on page 21 for a map of the current topography of the area. Also see Map A8:Current Drainage Map on page 22 for the drainage for the site. For a view of current topography in cross sections see Maps A15 and A16.

#### 3.3.2 Soils

Information on soil types was obtained from the National Resources Conservation Service’s (NRCS) Web Soil Survey<sup>6</sup> website. See Map A9:Soil Map on page 23 for map of the general soil types in the Iola Site area.

##### Rosholt Sandy Loam

This type of soil makes up about 41 acres or 69% of the area within this property. The soil forms in loamy and sandy deposits underlain by stratified sand and gravel and is very well drained. The depth of loam layer above the sand and gravel can vary between 28 to 34 inches.

##### Elderon-Rosholt Complex

This type of soil makes up about 18 acres or 31% of the area within this property. This type of soil is a mixture between Rosholt soil type, described above, and Elderon soil type. Elderon is a well-drained and forms in sandy and gravely glacial drift. The depth of loam layer above the sand can vary between 50 to 60 inches. The sand layer can contain as much as 50% rocks and stone.

#### 3.3.3 Bedrock

The depth to bedrock for the area is 50 to 100 feet from the surface, according to the WI DNR’s “Groundwater Contamination Susceptibility Model”<sup>7</sup>. According to the same study the bedrock for this area is igneous, metamorphic, and volcanic rock. See Map A10:Depth to Bedrock Map on page 24 for map of the depth to bedrock for Waupaca County.

A review of well construction reports, from the WI DNR’s “Wisconsin Wells”<sup>4</sup> inventory, near the site shows that none of the wells hit bedrock during construction.

### 3.4 Hydrology

#### 3.4.1 Groundwater Information

The depth to water table for the site is listed as 20 to 50 feet from the surface according to the WI DNR’s “Groundwater Contamination Susceptibility Model”<sup>7</sup>. See Map A11:Depth to Water Table Map on page 25 for map of the depth to water table for Waupaca County.

A review of well construction reports, from the “Wisconsin Wells”<sup>4</sup> inventory, shows an average depth to groundwater is about 33 feet from the surface in higher areas and about 20 feet in lower areas.

#### 3.4.2 Surface Waters & Wetlands

The Iola Site is located within the South Branch of the Little Wolf River Watershed, which is part of the Lake Michigan Basin.

See Map A12:Water & Wetlands Map on page 26 for map of waterbodies & wetlands of surrounding area.

There are three lakes and no rivers located within 1 mile of the Iola Site. The lakes are Norby Lake (~0.3 miles), Herman Lake (~0.4 miles) and Kating Lake (~0.5 miles).

There are four ponds near the mine site. One each on the following three properties owned by Gregory Ambrosius, Amy Ording and Charles Wasrud. The fourth pond is in the middle of the proposed site. The pond is currently being delineated. Once delineated, FBC will consult with North Central planning and the WDNR to determine how to deal with the pond during extraction and for reclamation.

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<sup>5</sup> <https://apps.nationalmap.gov/downloader/>

<sup>6</sup> <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

<sup>7</sup> <https://data-wi-dnr.opendata.arcgis.com/datasets/groundwater-contamination-susceptibility-model>

### 3.4.3 Floodplain

According to the “FEMA Floodplain Viewer”<sup>8</sup> on the Waupaca County GIS site, no portion of the site falls within a FEMA designated floodplain.

### 3.4.4 Drainage

The property currently drains primarily down the slope from west to east. Because of the infiltration rates of the soil, most stormwater infiltrates on-site. It appears that most of the stormwater pools up in the man-made pond on the east side of the slope. Some of the surface water flows to a low spot on the extreme southeast part of the property. There is a culvert that crosses under Olson Road in that area. A temporary sedimentation screen may be needed to avoid storm water drain through the culvert and across the road into Herman Lake, until the screening berm has been constructed.

Once screening berms are constructed along the perimeter, any stormwater runoff will be trapped in the mining area and allowed to infiltrate. The site will become internally drained.

The major soil types of the property have a moderately high to high infiltration rate (0.6 to 6.0 inches per hour) at their most limiting layer. Therefore, there is not much stormwater runoff from the property. See Map A8:Current Drainage Map on page 22 for the current drainage for the site. This map was created using Digital Elevation Model from the USGS “The National Map”<sup>5</sup> data.

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<sup>8</sup> <https://public1.co.waupaca.wi.us/floodplain-viewer/>



## 4 Operational Plan

### 4.1 Phasing of Operations

The operation will first require the removal of topsoil and over-burden. The topsoil will be stockpiled for later use during reclamation. The overburden will be used to make berms on-site or stockpiled for later use during reclamation. All stockpiles will be in non-sensitive areas within or immediate adjacent to the area of excavation. Any stockpiles not within the excavation area will be encircled with a silt fence.

The mining operation will have annual phasing starting from the south-central point of the mining area. Extraction will start from East to West and then move from South to North on an as needed basis.

See Map A13: Mine Plan on page 27 for map of phasing, entrance/exit, scale house, berm and screening and the approximate location of stockpiles. See also Map A14: Profiles Map on page 28 along with maps A15 & A16 for cross section profile of the property after excavation has completed to 940 feet above sea level.

The extraction area is 21.8 acres. The planned excavation depth will be approximately to 940 feet above sea level. The average elevation of the area is 966 feet above sea level, making the average depth of the excavation of 26 feet. The topsoil in the area is estimated to be 9 inches thick and overburden an additional 27 inches. Topsoil yield will be approximately 26,000 cubic yards and over burden will be approximately 79,000 cubic yards. The estimated materials extracted will be from 660,000 to 734,000 cubic yards.

### 4.2 Hours of Operation

The operator shall conduct mining operation only during the following times:

- Monday through Friday: 6am to 6pm
- Saturday: 8am to 12pm (No Blasting)
- Sundays: No mining operations
- Holidays: No mining operations

### 4.3 General Operations

#### 4.3.1 Water

The construction of a well on the site is not planned for this site at this time. Any water used, such as for dust control (applied by water trucks), will be trucked come from outside sources.

#### 4.3.2 Blasting & Crushing

If boulders are encountered during extraction, blasting maybe required. If so, FBC will follow all State and Federal guidelines and requirements, including Ch SPS 307.41 of Wisconsin Administration Code.

Depending upon the consistence of the sand and gravel encountered, rock crushing may also be employed on location. If required, rock crushing will be done during normal operations hours.

#### 4.3.3 Equipment

Operator equipment utilized during the operations will consist of the following:

Operation	Equipment
Topsoil & Over Burden Removal	Front end loaders, bulldozers, excavators, tractors, tractor-trailers, dump trucks, and haul trucks.
Sand & Gravel Extraction	Front end loaders, screening equipment, conveyors, small generators, dump trucks, haul trucks, skid steers, and water trucks.
Reclamation	Front end loaders, bulldozers, excavators, tractors, tractor-trailers, graders, discs, seeders, dump trucks, and haul trucks.
Possible	Rock Crusher.
Other	Pick-up trucks, Contractor equipment and vehicles, employee personal vehicles.

#### 4.3.4 Noise

Noise is limited to the equipment listed above.

#### 4.3.5 Stockpiles

Location of stockpiles will vary throughout the life of the mine. The stockpiles will be approximately 40 feet in height.

### 4.4 Transportation

Most of the sand/aggregate will be sold directly to customers from the mine site. Some will be hauled to either FBC's Headquarters or to FBC's Foley site for further processing or for sale.

#### 4.4.1 Exit/Entrance

A stone tracking pad of at least 50 feet in length will be installed, in between the scale and the exit/entrance, in accordance with the WI DNR Technical Standard 1057<sup>9</sup>, Tracking Control Practices, to prevent or reduce tracking out of sediment onto the roadway.

The exit/entrance will be installed at the southernmost part of the property and exit to/enter from Hwy J. A scale and scale house will be constructed inside the pit for this property. Another gated exit/entrance to the property will be constructed on the east side that exit to/enter from Olson Rd near the intersect with Wesley Rd. This exit/entrance will be an emergency exit/entrance to the mine site.

#### 4.4.2 Frequency of Loads

The frequency of dump truck per day will vary with market demand. Each load is approximately 22 tons.

#### 4.4.3 Routes

Routes for those heading north of site will be north on Hwy J to State Hwy 161. Routes for those heading south will be south on Hwy J to Hwy B and then on to State Hwy 49 or Hwy E. See A17:Transportation Routes Map on page 31 for a map of expected routes.

### 4.5 General Safety

#### 4.5.1 Setbacks

Mine operations will be further than 500 feet from any dwelling or building other than those of the owner or operator.

Mine operation will be further than 150 feet from the centerline or 100 feet from the right-of-way, whichever is greater, of any roads near the site.

#### 4.5.1 Berm & Screening

A berm, with minimum height of 10 feet above the right-of-way, will be constructed along the right-of-way of County Highway J, and Olson Road to screen the mine activity from those roadways. Along boundaries that are not adjacent to roads, the berm construction will be begin at least 25 feet from the lot line to screen the mine activity from those locations. The berm will slant or curve in places to exclude areas that are within required setbacks.

The berm will have slope of three (3) horizontal units to one (1) vertical unit on the outward facing slope. The inward facing side will vary but will be approximately a slope of two (2) horizontal units to one (1) vertical unit and remain stable. At the time of reclamation, the inward facing side will be graded to three (3) horizontal units to one (1) vertical unit slope.

#### 4.5.2 Fencing

Fencing is not required as no properties adjacent to the site are zoned residential.

#### 4.5.3 Gating

A gate will be installed at both exits/entrances of the mine site. This gate shall remain locked outside of operation hours.

#### 4.5.4 Lighting

No overhead or portable nighttime lighting has been proposed for the site.

### 4.6 Environmental Protection Standards

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<sup>9</sup> <https://dnr.wi.gov/topic/stormWater/documents/1057TrackoutControlPractices.pdf>



## Iola Non-Metallic Mining Site Operations & Reclamation Plan

The operator will comply with all applicable local, state, and federal environmental protection laws.

### 4.6.1 On-site Fuel Storage

No on-site permanent fuel storage is planned for this site. Refueling will be conducted on-site with mobile refueling tanks or trucks. The only temporary storage of fuel will be in approved mobile fuel trailers.

### 4.6.2 Hazardous Materials Storage

No hazardous waste or materials will be stored or result from the mining operations.

### 4.6.3 Groundwater

No well is planned for this site and therefore shall not affect the groundwater levels around the mine site.

### 4.6.4 Water Discharges

The operator will obtain and comply with any applicable Wisconsin Pollution Discharge Elimination System (WPDES) permitting.

No well is planned at the site at this time, so the only water discharge would be stormwater.

Silt screening and other runoff catchment will be used until berm is in place to prevent stormwater runoff. Upon construction of berms, it is anticipated that the site will be internally drained and there will be no stormwater run-off from the site into any surface waters or adjacent properties. A Stormwater Pollution Prevention Plans (SWPPP) will not be required.

## 5 Reclamation Plan

The property has a total of 21.8 acres that will be reclaimed, with approximately 4.0 acres of periphery slope and 17.8 acres of pit floor.

### 5.1 Post Mining Land Use

The land use, after reclamation, will be determined by the property owner (Iola Car Show) and within compliance of the reclamation requirements.

### 5.2 Final Grades and Slopes

Overburden that was used to make berms or stockpiled and then will be used to form the required slopes for reclamation. The final slope will be three (3) horizontal units to one (1) vertical unit as requested by the property owner.

### 5.3 Topsoil Management

The topsoil that was stockpiled during the topsoil and overburden removal portion of the operation. The stockpiled topsoil will be spread to minimum depth of 4 inches across the reclamation site.

### 5.4 Structure Removal

#### 5.4.1 Scale & Scale House

The scale and the scale house will be removed upon completion of reclamation.

#### 5.4.2 Roads & Berms

All berms and haul roads will be graded to meet the final reclamation plan grades. It is up to the current property owner if they want the entrance/exits removed from the site.

#### 5.4.3 Drainage & Sediment Control

Any drainage or sediment control structures used will be removed once the vegetative cover has been effectively reestablished.

### 5.5 Revegetation

#### 5.5.1 Plan

After reapplication of topsoil, the site will be seeded, and fertilized, were necessary.

##### Seeding

A seed mix, determined by the owner of the property, will be used on all slopes and any disturbed areas that are not to be immediately reverted to agricultural use, at the time of reclamation.

##### Fertilizer

A fertilizer will be incorporated into the topsoil of the seeded area using a light discing or harrowing. It may be applied just before or in conjunction with final discing or harrowing of the site.

If seeding is to be done using pressure spray, the required amount of fertilizer shall be mixed with the water and seed and applied directly during seeding operation. If applying fertilizer in this way, discing and harrowing is not required after placement.

The required fertilizer composition of Nitrogen, Phosphoric Acid, and Potash will be determined by soil testing prior to seeding operations.

#### 5.5.2 Erosion Control

During reclamation, silt screening and other runoff catchment will be used to prevent stormwater runoff until revegetation has been established per the standard set below.

#### 5.5.3 Revegetation Standards

To determine successful revegetation for final vegetation cover, Wisconsin Code NR 216 "final stabilization" will be used. The standard states that "final stabilization" has been achieved when a "uniform perennial vegetative cover has been established with a density of at least 70% of the cover for unpaved areas and areas not covered by permanent structures."



### 5.6 Criteria for Successful Reclamation

Compliance with reclamation measures described in in this section shall be determined by on-site inspections by the regulatory authority or its agent. Compliance with reclamation measures may also be determined by reports obtained during reclamation inspections. The reports shall include summarized data on revegetation, photo documentation, or other evidence that the reclamation measures have been met.

Once reclaimed areas have achieved compliance, the areas will be considered successfully reclaimed and no further reclamation activities shall be required. The operator will notify Waupaca County in writing that reclamation has been completed. Reclamation of those areas will be considered complete after Waupaca County performs the final inspection of the area and issues the County Certification of Completion for the Reclamation. Waupaca County will have access to the site for inspections as required.

## 6 Financial Assurance

The financial assurance shall provide that the operator shall faithfully perform all requirements in the County and Local Ordinances and the reclamation plan.

The operator will file financial assurance with the Administering Agency as soon as the operator has a written notification of the amount of financial assurance required.

Upon completion of Reclamation plan and the issuance of the Certification of Completion, the Administering Agency will release the Financial Assurance to the operator.

## 7 Insurance

The operator will provide the Administering Agency a certification of insurance prior to the commencement of any activity at the site.

## 8 Certifications & Receipts

### 8.1 Certification of Plan – Operator

I hereby certify, as a duly authorized representative or agent, that post mining reclamation will be carried out in accordance with the provisions of the statewide nonmetallic mining reclamation standards established in ss. NR 135.05 through NR 135.15 Wis. Adm. Code, the Waupaca County Non-Metallic Mining Reclamation Ordinance, Village of Iola Ordinance Non-Metallic Mining Chapter 183, and this approved site-specific reclamation plan.

\_\_\_\_\_  
Signature of President, Faulks Bros. Const. Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

### 8.2 Plan Proof of Receipt – Owner

Owner: Iola Old Car Show Inc.

Representative: Joe Opperman

Site Name: Iola Non-Metallic Mining Site

Parcel #: 17 01 41 2 & 26 01 11 4

I hereby certify, as owner of the property as described above, that I have received a copy of this plan prepared for use by the Waupaca County Planning and Zoning Department.

\_\_\_\_\_  
Signature of Executive Director, Iola Car Show Inc.

\_\_\_\_\_  
Date

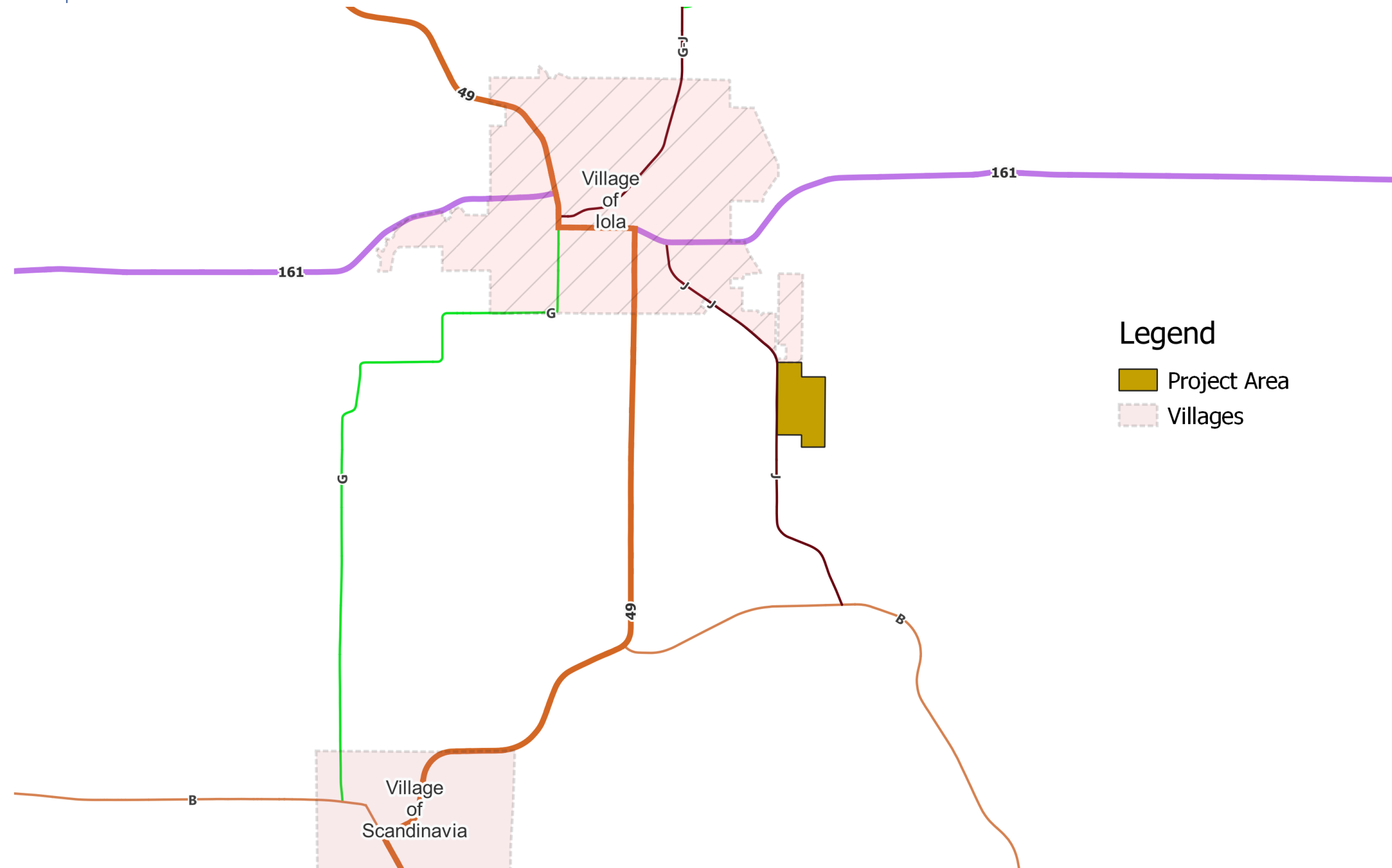
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Appendix A: Maps

A1: General Location Map

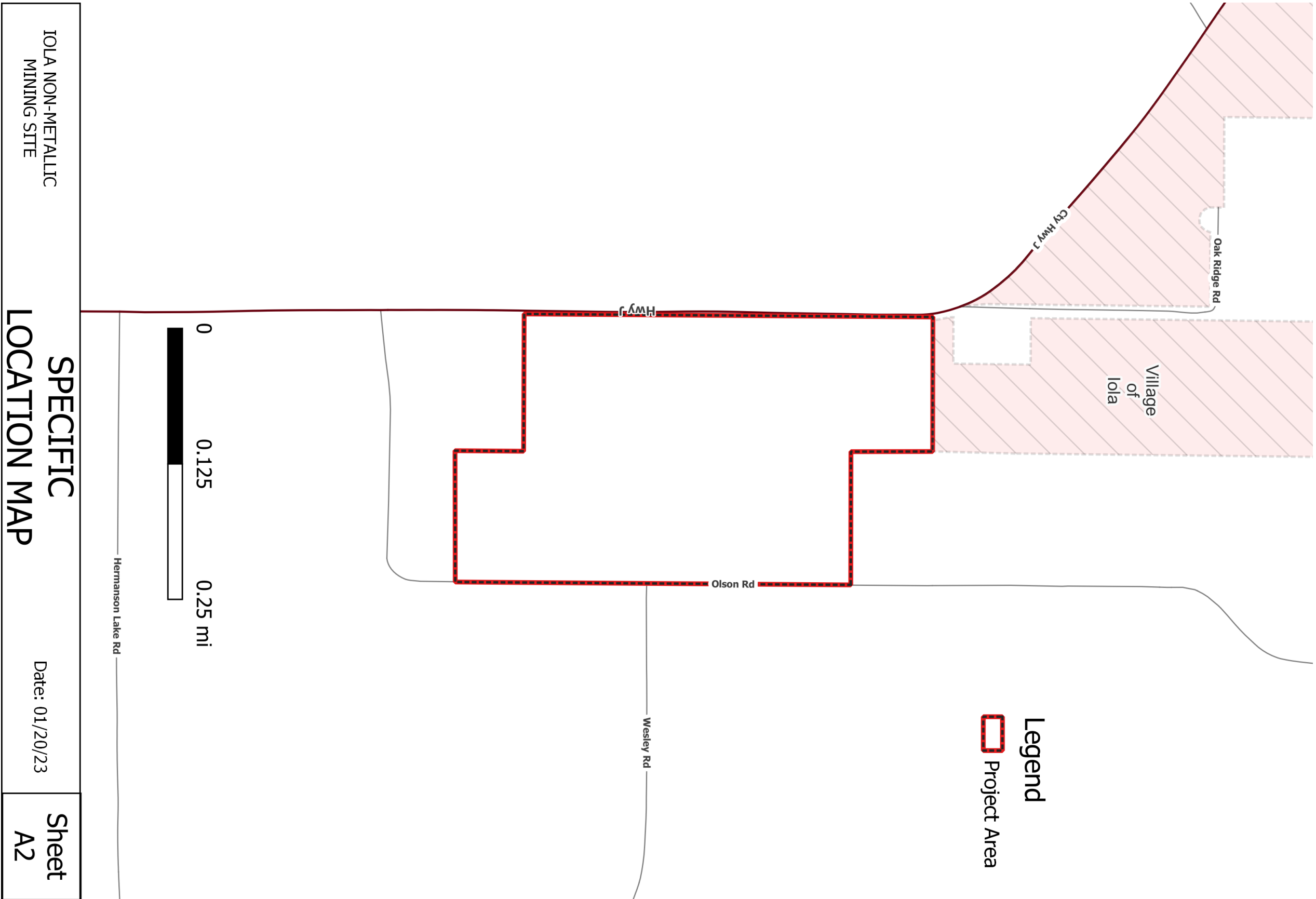
A1: General Location Map



IOLA NON-METALLIC MINING SITE Town of Scandinavia, Waupaca County	<b>GENERAL LOCATION MAP</b>	Date: 01/20/2023	Sheet A1
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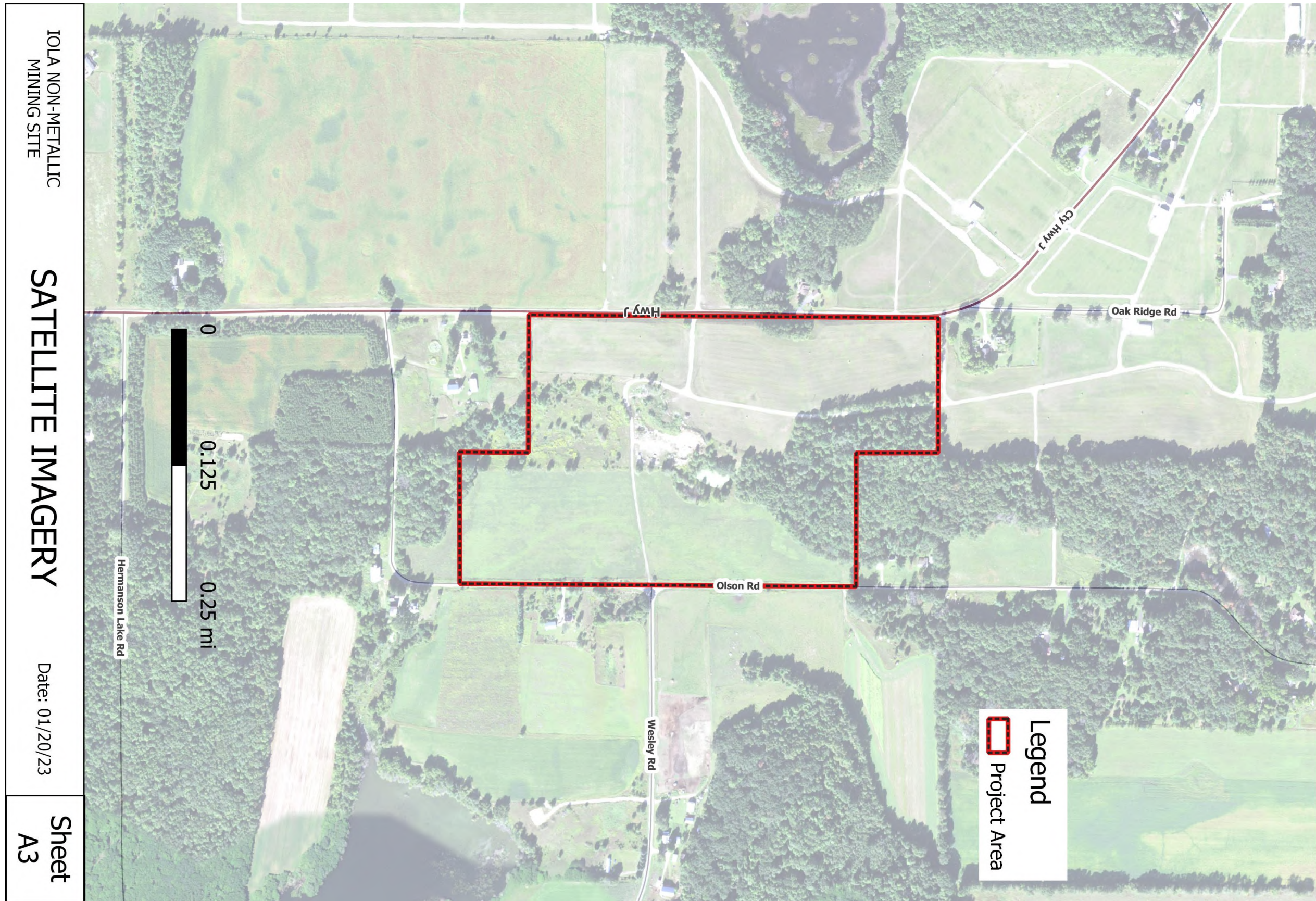


A2: Specific Location Map





A3: Satellite Imagery 2020

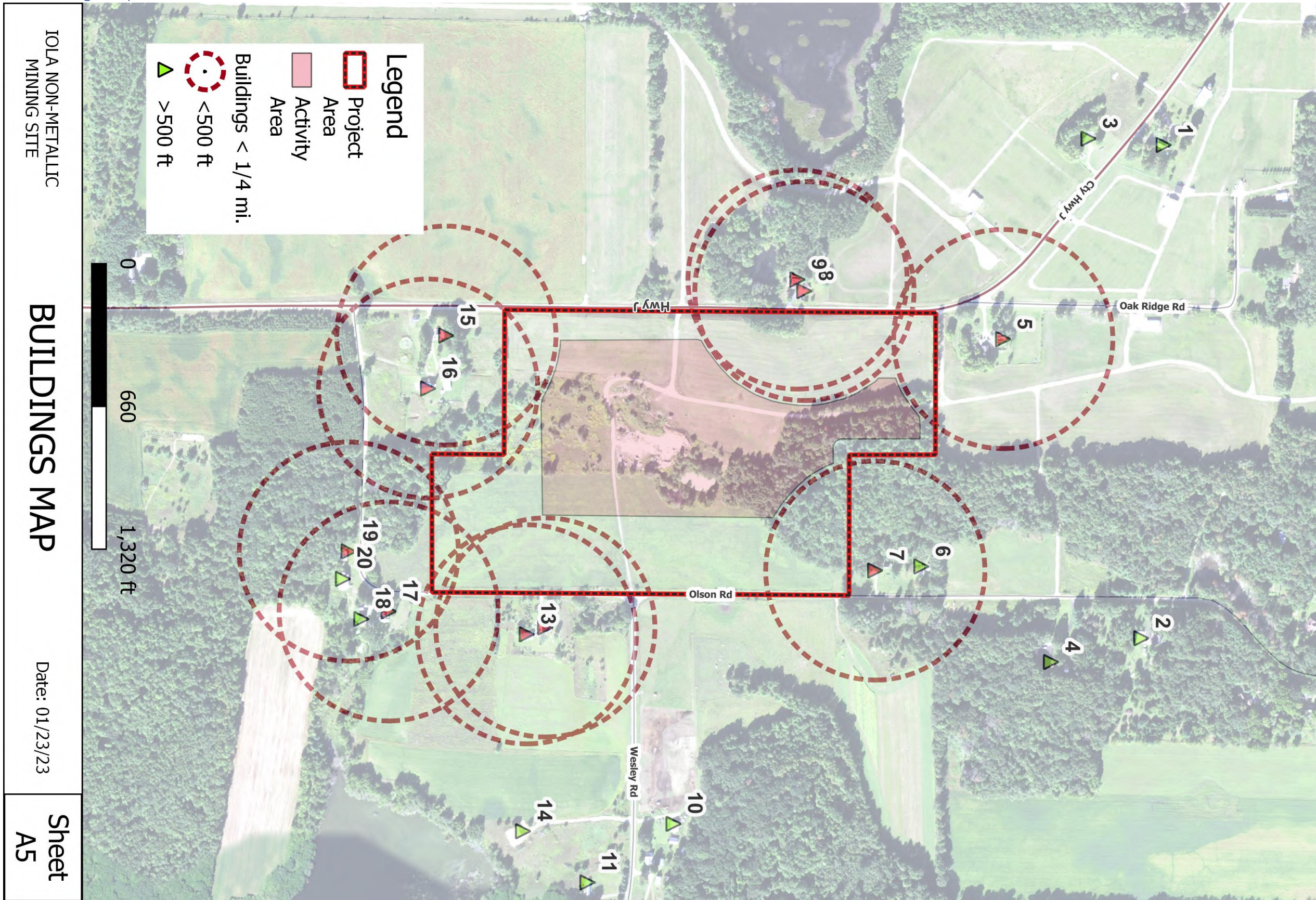






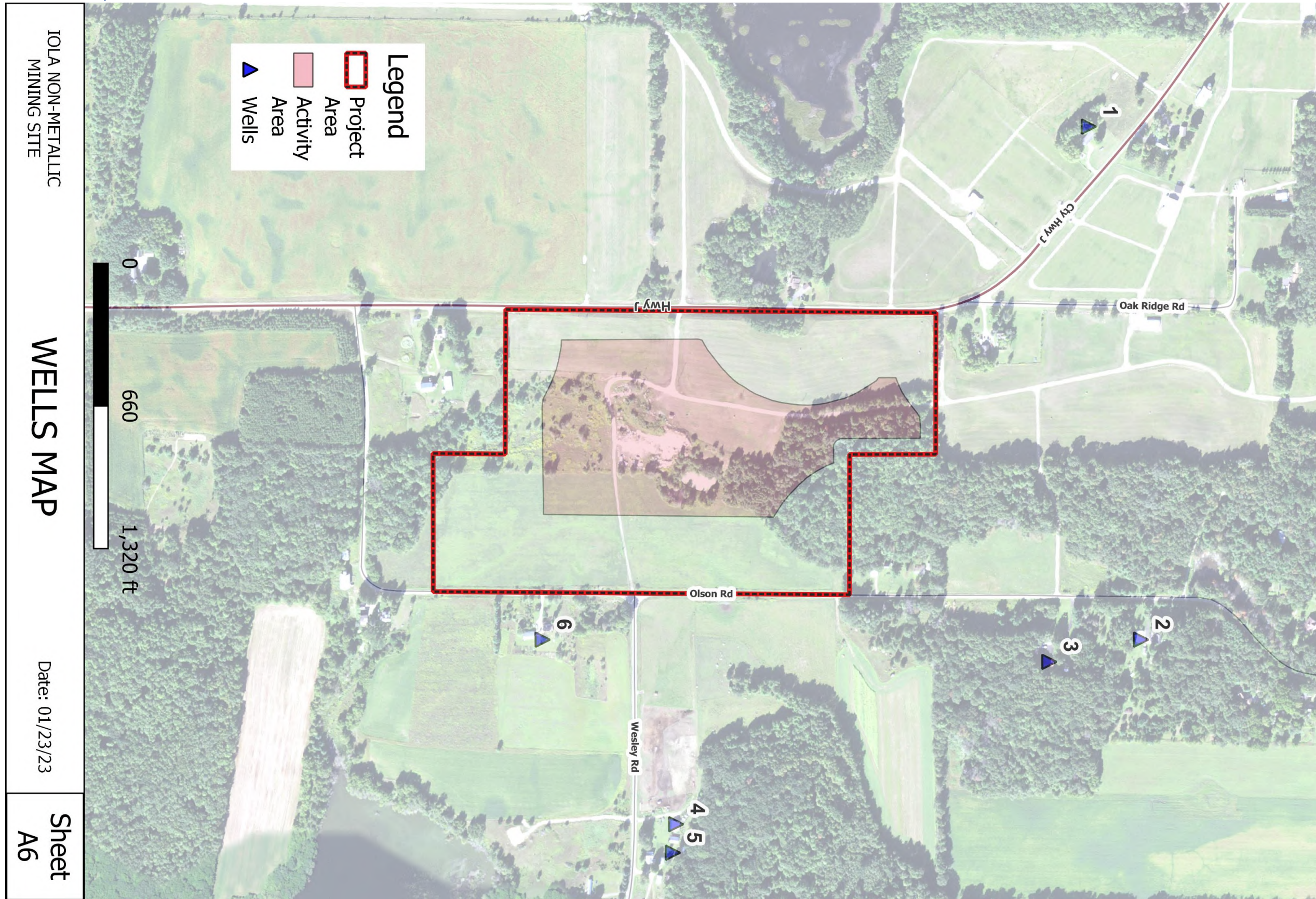


A5: Buildings Map



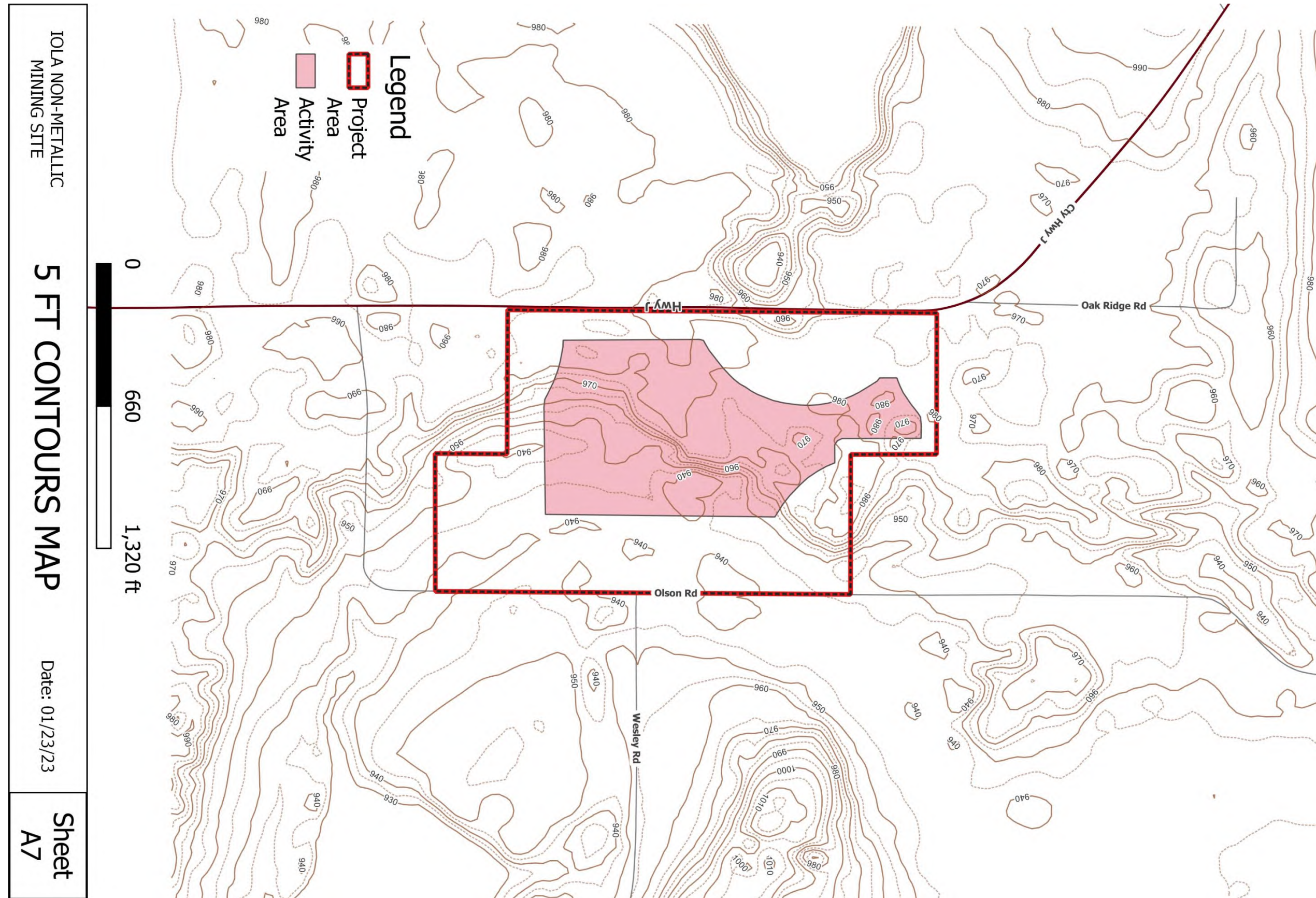


A6: Wells Map



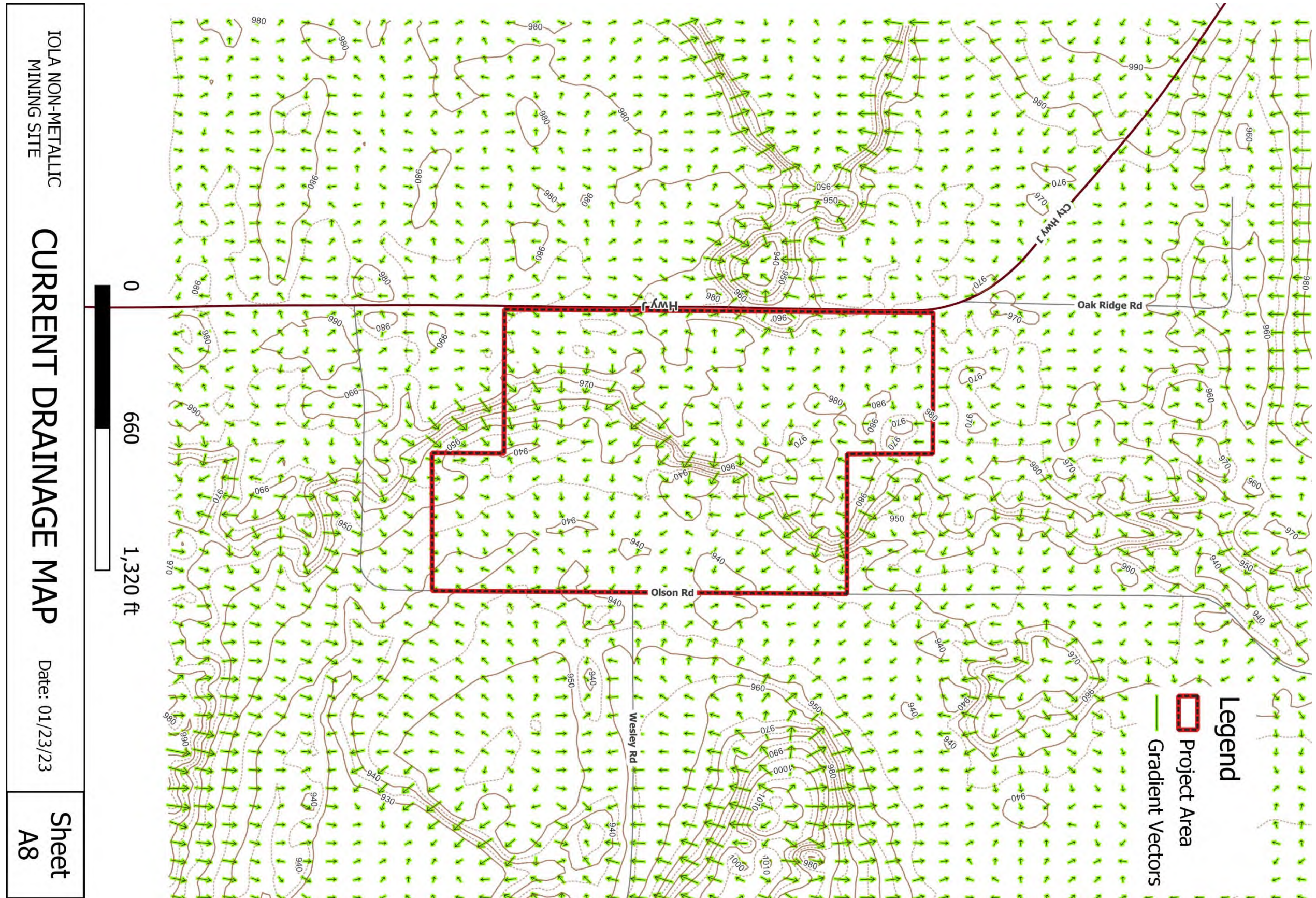


A7: 5 Ft Contour Map



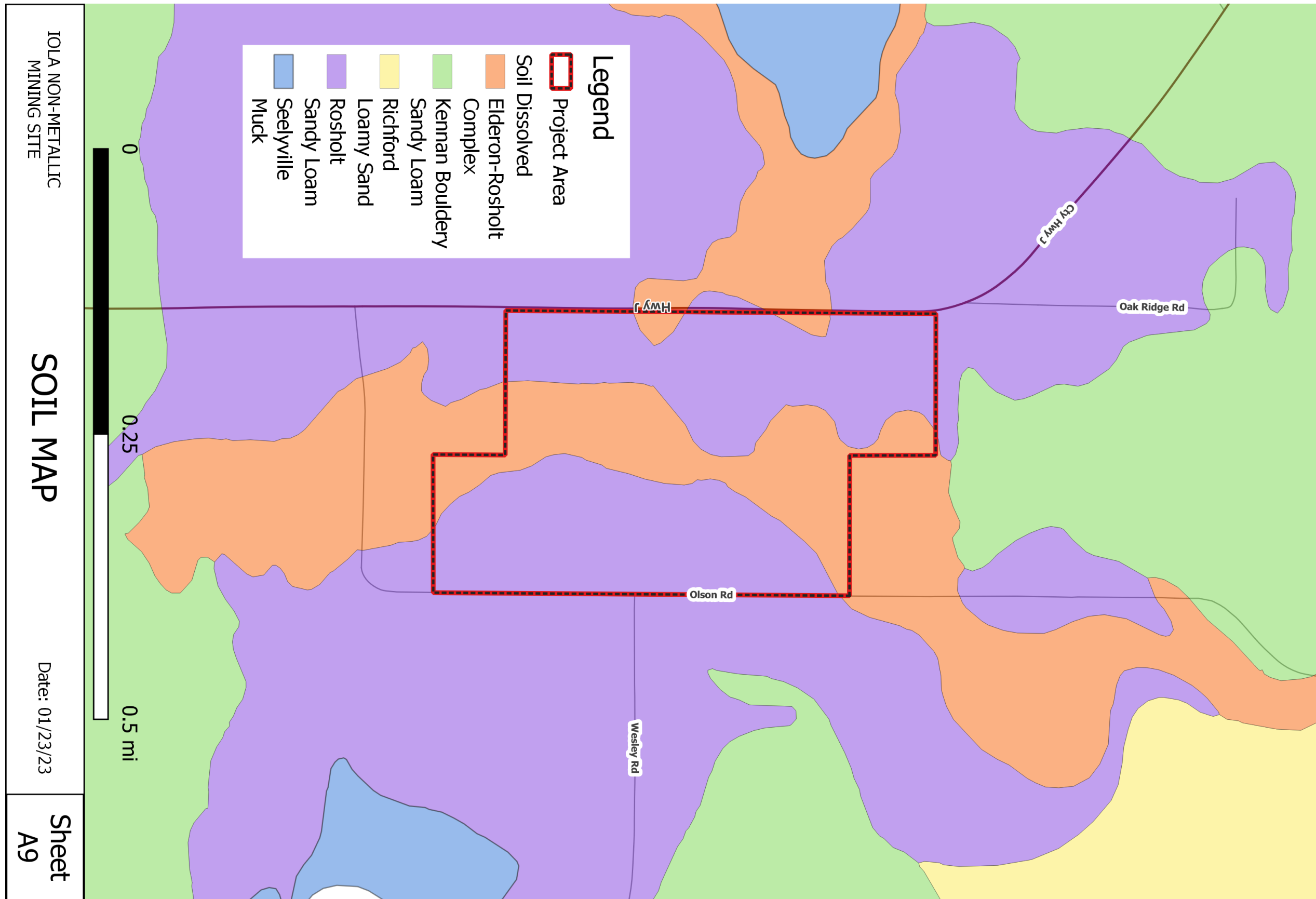


A8: Current Drainage Map



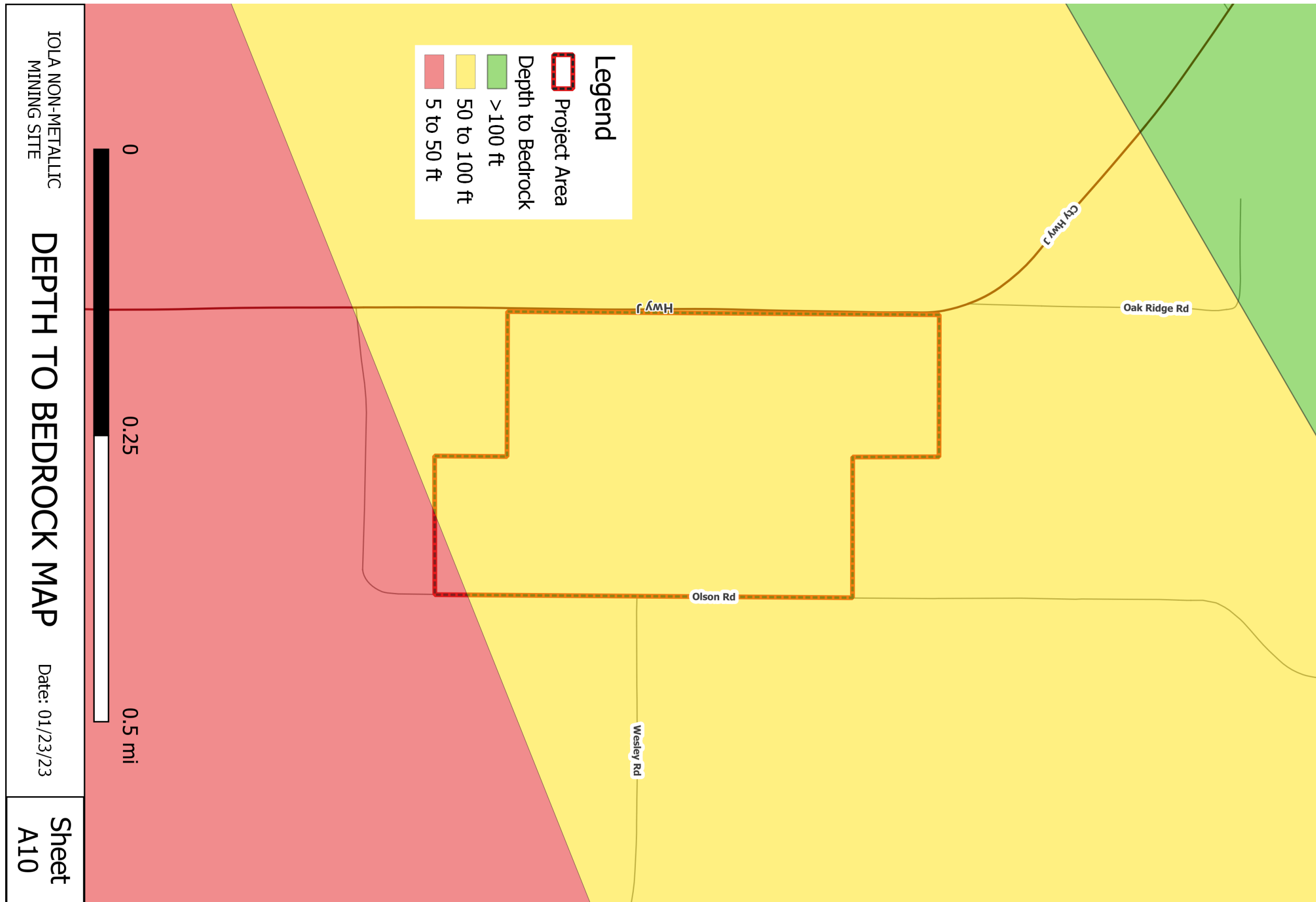


A9: Soil Map

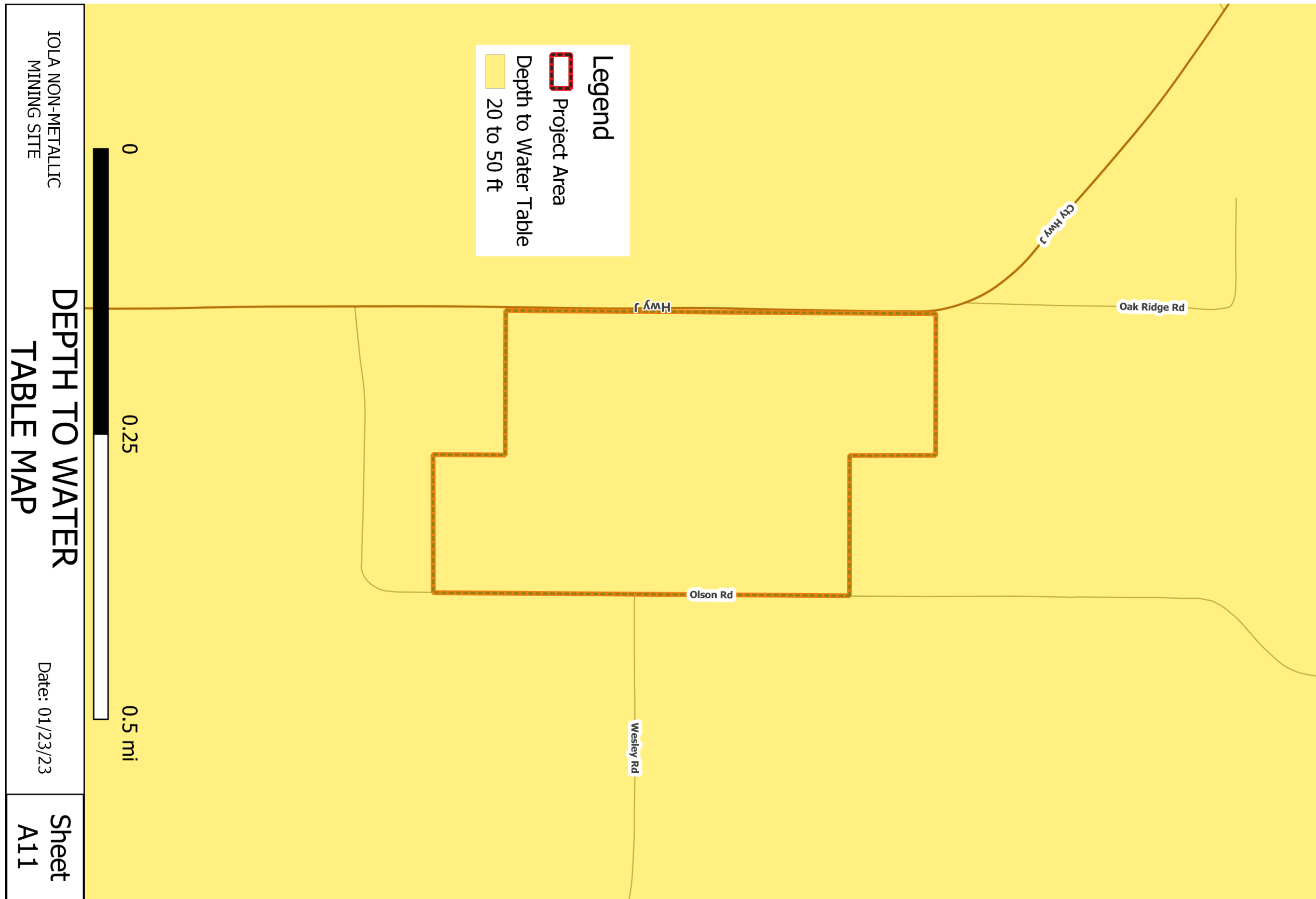




A10: Depth to Bedrock Map

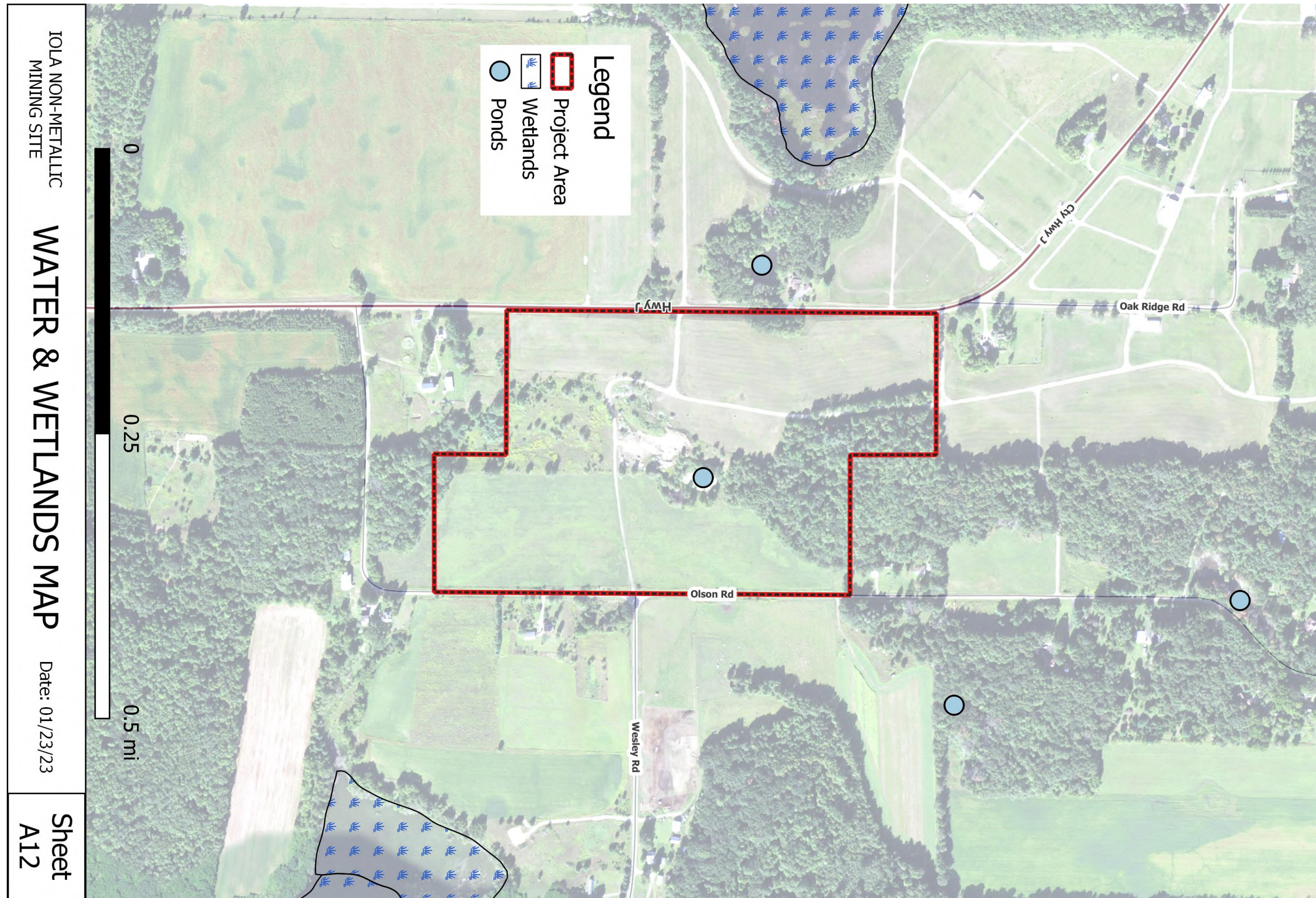


A11: Depth to Water Table Map



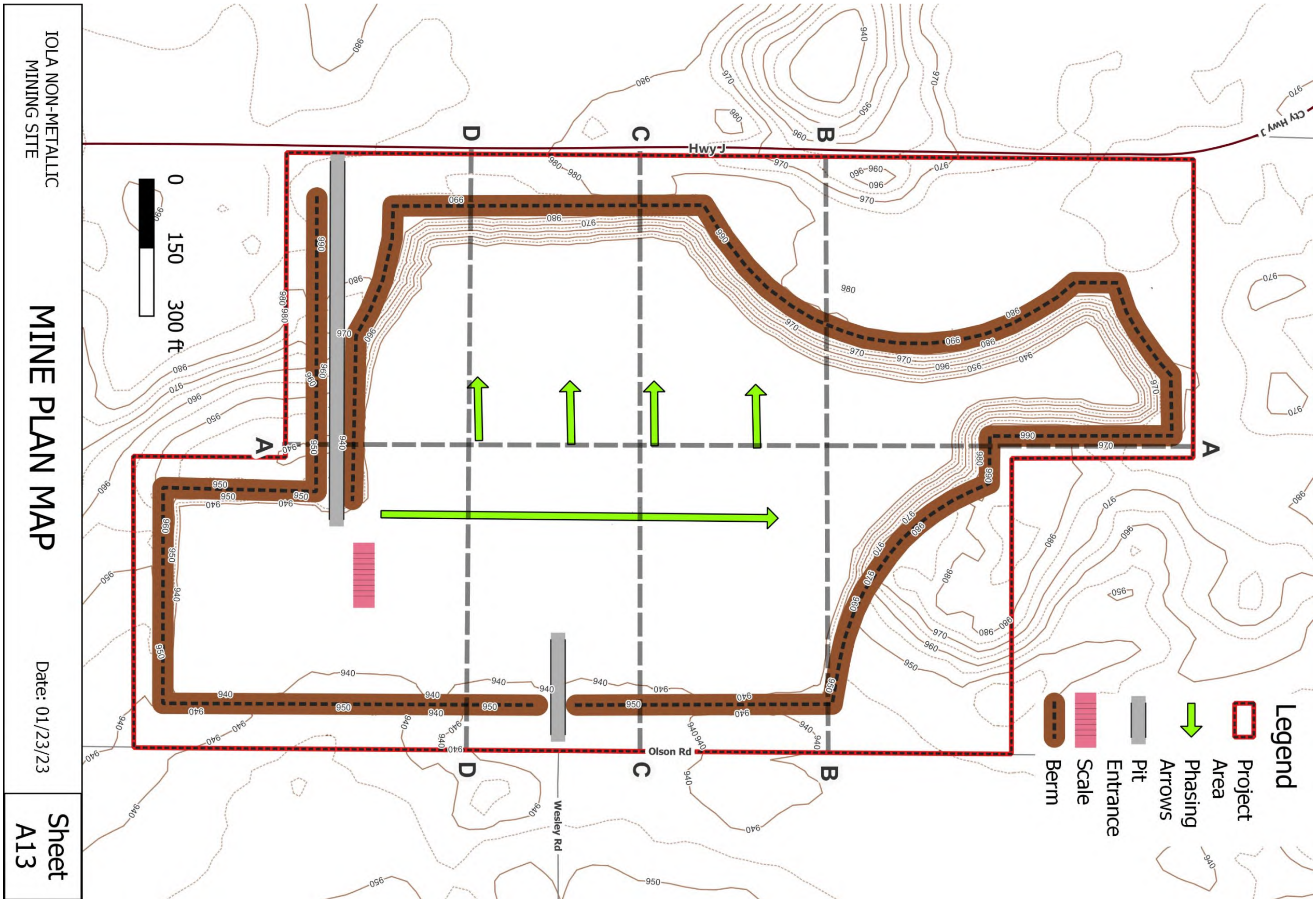


A12: Water & Wetlands Map



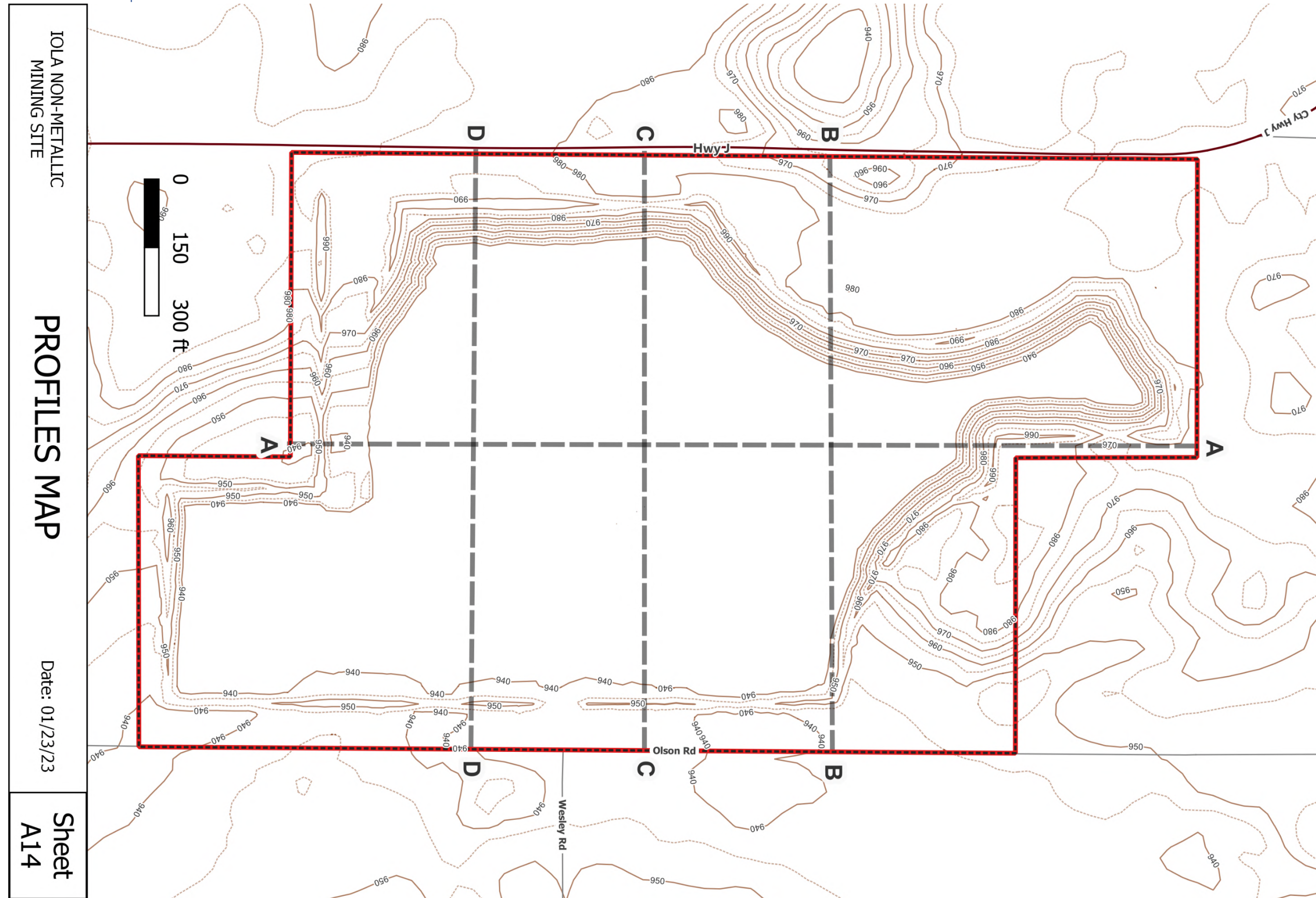


A13: Mine Plan



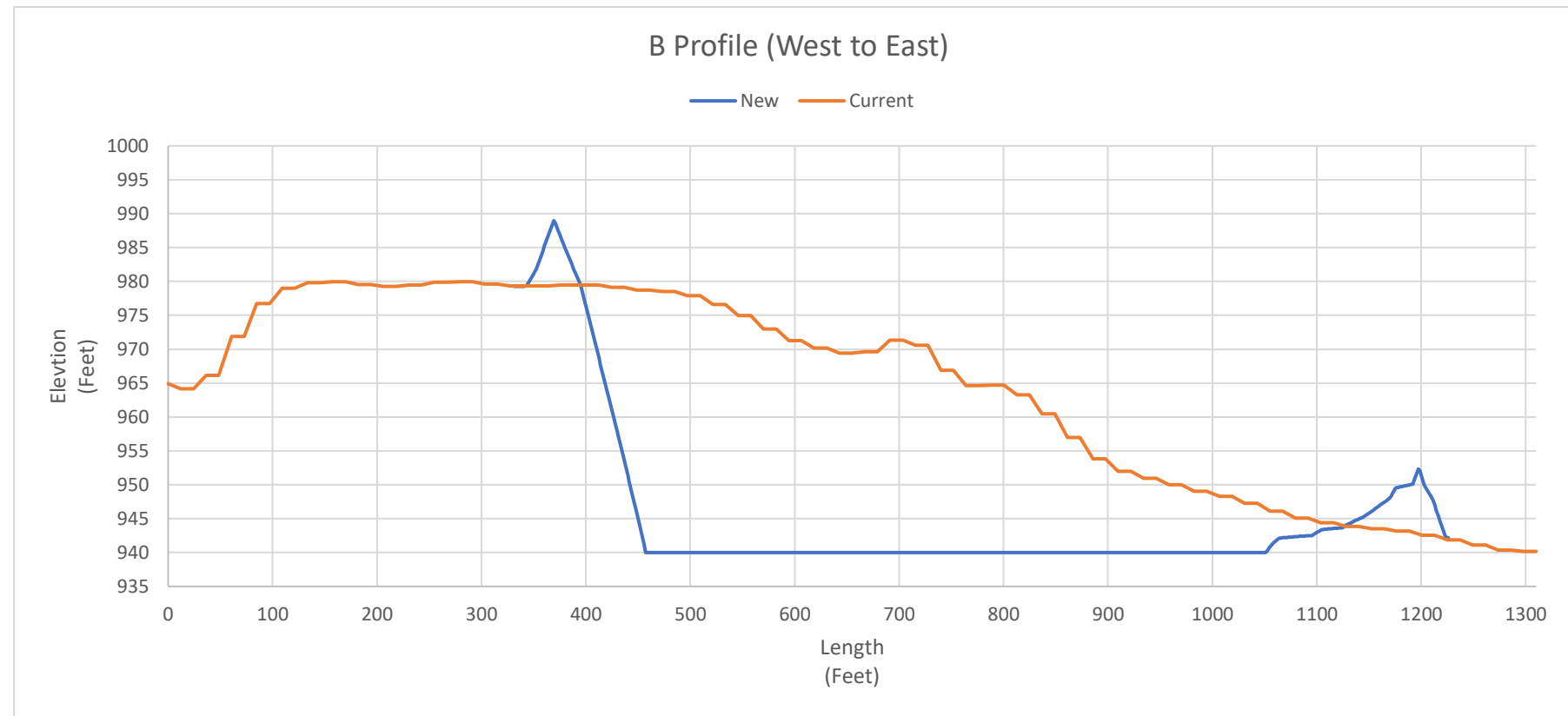
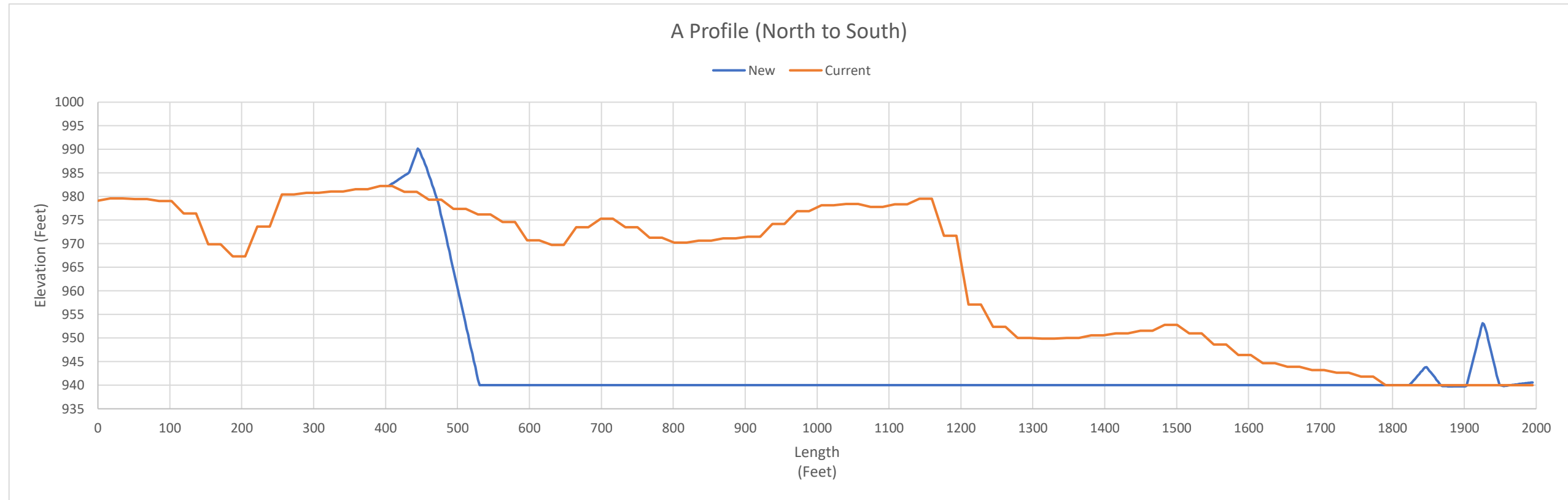


A14: Profiles Map



A15: Cross Sections A & B

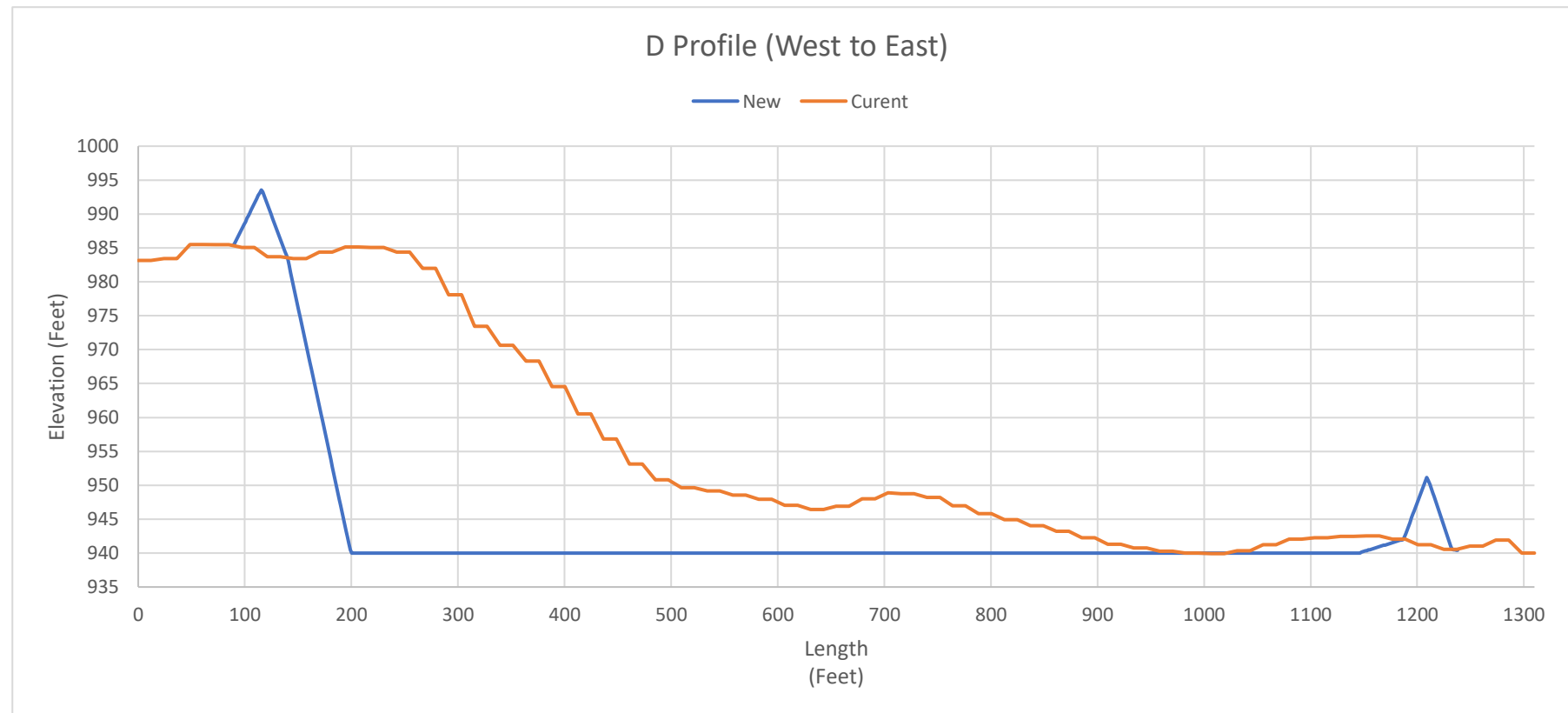
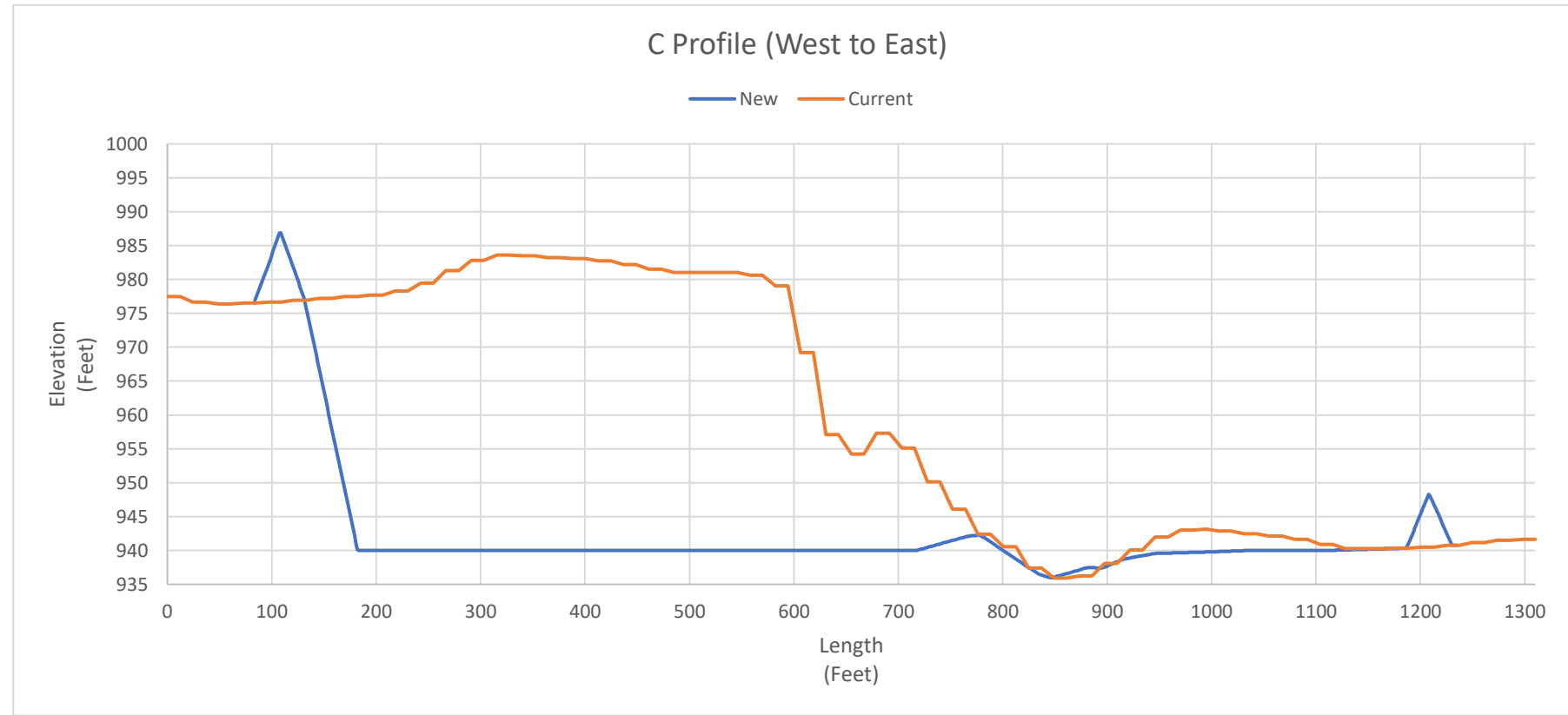
A15: Cross Sections A & B





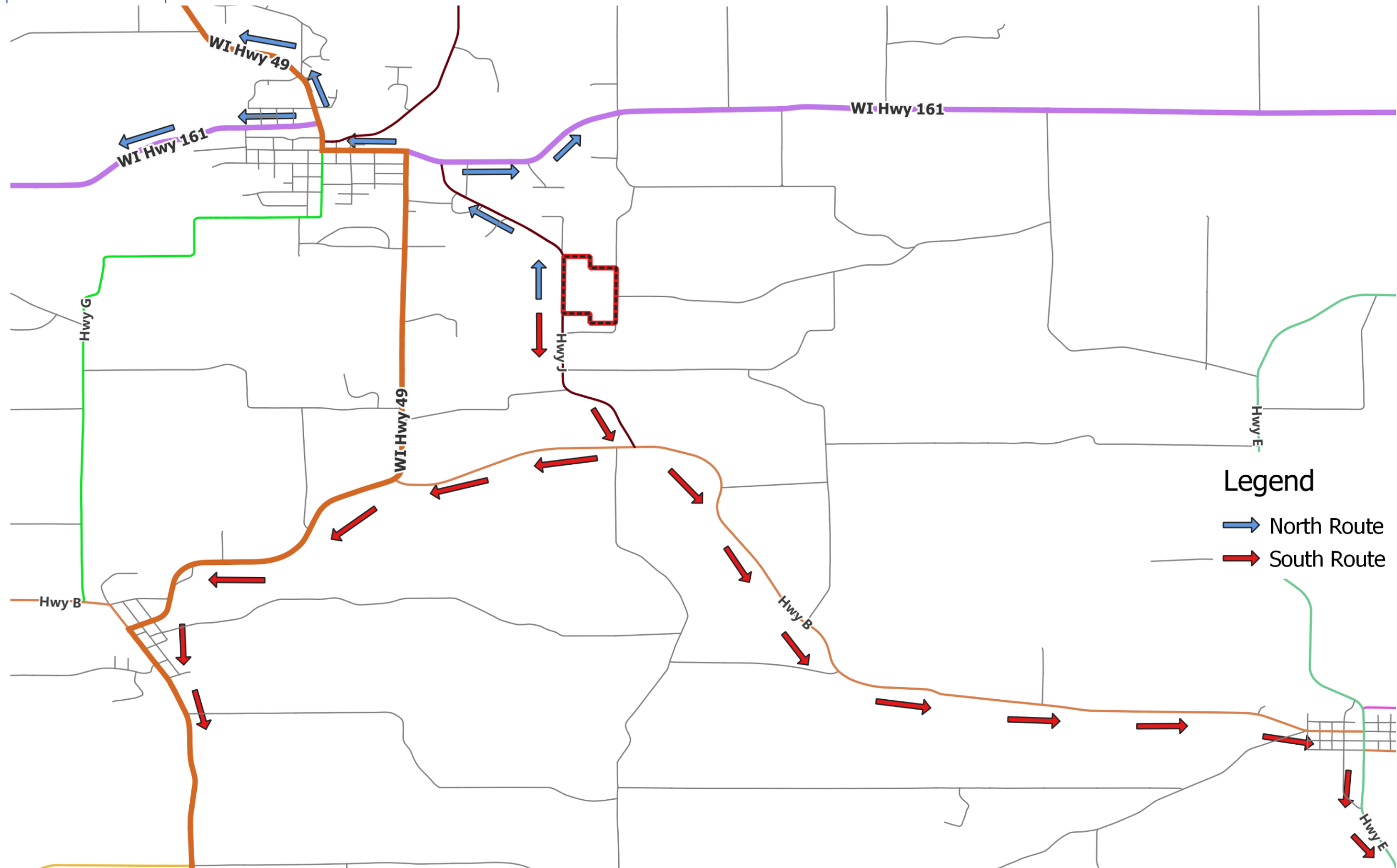
A16: Cross Sections C & D

A16: Cross Sections C & D



A17: Transportation Routes Map

A17: Transportation Routes Map



IOLA NON-METALLIC MINING SITE	TRANSPORTATION ROUTES MAP	Date: 01/24/2023	Sheet A17
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## Appendix B: Tables

B1: Adjacent Property Ownership Table

Last Name	First Name	Address	City, State	Zip Code
Ambrosius	Gregory	N7055 County Road J	Iola, WI	54945
Bonikowske	Clara	N6966 Olson Rd	Iola, WI	54945
Boyer	Kenneth	N7116 Oak Ridge Rd	Iola, WI	54945
Danielson	Roland	N7159 County Road J	Iola, WI	54945
Deschler	Mark	N7150 Olson Rd	Iola, WI	54945
Driver	Linda	N7099 Olson Rd	Iola, WI	54945
Karolus	Kenneth	505 Pierce St	Iola, WI	54945
Kasten	Brian	E5646 Waukaunaka St	Weyauwega, WI	54986
Krueger	Robert	225 Southtowne Dr Apt C104	South Milwaukee, WI	53172
Landowski	Michael & Katherine	2524 Currier St	Stevens Point, WI	54481
Mentzel	Kenneth & Joanne	N6926 County Road J	Iola, WI	54945
Meyer	Scott	44 E Mifflin St Ste 400	Madison, WI	53703
Olson	Dell	N7180 Olson Rd	Iola, WI	54945
Ording	Amy	N7299 Olson Rd	Iola, WI	54945
Palm-Leis	Mati Jr Et Al	N6896 Olson Rd	Iola, WI	54945
Palm-Leis Surv Trust	Dawn	1530 Brika Lane	Onalaska	54650
Rineck	Thomas H Et Al	100 Pleasant St	Iola, WI	54945
Scott		N6906 Olson Rd	Iola, WI	54945
Wasrud	Charles & Ramona	N7312 Twin Grove Rd	Iola, WI	54945
Wasrud	Benjamin	N7312 Twin Grove Rd	Iola, WI	54945
Wendlandt	William & Jacqueline	N7302 Keatings Lake Dr	Iola, WI	54945
Wesley Farm LLC		N8021 Bestul Rd	Iola, WI	54945

Iola Non-Metallic Mining Site Operations & Reclamation Plan

B2: Buildings with ¼ Mile

Building Number	Parcel Owner		Address	City & State	Zip
	Last Name	First Name			
1	Karolus	Kenneth	505 Pierce St	Iola, WI	54945
2	Olson	Dell	N7180 Olson Rd	Iola, WI	54945
3	Danielson	Roland	N7159 County Road J	Iola, WI	54945
4	Deschler	Mark	N7150 Olson Rd	Iola, WI	54945
5	Boyer	Kenneth	N7116 Oak Ridge Rd	Iola WI	54945
6	Driver	Linda	N7099 Olson Rd	Iola WI	54945
7	Driver	Linda	N7099 Olson Rd	Iola WI	54945
8 & 9	Ambrosius	Gregory	N7055 County Road J	Iola WI	54945
10	Wesley Farm		N8021 Bestul Rd	Iola, WI	54945
11	Krueger	Robert	225 Southtowne Dr Apt C104	South Milwaukee, WI	53172
12 & 13	Bonikowski	Clara	N6966 Olson Rd	Iola WI	54945
14	Meyer	Scott	44 E Mifflin St Ste 400	Madison, WI	53703
15 & 16	Mentzel	Kenneth	N6926 County Road J	Iola WI	54945
17	Scott Family		N6906 Olson Rd	Iola WI	54945
18	Scott Family		N6906 Olson Rd	Iola WI	54945
19	Palm-Leis	Mati Jr	N6896 Olson Rd	Iola, WI	54945
20	Scott Family		N6906 Olson Rd	Iola WI	54945

B3: Adjacent Properties with Wells

Well Number	Parcel Owner		Address	City & State	Zip
	Last Name	First Name			
1	Danielson	Roland	N7159 County Road J	Iola WI	54945
2	Olson	Dell	N7180 Olson Rd	Iola WI	54945
3	Deschler	Mark	N7150 Olson Rd	Iola WI	54945
4 & 5	Wesley Farm		N8021 Bestul Rd	Iola WI	54945
6	Bonikowske	Clara	N6966 Olson Rd	Iola WI	54945



## Appendix C: Attachments

C1: Letter of Consent from Joe Opperman



**IOLA CAR SHOW**  
P.O. Box 1  
Iola, WI 54945  
(715) 445-4000  
www.iolaoldcarshow.com

### BOARD OF DIRECTORS

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Vice President,  
Michael Mazemke  
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Mark Sether  
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Rick Ertl  
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David Leder  
Director,  
Scott Bestul  
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Executive Assistant,  
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Kitty Tetzlaff  
Show Car Director,  
Denise Clumpner

### MEMBER ORGANIZATIONS

Iola Lions Club  
Iola Winter Sports Club  
Iola & Rural Fire Department  
Iola American Legion  
Waupaca VFW  
Norseman Snowmobile  
Iola Conservation Club  
Ogdensburg Fire Department  
Norske Sons of Norway

## *50th Annual Iola Car Show*

**IOLA 2022, July 7-9**  
***A Celebration of Iola***

June 1, 2022

To whom it may concern:

This letter serves to affirm that Iola Old Car Show, Inc. grants permission to Faulks Brothers to obtain a conditional use permit for mining of our property, as is represented in our mutual agreement.

Sincerely,

A handwritten signature in black ink that reads "Joe Opperman".

**Joe Opperman**  
Executive Director  
Iola Car Show  
920-358-3224  
PO Box 1 – Iola, WI 54945

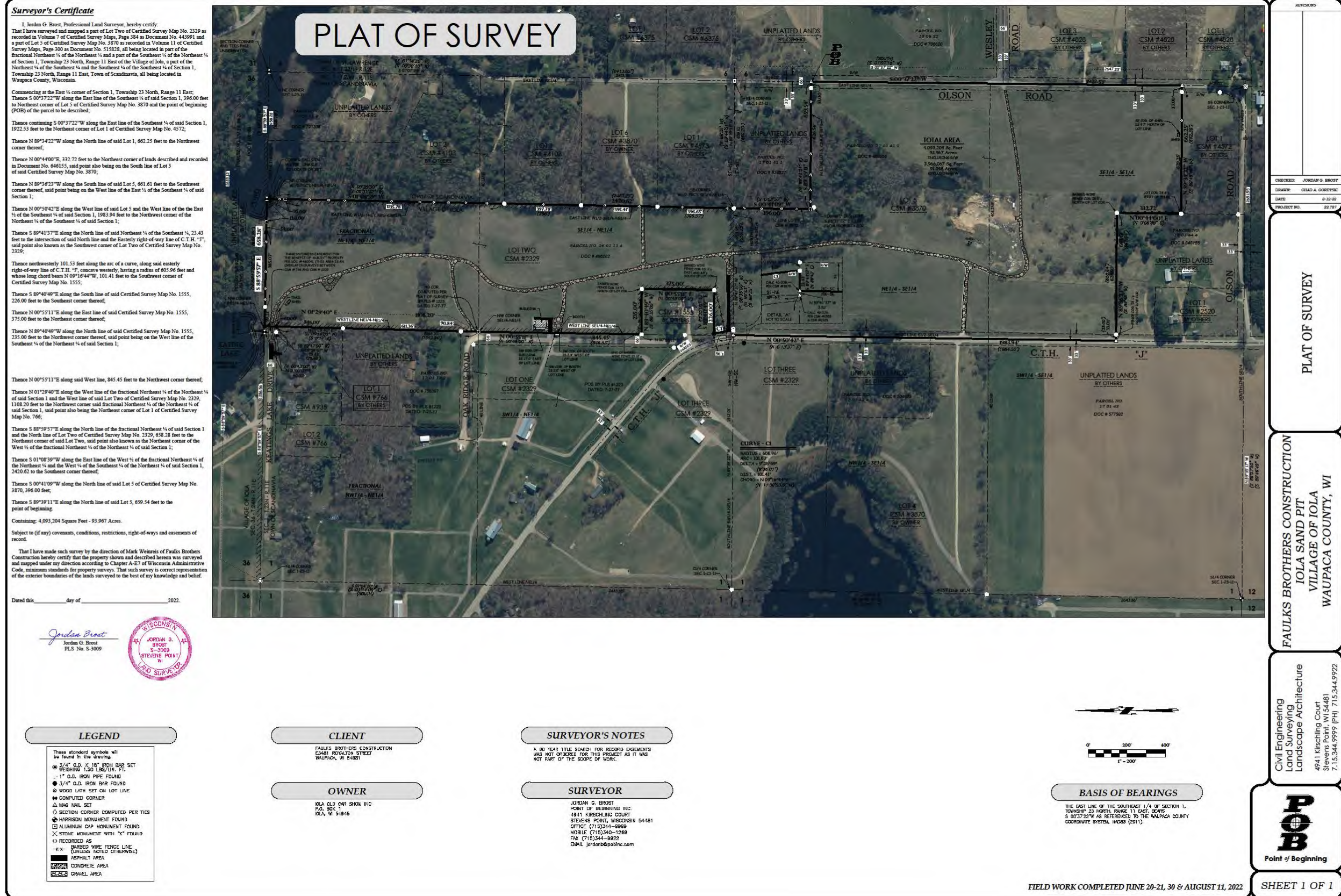
*"Together, we leverage the power of vehicles to create memories and transform lives."*

**51<sup>st</sup> Annual: July 6-8, 2023**





C3: Plat Survey – Aerial Photo



**Surveyor's Certificate**

I, Jordan G. Brost, Professional Land Surveyor, hereby certify that I have surveyed and mapped a part of Lot Two of Certified Survey Map No. 2329 as recorded in Volume 7 of Certified Survey Maps, Page 384 as Document No. 443991 and a part of Lot 5 of Certified Survey Map No. 3870 as recorded in Volume 11 of Certified Survey Maps, Page 380 as Document No. 515528, all being located in part of the fractional Northeast 1/4 of the Northeast 1/4 and a part of the Southeast 1/4 of the Northeast 1/4 of Section 1, Township 23 North, Range 11 East of the Village of Iola, a part of the Northeast 1/4 of the Southeast 1/4 and the Southeast 1/4 of the Southeast 1/4 of Section 1, Township 23 North, Range 11 East, Town of Scandinavia, all being located in Waupaca County, Wisconsin.

Commencing at the East 1/4 corner of Section 1, Township 23 North, Range 11 East; Thence S 00°37'22" W along the East line of the Southeast 1/4 of said Section 1, 396.00 feet to Northeast corner of Lot 5 of Certified Survey Map No. 3870 and the point of beginning (POB) of the parcel to be described;

Thence continuing S 00°37'22" W along the East line of the Southeast 1/4 of said Section 1, 1922.33 feet to the Northeast corner of Lot 1 of Certified Survey Map No. 4372;

Thence N 89°34'22" W along the North line of said Lot 1, 662.25 feet to the Northwest corner thereof;

Thence N 00°44'00" E, 332.72 feet to the Northeast corner of lands described and recorded in Document No. 446155, said point also being on the South line of Lot 5 of said Certified Survey Map No. 3870;

Thence N 89°34'22" W along the South line of said Lot 5, 661.61 feet to the Southwest corner thereof, said point being on the West line of the East 1/4 of the Southeast 1/4 of said Section 1;

Thence N 00°50'42" E along the West line of said Lot 5 and the West line of the East 1/4 of the Southeast 1/4 of said Section 1, 1983.94 feet to the Northwest corner of the Northeast 1/4 of the Southeast 1/4 of said Section 1;

Thence S 89°41'37" E along the North line of said Northeast 1/4 of the Southeast 1/4, 23.43 feet to the intersection of said North line and the Eastern right-of-way line of C.T.H. "J", said point also known as the Southwest corner of Lot Two of Certified Survey Map No. 2329;

Thence northwesterly 101.53 feet along the arc of a curve, along said easterly right-of-way line of C.T.H. "J", concave westerly, having a radius of 605.96 feet and whose long chord bears N 09°16'44" W, 101.41 feet to the Southwest corner of Certified Survey Map No. 1555;

Thence S 89°40'49" E along the South line of said Certified Survey Map No. 1555, 226.00 feet to the Southeast corner thereof;

Thence N 00°55'11" E along the East line of said Certified Survey Map No. 1555, 375.00 feet to the Northeast corner thereof;

Thence N 89°40'49" W along the North line of said Certified Survey Map No. 1555, 235.00 feet to the Northwest corner thereof, said point being on the West line of the Southeast 1/4 of the Northeast 1/4 of said Section 1;

Thence N 00°55'11" E along said West line, 845.45 feet to the Northwest corner thereof;

Thence N 01°29'49" E along the West line of the fractional Northeast 1/4 of the Northeast 1/4 of said Section 1 and the West line of said Lot Two of Certified Survey Map No. 2329, 1108.20 feet to the Northwest corner said Fractional Northeast 1/4 of the Northeast 1/4 of said Section 1, said point also being the Northeast corner of Lot 1 of Certified Survey Map No. 766;

Thence S 89°59'57" E along the North line of the fractional Northeast 1/4 of said Section 1 and the North line of Lot Two of Certified Survey Map No. 2329, 638.28 feet to the Northeast corner of said Lot Two, said point also known as the Northeast corner of the West 1/2 of the fractional Northeast 1/4 of the Northeast 1/4 of said Section 1;

Thence S 01°08'39" W along the East line of the West 1/2 of the fractional Northeast 1/4 of the Northeast 1/4 and the West 1/2 of the Northeast 1/4 of said Section 1, 2420.02 to the Southeast corner thereof;

Thence S 00°41'09" W along the North line of said Lot 5 of Certified Survey Map No. 3870, 396.00 feet;

Thence S 89°39'11" E along the North line of said Lot 5, 659.54 feet to the point of beginning;

Containing: 4,093,204 Square Feet - 93.987 Acres.

Subject to (if any) covenants, conditions, restrictions, right-of-ways and easements of record.

That I have made such survey by the direction of Mark Weinstein of Faulks Brothers Construction hereby certify that the property shown and described herein was surveyed and mapped under my direction according to Chapter A-87 of Wisconsin Administrative Code, minimum standards for property surveys. That such survey is correct representation of the exterior boundaries of the lands surveyed to the best of my knowledge and belief.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

*Jordan G. Brost*  
 JORDAN G. BROST  
 PLS No. S-3009  
 STEVENS POINT, WI

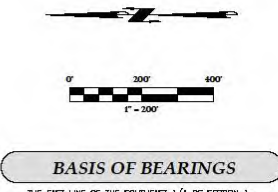
- LEGEND**
- These standard symbols will be found in the drawing.
  - 3/4" O.D. X 18" IRON BAR SET REINFORCE L/O LIND/IN. PT.
  - 1" O.D. IRON PIPE FOUND
  - 3/4" O.D. IRON BAR FOUND
  - WOOD LATH SET ON LOT LINE
  - COMPUTED CORNER
  - WIRE NAIL SET
  - SECTION CORNER COMPUTED PER TIES
  - HARRISON MONUMENT FOUND
  - ALUMINUM CAP MONUMENT FOUND
  - STONE MONUMENT WITH "X" FOUND
  - RECORDED AS
  - BARBED WIRE FENCE LINE (UNLESS NOTED OTHERWISE)
  - ASPHALT AREA
  - CONCRETE AREA
  - GRAVEL AREA

**CLIENT**  
 FAULK'S BROTHERS CONSTRUCTION  
 4841 KIRSCHLING COURT  
 WAUPACA, WI 54981

**OWNER**  
 IOLA OLD CAR SHOW INC  
 P.O. BOX 1  
 IOLA, WI 54646

**SURVEYOR'S NOTES**  
 A 90 YEAR TITLE SEARCH FOR RECORDED EASEMENTS WAS NOT ORDERED FOR THIS PROJECT AS IT WAS NOT PART OF THE SCOPE OF WORK.

**SURVEYOR**  
 JORDAN G. BROST  
 POINT OF BEGINNING INC.  
 4841 KIRSCHLING COURT  
 STEVENS POINT, WISCONSIN 54481  
 OFFICE (715)344-9989  
 MOBILE (715)344-1268  
 FAX (715)344-9922  
 EMAIL jordanb@pointofbeginning.com



**BASIS OF BEARINGS**  
 THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 23 NORTH, RANGE 11 EAST, BEARS S 00°37'22" W AS REFERENCED TO THE WAUPACA COUNTY COORDINATE SYSTEM, NAD83 (SP1).

PLAT OF SURVEY

FAULK'S BROTHERS CONSTRUCTION  
 IOLA SAND PIT  
 VILLAGE OF IOLA  
 WAUPACA COUNTY, WI

Civil Engineering  
 Land Surveying  
 Landscape Architecture  
 4911 Kirschling Court  
 Stevens Point, WI 54481  
 715.344.9999 (PH) 715.344.9922

**Point of Beginning**

SHEET 1 OF 1



MAY 11 2023

# TOWN RECOMMENDATION FORM

## For Waupaca County Non-Metallic Mining Conditional Use Application

THIS TOWN RECOMMENDATION FORM MUST BE SUBMITTED TO THE PLANNING & ZONING OFFICE WITH THE CONDITIONAL USE APPLICATION. INCOMPLETE APPLICATIONS MAY BE DELAYED.

### Petitioner Information

Company Name: Faulks Bros. Construction Inc.

CONTACT PERSON: Name: Mark Weinreis Phone #: 715-258-8566

Address: E3481 Royallon St. Waupaca WI 54981

Fax #: 715-942-0509 Cell #: 715-281-0959 E-mail: mark@waupacasand.com

➤ PROOF OF INSURANCE (PLEASE ATTACH A COPY OF THIS AT THE BACK OF THE APPLICATION) See attached

### Property Information

Parcel Number(s): 17 01 41 2

Physical Address: Cty. Rd. J. Iola, WI 54945 (No Fire Number Provided)

Legal Description of land for proposed mine development: SFC 1 T23N R11E PRT NESE & PRT SESE

Current Zoning District: PVRF Current Use and Improvements: Agriculture & Parking for Car Show

SURFACE LAND OWNER: Name Iola Old Car Show Inc.

Address: P.O. Box 1 Iola, WI 54945

MINERAL RIGHTS OWNER: Name Same as above

Address: \_\_\_\_\_

### Zoning Information

Current Zoning District: (check)

Private Recreation & Forestry (PVRF)

Agriculture Enterprise (AE)

Agriculture Retention (AR)

Agriculture & Woodland Transition (AWT)

Rural Industrial Intensive (RI-I)

Rural Industrial General (RI-G)

For Parcel and Zoning Maps go to: [http://public1.co.waupaca.wi.us/GISviewer/index.html?config=config\\_zoning.xml](http://public1.co.waupaca.wi.us/GISviewer/index.html?config=config_zoning.xml)



What are the existing use(s) of adjacent lands to this parcel and are they compatible? No  
Attachment, Existing Uses

Is the proposal consistent with the Town Comprehensive Plan?  Yes  No

Explain: Attachment, Consistency with Town Comp Plan.

Is the proposal consistent with the Town Goals, Objectives & Development Strategies as found in the Town Comprehensive Plan?  Yes  No (Please give detailed information including page numbers from the comprehensive plan supporting the recommendation) Explain:

Attachment, Consistency with Town Goals, Objectives, Development Strategies.

If Applicable, please list recommended conditions for the Waupaca County Planning & Zoning Committee to consider.

Attachment, Recommended Conditions

Please attach any additional comments, minutes, or information further supporting the recommendation.) [Pertinent Info Conclusions]

**Town Plan Commission**

Recommend Approval  Recommend Denial

Mary Marx  
Plan Commission Chairperson

Date: 5/3/2023

**Town Board**

Recommend Approval  Recommend Denial

Mary Marx  
Town Chairman

Date: 5/10/2023

Brenda Mazmke  
Town Clerk

Date: 5/10/2023

Please Note: Pursuant to Section 14.06 of the Waupaca County Zoning Ordinance, the Town has 45 days to provide a written recommendation on rezonings and conditional use permits to the Waupaca county Planning & Zoning Director. If the Director has NOT received a written recommendation within 45 days, the county review process will continue without Town feedback.

Remit along with application to: Waupaca County Planning & Zoning – 811 Harding St., Waupaca WI 54981

5

MAY 11 2023

**Attachment  
Existing Uses**



### Attachment, Existing Uses

The Preferred Land Use of the parcel and adjacent lands is divided among these three classifications (Map attached):

- Agriculture Enterprise (AE) Town of Scandinavia - Brown
- Agriculture Retention (AR), Town of St Lawrence - Brown
- Private Recreation Forestry Enterprise (PVRF) – Green

The site to be mined is on a 59 acre parcel (Project Area), of which only 22 acres is to be mined (Activity Area). The unusual shape of the Activity Area is due to the close proximity to existing buildings, road setbacks, and proximity to the Village of Iola to the North. This appears to be “shoehorned” into the area to accommodate the densely populated surroundings, and border with the Village of Iola (Maps attached):

- Parcel Map, Sheet A4, Parcel Map from submitted Reclamation Plan attached.
- Buildings Map, Sheet A5, Buildings Map from submitted Reclamation Plan attached.

There are seven homes within 500' and 14 homes within ½ mile.

“Location, Location, Location”

Other Sand Mine maps and data attached, show far less populated area with less residential density than the proposed application site:

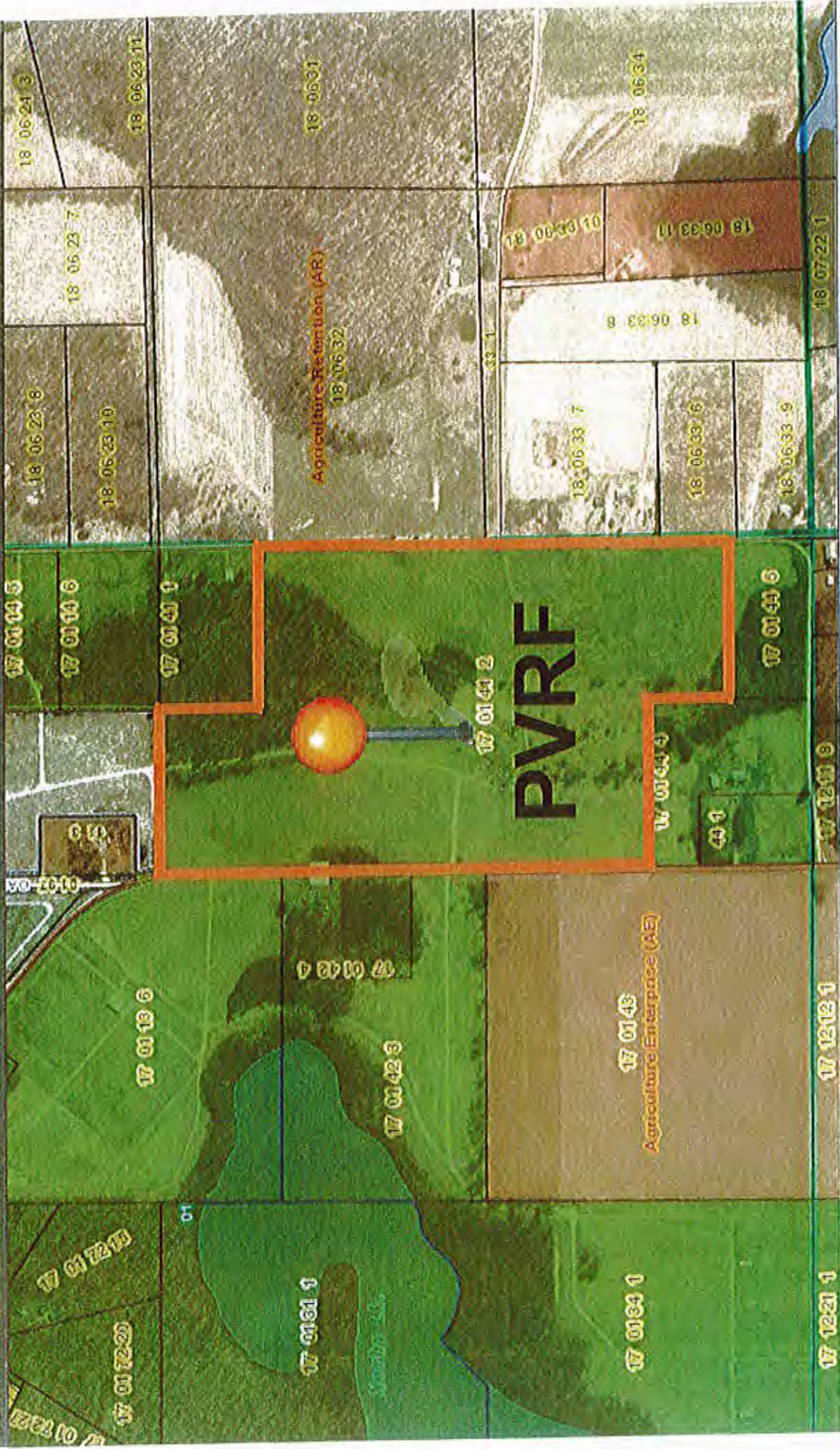
- Shady Rd, Scandinavia
- Foley Rd, Farmington
- Colrue Rd, St Lawrence
- Kelly Sand & Gravel, Wautoma
- Rural
- County Materials, Custer
- Wimme Sand & Gravel, Plover
- Go Green Quarry, Fremont

Updated 5/03/2023



# CURRENT ZONING DISTRICT: PRIVATE RECREATION AND FORESTRY (PVRF)

Powered By GIS  
Waupaca County



Map Data Sources -> Waupaca County Land Information

2/20/2023, 10:49:04 AM

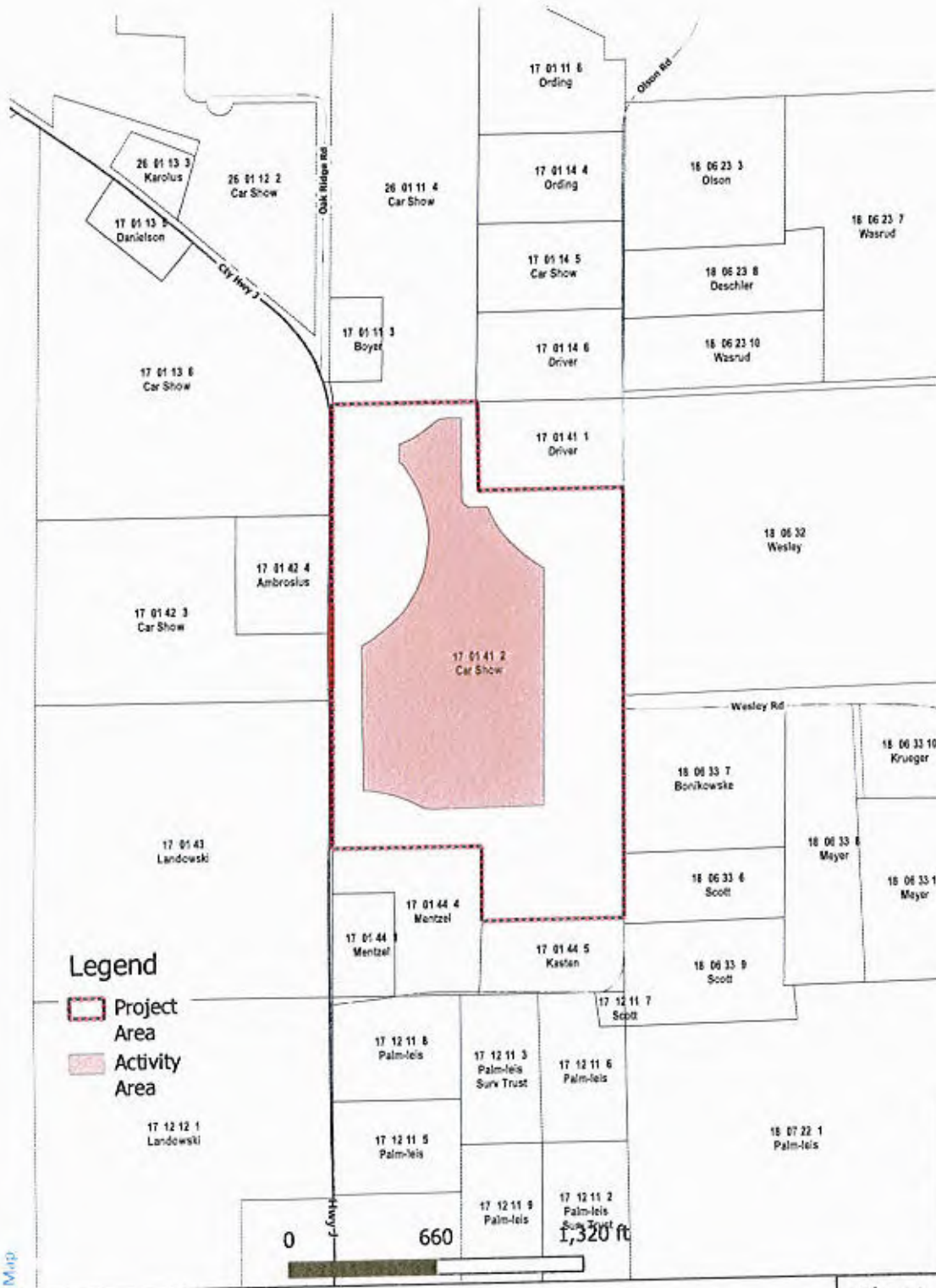
To Order Maps Or To Report A Problem Visit:  
[www.ci.waupaca.wisconsin.gov/departments/land\\_information/index.php](http://www.ci.waupaca.wisconsin.gov/departments/land_information/index.php)  
Map Key

- Zoning Collector GPS
- Parcel - County Zoning
- Parcel Numbers
- Parcel - Local Zoning
- Parcel Changes (Splits-Combos etc)
- Section Lines
- Section Line
- Section Numbers



**ATTENTION!**  
 CUSTOMER PARCEL MAPS ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT  
 INTENDED TO REPRESENT EVIDENCE IN TITLE. THE REPRESENTATIONS ON THE MAPS  
 COULD IN FACT BE IN ERROR AND SHOULD NOT BE RELIED UPON AS THE SOLE  
 DETERMINING FACTOR IN THE LOCATION OF ANY GIVEN PARCEL. WAUPACA COUNTY IS  
 NOT RESPONSIBLE FOR ANY INACCURACIES CONTAINED HEREIN. INDIVIDUALS SHOULD  
 CONSULT LEGAL REPRESENTATION OR PROFESSIONAL SURVEY ADVICE TO OBTAIN





Iola Non-Metallic Mining Site Operations & Reclamation Plan

Ad.: Parcels Map

IOLA NON-METALLIC MINING SITE

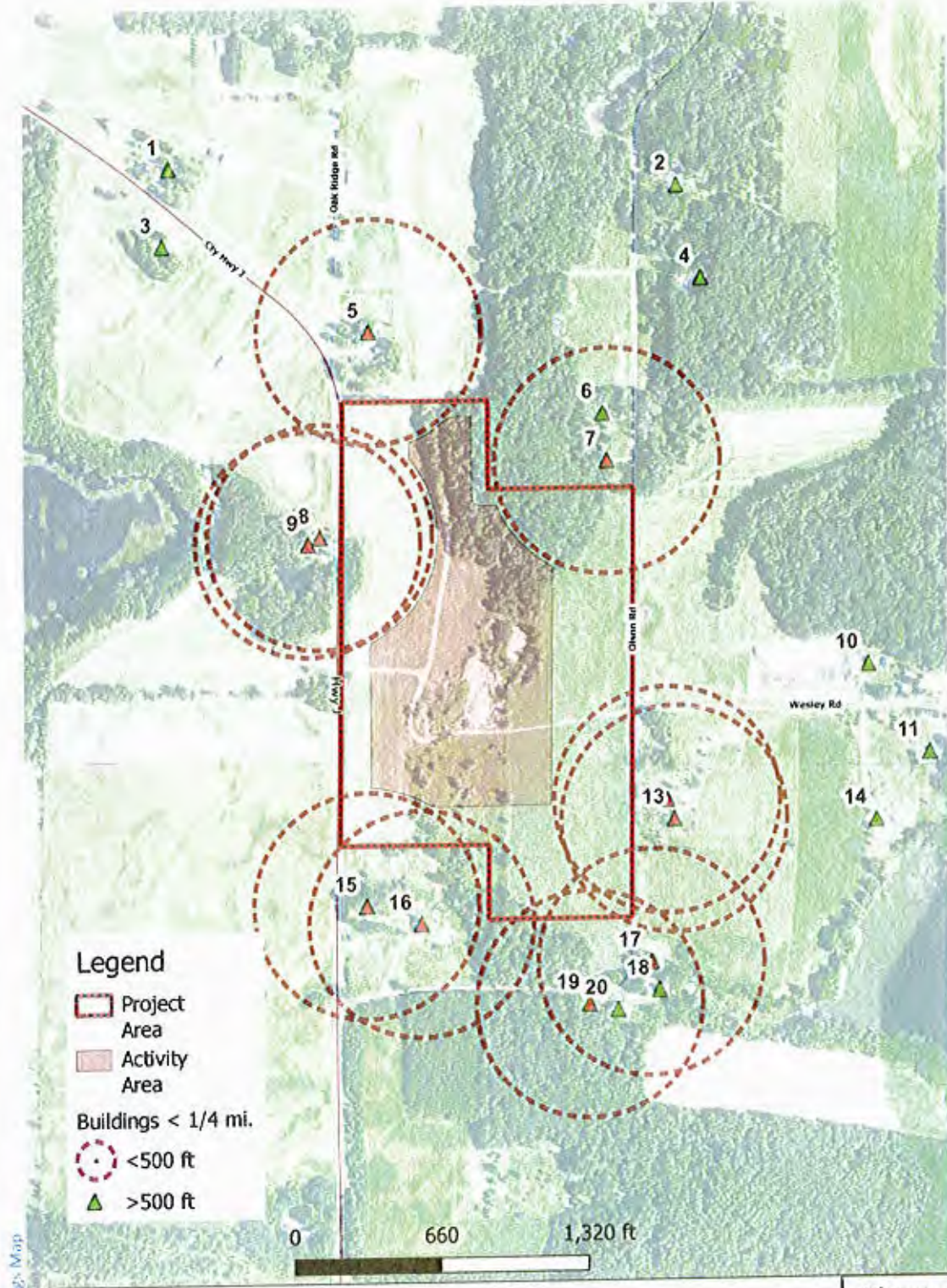
# PARCEL MAP

Date: 01/23/23

Sheet A4

Faulks Bros. Construction, Inc.

Iola Non-Metallic Mining Site Operations & Reclamation Plan



**Legend**

- Project Area
- Activity Area
- Buildings < 1/4 mi.
- <500 ft
- ▲ >500 ft

0      660      1,320 ft

IOLA NON-METALLIC MINING SITE

**BUILDINGS MAP**

Date: 01/23/23

Sheet A5

Faulks Bros. Construction, Inc.





Imagery ©2023 CNES / Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 500 ft

Shady Rd  
Scandinavia

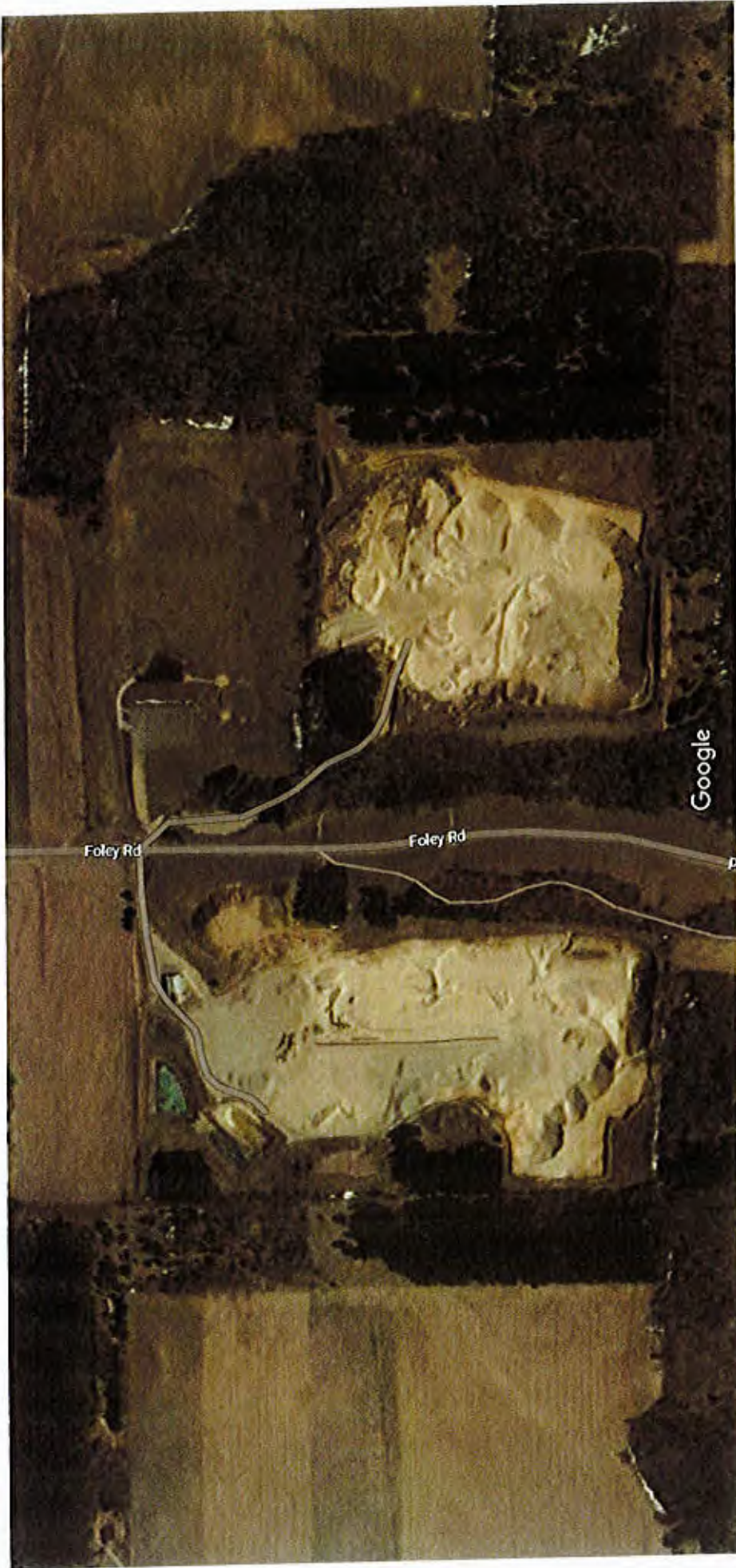
MAY 11 2023



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Google Maps



Imagery ©2023 Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 500 ft

Foley Road Mine  
Farmington





Imagery ©2023 Maxar Technologies, USDA/FPAC/REO, Map data ©2023 200 ft

MAY 1 1 2023

Ogdenburg  
 Warpaca  
 Colruie Road





Imagery ©2023 Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 200 ft

MAY 11 2023

Kelley Sand & Gravel  
Wautoma





Imagery ©2023 Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 500 ft

Rural





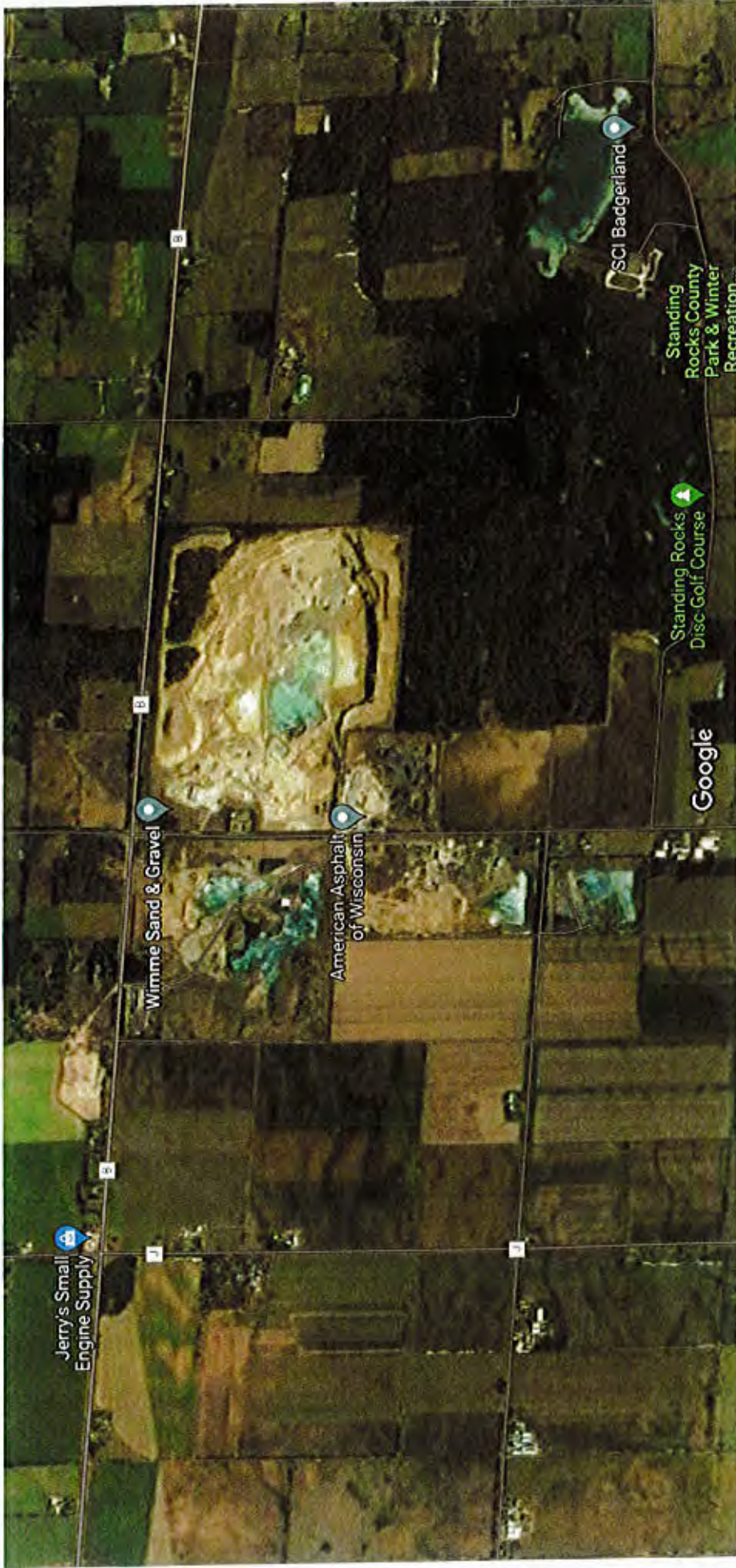
Imagery ©2023 CNES / Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 1000 ft

# County Materials Corp. Custer

Hours: Monday-Friday 7am-3pm  
 Saturday Closed  
 Sunday Closed

MAY 11 2023





# Wimme Sand & Gravel Plover

Hours: Monday - Friday 7am - 5pm  
 Saturday: Closed  
 Sunday: Closed



Go Green Quarry



Imagery ©2023 Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 200 ft



MAY 1 1 2023

# Go Green Quarry Fremont

Hours Monday - Thursday 7am - 3pm  
 Friday 7am - 2pm  
 Saturday - Sunday Closed



**Attachment**  
**Consistency with Town Comprehensive Plan**

## Attachment

### Is the proposal consistent with the Town Comprehensive Plan?

#### **Comp Plan 1-2: Plan Summary**

Town of Scandinavia residents responded to two planning process surveys, and the strongest areas of consensus included the following:

- ◆ Protecting groundwater, wetlands, and waterways
- ◆ Protecting wildlife habitat
- ◆ Protecting rural character

#### **Comp Plan 1-13: Policies - Town Directive, Issues & Opportunities (IO)**

**IO1** The town shall conduct all business related to land use decision making by utilizing an open public process and by giving due consideration to its comprehensive plan (Source: Basic Policies).

**IO2** Public participation shall continue to be encouraged for all aspects of town governance (Source: Basic Policies).

#### **Comp Plan 5-6, 5-7: Agricultural, Natural and Cultural Resources Policies and Recommendations (ANC)**

**ANC10:** Development proposals shall provide the community with an analysis of the potential natural resources impacts including, but not necessarily limited to, potential impacts to groundwater quality and quantity, surface water, wetlands, floodplains, steep slopes, woodlands, and other existing vegetation (Source: Strategy ANC4)

**ANC12:** Conservation land divisions in PVRF (Private Recreation & Forestry Enterprise), AWT (Agriculture & Woodland Transition), RR (Rural Residential), SHR (Shoreland Residential) areas shall be designed primarily to protect shoreline areas, wetlands, floodplains, wildlife habitat, woodlands, existing vegetation, and existing topography, and these features should take precedence over other features that could be protected in these locations (Source: Strategy ANC4).

#### **Comp Plan 5-8, 5-9: Recommendations**

Require major land divisions, conditional uses, and other substantial development projects to submit an assessment of potential natural resources impacts and multiple site development alternatives as part of the development review process (Source: Strategy ANC4).

#### **Comp Plan 6-1, 6-2: Economic Development Plan**

The town's plan for economic development also seeks to build town tax base by requiring quality building and site design. The town does not anticipate that substantial commercial or industrial development will take place within its borders, but rather, prefers to direct such uses to the neighboring cities and villages whenever possible. However, if any such development does locate in the town, it should use attractive and functional design.



**Comp Plan 6-5: Desired Business and Industry**

Similar to most communities in Waupaca County, the Town of Scandinavia would welcome most economic opportunities that do not sacrifice community character or require a disproportionate level of community services per taxes gained. The categories or particular types of new businesses and industries that are desired by the community are generally described in the goals, objectives, and policies, and more specifically with the following. Desired types of business and industry in the Town of Scandinavia include, but are not necessarily limited to:

- ◆ Business and light industry that retain the rural character of the community.

**Comp Plan 8-10: The town has not explicitly planned for the projected demand of commercial and industrial land.**

This reflects the town's desire to direct most new commercial and industrial development to locate in the Villages of Iola and Scandinavia, where the services they need (water, sewer, electricity, gas) are provided more efficiently. It should be noted that there is less than one acre of demand for additional commercial land, and that the projected demand for industrial use is driven entirely by the existing acreage of sand and gravel pits in the town (*there is no industrial land use on the existing land use map*). It is anticipated that the minimal commercial demand and the siting of future sand and gravel extraction sights can be accommodated within the other classifications provided on the preferred land use map.

**Comp Plan 8-11: Preferred Land Use Plan**

The preferred land use plan is one of the central components of the comprehensive plan that can be used as a guide for local officials when considering community development and redevelopment proposals. When considering the role of the preferred land use plan in community decision making, it is important to keep the following characteristics in mind.

- ◆ A land use plan is not the same as zoning. Zoning is authorized and governed by a set of statutes that are separate from those that govern planning. And while it may make sense to match portions of the land use plan map with the zoning map immediately after plan adoption, other portions of the zoning map may achieve consistency with the land use plan incrementally over time.
- ◆ The preferred land use plan was shaped by both objective data and local opinion. Public participation in the form of copious meetings and a survey of all town landowners was utilized to significantly impact the outcome. The town considered the locations of natural resources, prime soils, existing farms, roads, current land use patterns, and other objective factors to measure suitability of lands for various future land uses using *What If* software. The objective data were further mixed with local knowledge and public opinion to produce a draft map that was reviewed by the public.

**Comp Plan 8-12: Development of the Preferred Land Use Map**

The town's desire to preserve its private forested lands is reflected in areas mapped Private Recreation and Forestry Enterprise (PVRF). PVRF has been mapped in upland locations where the highest concentrations of Managed Forest Land program enrollment are present and where the largest tracts of existing woodlands remain in the town. Public Recreation and Forestry Enterprise (PURF) has been mapped in areas of public lands.

**Comp Plan 8-13: Intensive Use Overlay (IUO)** has been mapped relative to features of the town that existing and future property owners should be aware of. Existing locations of sand and gravel extraction pits are indicated with IUO. The sites of closed landfills and a 1,200 foot buffer are indicated with IUO. In both of these cases, potential for conflict between these existing situations and future development is present.

**Comp Plan 8-17, 8-18: Private Recreation and Forestry Enterprise (PVRF)**

- ◆ Purpose: To preserve forest and woodland and allow for recreational opportunities.
- ◆ Primary Goal: To encourage the continuation of large tracts of forest and woodland areas which are managed to produce sustainable forest products and to provide quality outdoor recreation experiences such as hunting, trail riding, and general wildlife viewing.
- ◆ Preferred Use: PVRF areas are comprised exclusively of private land. Single family residential development and seasonal dwellings (hunting cabins) may be accommodated. Limited commercial and light industrial activity associated with primary residences (home based business) may also be accommodated in the PVRF. Voluntary landowner resource protection programs such as the Managed Forest Land, Conservation Reserve Program, and Wetland Reserve Program are encouraged.
- ◆ Discouraged Uses: Uses which are not compatible with or detract from forestry or outdoor recreation activities.

**Comp Plan 8-23: Land Use Policies and Recommendations**

Policies identify the way in which activities are conducted in order to fulfill the goals and objectives. Policies that direct action using the word "shall" are advised to be mandatory and regulatory aspects of the implementation of the comprehensive plan. In contrast, those policies that direct action using the words "will" or "should" are advisory and intended to serve as a guide. "Will" statements are considered to be strong guidelines, while "should" statements are considered loose guidelines. The town's policies are stated in the form of position statements (Town Position), directives to the town (Town Directive), or as criteria for the review of proposed development (Development Review Criteria).

Recommendations are specific actions or projects that the town should be prepared to complete. The completion of these actions and projects is consistent with the town's policies, and therefore will help the town fulfill the comprehensive plan goals and objectives.

**Comp Plan 8-25, 8-26: Policies: Development Review Criteria**

**LU12** Proposed conditional uses shall meet the following criteria in order to gain town approval:

- ◆ Do not diminish property values in the surrounding neighborhood



*Extraction use conflicts*

**LU13** The Town of Scandinavia permits properly conducted non-metallic mineral extraction operations. Owners of property in areas designated as **Intensive Use Overlay** relative to existing or planned extraction sites or known concentrations of extractable non-metallic minerals should expect that they will be subject to conditions arising from such operations. Conditions may include, but are not limited to exposure to: heavy truck traffic, noise, lights, fumes, dust, machinery operations, and blasting. The conditions described may occur as a result of extraction operations that are in conformance with accepted customs, standards, laws, best management practices, and regulations. Residents in and adjacent to Intensive Use Overlay areas should be prepared to accept such conditions as normal and necessary aspects of living in a rural area (Source: Strategy LU9).

**LU18** Conditional use permits for extraction operations should include a time limit for completion of the project (Source: Strategy LU9).

**LU19** The open area of a permitted extraction operation shall not exceed 10 acres (Source: Strategy LU9).

**Comp Plan 9-15: Policies: Town Directive**

**I1** The town shall maintain the comprehensive plan as an effective tool for the guidance of town governance, and will update the plan as needed to maintain consistency with state comprehensive planning requirements (Source: Basic Policies).

**I2** Town policies, ordinances, and decisions shall be made in conformance with the comprehensive plan to the fullest extent possible (Source: Basic Policies).

The Proposal **IS NOT** consistent with the Town Comprehensive Plan

Updated 5/1/2023

**Attachment**  
**Consistency with Town Goals, Objectives,**  
**Development Strategies**



(23)

## Attachment

### Is the proposal consistent with the Town Goals, Objectives & Development Strategies as found in the Town Comprehensive Plan?

#### Comp Plan 1-8: Agricultural, Natural, and Cultural Resources Goals

*Goal:* Preserve open space areas for the purpose of protecting related natural resources including wildlife habitat, grasslands, savannas, wetlands, and water quality.

*Goal:* Balance future needs for the extraction of mineral resources with potential adverse impacts on the community.

*Goal:* Preserve rural character as defined by scenic beauty, a variety of landscapes, curved roads, attractive design of buildings and landscaping, undeveloped lands, farms, small businesses, and quiet enjoyment of these surroundings.

*Goal:* Promote consistent integration of the comprehensive plan policies and recommendations with the ordinances and implementation tools that affect the town.

*Goal:* Balance appropriate land use regulations and individual property rights with community interests and goals.

#### Comp Plan 5-3 to 5-5: Agricultural, Natural, and Cultural Resources Goals & Objectives

Community goals are broad, value-based statements expressing public preferences for the long term (20 years or more). They specifically address key issues, opportunities, and problems that affect the community. Objectives are more specific than goals and are more measurable statements usually attainable through direct action and implementation of plan recommendations. The accomplishment of objectives contributes to fulfillment of the goal.

#### **Goal 2 Balance future development with the protection of natural resources.**

##### **Objectives**

2.a. Regulate the potential impacts of development proposals on groundwater quality and quantity, surface water quality, open space, wildlife habitat, and woodlands.

#### **Goal 4 Preserve surface water quality including lakes, ponds, flowages, rivers, and streams.**

##### **Objectives**

4.b. Manage the preservation of natural buffers and building setbacks between intensive land uses and surface water features.

4.c. Develop partnerships with adjacent communities, Waupaca County, lake and river organizations, and state agencies to address surface water quality degradation.

#### **Goal 5 Preserve open space areas for the purpose of protecting related natural resources including wildlife habitat, grasslands, savannas, wetlands, and water quality.**

##### **Objectives**

5.a. Manage growth to protect interconnected open space, streams, and wildlife habitat corridors.

5.b. Manage growth to protect small, isolated, open spaces with aesthetic qualities that contribute to community character.

**Goal 6 Preserve and protect woodlands and forest resources for their economic, aesthetic, and environmental values.**

**Objectives**

- 6.a. Preserve large contiguous wooded tracts in order to reduce forest fragmentation, maximize woodland interiors, and reduce the edge/area ratio.
- 6.b. Address the use of conservation land division design, which reduces further forest fragmentation.

**Goal 8 Preserve rural character as defined by scenic beauty, a variety of landscapes, curved roads, attractive design of buildings and landscaping, undeveloped lands, farms, small businesses, and quiet enjoyment of these surroundings.**

**Objectives**

- 8.a. Address the potential impacts of development proposals on those features that the town values as a part of its character and identity.
- 8.b. Discourage rural blight including the accumulation of junk vehicles, poorly maintained properties, and roadside litter.

**Comp Plan 6-7: Economic Development Goals and Objectives**

Community goals are broad, value-based statements expressing public preferences for the long term (20 years or more). They specifically address key issues, opportunities, and problems that affect the community. Objectives are more specific than goals and are more measurable statements usually attainable through direct action and implementation of plan recommendations. The accomplishment of objectives contributes to fulfillment of the goal.

**Goal 1 Maintain, enhance, and diversify the economy consistent with other community goals and objectives in order to provide a stable economic base.**

**Objectives**

- 1.b. Encourage efforts that distinguish and promote features unique to the town.
- 1.c. Support the sustainable economic development of Waupaca County (See Sustainability Resolution for Village & Town of Scandinavia, adopted 12/10/2013).

The proposal **IS NOT** consistent with the Town Goals, Objectives & Development Strategies as found in the Town Comprehensive Plan.

Updated 5/1/2023



**Attachment  
Recommended Conditions**

# CONDITIONAL USES

January 4, 2023

AS STATED BELOW OPERATOR = FAULKS BROTHER'S CONSTRUCTION AND OWNER = IOLA CAR SHOW

Below is what is required before a decision can be made by the Town of Scandinavia Board:

The Town of Scandinavia recommends all items below shall be considered as conditions for approval of the Faulks Bros CUP by Waupaca County Zoning. The Town has also listed concerns, and alternate recommendations to some of these for consideration. Town of Scandinavia comments and alternate recommendations are in bold.

1. Perform independent forensic property value assessment for properties in the surrounding area.
2. All wells within 1,320 feet are identified and documented.
3. Conduct a hydrologic study of the site to determine effects on adjacent water levels (groundwater quantity). Study to also include DNR Wetland ID 69731692401 on parcel 17 01 41 2 to determine water flow and necessary setbacks. **Reference letter from Lane Loveland dated 3/6/2023. Town recommends wetland delineation to determine wetland boundary, and 50' setback from that boundary.**

Below are the list of conditions the surrounding neighbors of Iola Car Show require, should the conditional use permit be approved:

1. The open area of the permitted extraction operation shall not exceed 10 acres, as stated in Town of Scandinavia comprehensive plan (LU19).
2. Conditional use permit is for the extraction and trucking of material only. No crushing, processing, hot mix processing, cold mix processing, or blasting allowed. **Town supports this for period of one year after commencement date, then do review at that time to determine if there are crushing & blasting requirements.**
3. Permit shall expire in five (5) years from commencement date. Per Town of Scandinavia comprehensive plan (LU18), a time limit should be defined for completion of the project. This time is determined by the 10-acre limit and extracting 2-4 acres per year. **Town recommends a time limit to be established and, at minimum, a review in 5 years.**



4. Conditional review to be set three (3) months from commencement date. This is to ensure the established conditions are working and determine what may need to be added as additional conditions. **Town recommends conditional review 12 months after commencement date.**
5. An emergency plan shall be established and communicated to all public service departments servicing the location.
6. Any significant change to or expansion of the business operation, designated mine area and/or of its facilities shall require a new Conditional Use Permit. **There are at least four (4) additional parcels in the Town owned by OCS. Town recommends that these parcels shall be addressed by County Zoning with OCS now to determine any future CUP's.**
7. The permit is only valid for operator Faulk's Bros. and owner Iola Car Show, it is not transferable to another individual or entity. **Town defers to County Zoning for proper ruling.**
8. Hours of operation Monday through Friday 9:00 am to 5:00 pm. Maintenance and repair may be conducted at other times providing it does not constitute a nuisance. **Town recommends hours of operation to be 8:00am to 6:00pm Mon thru Fri. Town recommends no Weekends or Holidays.**
9. No well shall be installed on the property for the life of the conditional use permit. **Town also recommends no onsite fuel storage for the life of the CUP.**
10. Shall comply with 21.4 Groundwater Monitoring in the Waupaca County Non-Metallic Mining Ordinance, no waivers to be authorized by Waupaca County Zoning for section 21.4. Per conditional use item #9 no well shall be installed, which only alleviates the concern of drawdown. Section 21.4 of the ordinance states procedures for testing and monitoring of the quality of groundwater at off-site properties. Per Wisconsin DNR the area is in a higher groundwater contamination susceptibility area. A reasonable person will have to agree that once the overburden has been removed the filtering that had been taking place has been modified.
11. At least one portable restroom shall be onsite at any time the site is occupied.
12. Erosion control and stormwater management plans completed by qualified independent engineers must be submitted to and approved by the Waupaca County Land and Water Conservation Department. **Town defers to County Zoning and ECWRPC reclamation plan.**
13. The driveway from the scale shall be on the owner's property, exiting to State Hwy 161. No entrance to County Rd J shall be allowed. State Hwy 161 may provide already established acceleration and deceleration lanes. State Hwy 161 is safer for the community where the posted speed limit is 35 mph, no hills or curves to maneuver, and concrete pedestrian sidewalks are already constructed. See item #14 for alternative. **Town recommends item 14 alternative.**



14. The driveway from the scale to County Rd J shall not be within five hundred (500) feet of a dwelling unit, commercial structure, or active farm building. **Since this is a county Road, the Town recommends the County Hwy Dept shall be consulted to determine driveway placement on County J per established standards for safety. Warning Signs (e.g. Truck Entrance) and 35mph Speed limit shall be considered in accordance with policies.**
15. The Waupaca County Highway Commissioner shall determine if acceleration or deceleration lanes are required for the site and the width of the driveway based on public safety concerns. Operator shall be responsible for installation of said lanes, which shall be installed prior to mine being opened to truck traffic. **Town recommends County Hwy Dept be engaged to determine this.**
16. The operator and other haulers shall only use authorized routes. **Town also recommends that except for an emergency, no traffic will be allowed to/from the proposed mine site via any Town Roads. This also includes third party haulers. It is up to OCS/Faulks shall ensure this is adhered to and properly communicated. Towns of Iola, Helvetia, and St Lawrence shall also be notified.**
17. The driveway from the scale to County Rd J shall be paved. **Faulks indicates a 50' tracking pad between scale and the exit/entrance. Town recommends proposed tracking pad length be increased from 50' to 100'**
18. All dust, mud or gravel tracked onto the highway from the mine site shall be removed by the end of the day of operation. **Town recommends 100' tracking pad, and this be reviewed 3 months after commencement date to determine what, if anything else, needs to be done.**
19. No hauling during spring road limit. **Town recommends this shall be determined by the County Hwy Dept Spring Weight Limit schedule for County Roads.**
20. Owner and Operator shall have a road damage agreement with Waupaca County.
21. All loads shall be covered when leaving the extraction site.
22. Operator shall require all trucks, excavation, and equipment to have exhaust systems that meet or exceed current industry standards to ensure that noise levels are kept at or below allowable limits.
23. No yard or area lighting shall be permitted on the site. **Town recommends there shall be no nighttime activity allowed.**
24. No storage of any material of any type other than soil and aggregate taken from the site itself (and related operator equipment). **Town also recommends no outside material of any type be brought in for storage, or as part of the reclamation.**



- 25. Property owner shall create and maintain monarch butterfly habitat to replace the current habitat to be destroyed. It shall be placed on land at least 15% the size of the total proposed project, or about 1.5% of total land owned. **Town recommends the current habitat needs to be identified. Proper action be taken at that time. This should be considered as part of the Reclamation Plan.**
- 26. For the reclamation, plan operator shall be responsible for the cost of independent monitoring the quality of import soil and routine inspection. **Town's understanding is OCS/Faulks have indicated that only original material from inside the mine site shall be used for reclamation, so there shall not be any import soil. Town recommends this shall be included in the Reclamation plan if not already done so.**
- 27. Noise measured at the boundary of the property shall be below 60 dBA. **Town has concerns about monitoring, enforcement, and noise from local traffic. Town does not have a noise ordinance in place, and defers to Zoning and ECWRPC.**
- 28. The boundary of the property shall be fenced, in addition to the construction of the berms. **Town recommends the 10' berm is sufficient as a boundary/barrier.**
- 29. Surrounding properties within 1 mile of the sand mine that are sold during the life of the conditional use permit shall have three (3) independent appraisals completed, paid by the operator and/or owner. The off-site property owner will take the average loss of the 3 appraisals to set the amount to be reimbursed by the operator and/or owner within 30 days of closing. **Town has concerns about the other contributing factors that determine value: state of economy; inflation; interest rates; physical condition of the property; and supply/demand.**
- 30. Planning, Zoning, Land Information, Land and Water Conservation, Highway Departments, and Town of Scandinavia board are authorized to enter the mine to ascertain compliance with the operation plan, conditions of approval and reclamation plan. **Town Comp Plan LU20 supports this request. Compliance and enforcement of the plan is the responsibility of County Zoning and ECWRPC.**
- 31. If the Town of Scandinavia finds, after a public hearing, that the owner or operator is not in compliance with the permit conditions the permit may be revoked. Violation of the conditions, standards, or requirements of the permit shall subject the owner and/or operator to a \$10,000 per day fine until the violation is resolved. **The Town has no ability to do this. County Zoning is responsible for compliance and enforcement. All fines would be levied by County Zoning.**

32. **Town addition: OCS/Faulks must clean up debris designated east of the County Hwy J entrance Gate 19, before any work is done.**

33. **Town addition: OCS/Faulks must establish a focal point of contact, along with a backup representative to address any issues that may arise during operation of the mine. This contact info shall be made available to all residents within 500' of the area to be mined.**

Revised 4/30/2023



**OLSON ROAD NEIGHBORS REQUIREMENTS PRIOR TO CONDITIONS FOR FAULK'S BROS. C.U.P.; 1/19/23**

The Town of Scandinavia recommends all items below shall be considered as conditions for approval of the Faulks Bros CUP, submitted to Waupaca County Zoning. The Town has also listed concerns, and alternate recommendations to some of these for consideration. Town of Scandinavia comments and alternate recommendations are in bold.

**I. Groundwater and Wetlands**

Faulks Bros. fails to provide an adequate reclamation plan, pursuant to [Waupaca Ordinances Chapter 43 Non-Metallic Mining Reclamation](#), by not providing the following (among others):

**Section 13.10.1 Reclamation Plan Required**

*(a) geologic composition and depth of NM mineral deposits and location of surface water, approximate elevation of groundwater as determined by licensed professional hydrologist if existing hydrologic information is insufficient and*

*(c) information on biological resources, plant communities and wildlife use at and adjacent to the mine site*

Also, the Faulks CUP application provides inadequate proof that it complies with DNR rules like Wis. Admin code ch. [NR 103](#), [NR 151](#) and [NR 216](#), or that Faulks has applied for all necessary state and federal regulations. Without this critical information regarding on-site wetland, storm water drainage and groundwater protections, we cannot offer conditions under which the application may be approved, because requirements in Waupaca County Ordinances 34.14.5.1 (b) 3 and 4, as well as 38.26.1 and 38.26.2 have not been met. (At the Town level, see Town of Scandinavia Year 2030 Comprehensive Plan sections ANC 10, 22 and LU 12.)

Therefore, it is incumbent upon Faulks to demonstrate it can obtain coverage under the ["GENERAL PERMIT TO DISCHARGE UNDER THE WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM In compliance with the provisions of Chapter 283, Wisconsin Statutes, any facility engaged in MINERAL \(NONMETALLIC\) MINING AND/OR PROCESSING"](#)

Such permitting will engage the expertise of DNR staff site hydrology and will ensure wetland and groundwater identification and protections as required. Faulks is bound to obtain this permit in any case prior to disturbing the site; we require proof of this approved permit prior to continuing discussions regarding conditions.

**Town defers to DNR regarding water issues. See email from DNR Rep Lane Loveland dated 3/6/2023. Town recommends wetland delineation to determine wetland boundary, and 50' setback from water.**

**Town defers to County Zoning and East Central Wis Regional Planning Commission (ECWRPC) on the Reclamation Plan issues.**

**OLSON ROAD NEIGHBORS REQUIREMENTS PRIOR TO CONDITIONS FOR FAULKS BROS. C.U.P.; 1/19/23****II. Property Values**

In addition to our primary concerns regarding water, concerned neighbors will need information regarding possible property devaluation from an independent, accredited source. [The Forensic Appraisal Group](#) is such a source, and the legitimacy of its work has been vetted by Marquette County.

Per Waupaca County Ordinance 38.27.1.6, the County is authorized to retain licensed accredited professionals to examine NM mining applications and to make recommendations to the County as to whether the proposed mine will meet standards identified in the pertinent Ordinances. We require this study be done prior to continuing discussions regarding conditions.

**Town defers to Zoning. Town has concerns about other contributing factors that determine value: state of economy; inflation; interest rates; physical condition of the property; and supply/demand.**

**III. Identification of Wells**

All wells within 1,320 feet of the proposed mine site must be properly and accurately identified.

**Well identification has been a problem since the beginning of the first application request. Town recommends that Faulks shall work with Zoning and residents affected to ensure no wells are missed, and are properly identified.**



**OLSON ROAD NEIGHBORS REQUIREMENTS PRIOR TO CONDITIONS FOR FAULKS BROS. C.U.P.; 1/19/23**

**IV. Grounds for Denial**

As it stands, the Faulks Bros. Conditional Use Permit application fails to provide an adequate Reclamation Plan as required by NR 135<sup>1</sup>.

Under these circumstances, Waupaca County Ordinance Ch. 43.17.1(a) and (b) provide that therefore, the application "shall be denied":

SECTION 17 Permit Denial. An application for a nonmetallic mining reclamation permit shall be denied as set forth below: (1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. 16, if the Administering Agency finds any of the following: (a) The applicant has, after being given an opportunity to make corrections, failed to provide to the Administering Agency an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter. (b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this chapter, Chapter NR 135, Wisconsin Administrative Code or subch. I. of ch. 295, Stats.

Once Faulks Bros. submits a proper reclamation plan, obtains the WDNR permits referenced in Section I above, and the Town and County have the results of Forensic Appraisal Group's property value analysis in Section II, and there is proper identification of all pertinent wells within one-quarter mile of the Scandinavia mine site in Section III, this may provide grounds for continued negotiation regarding conditions pertaining to the C.U.P. application.

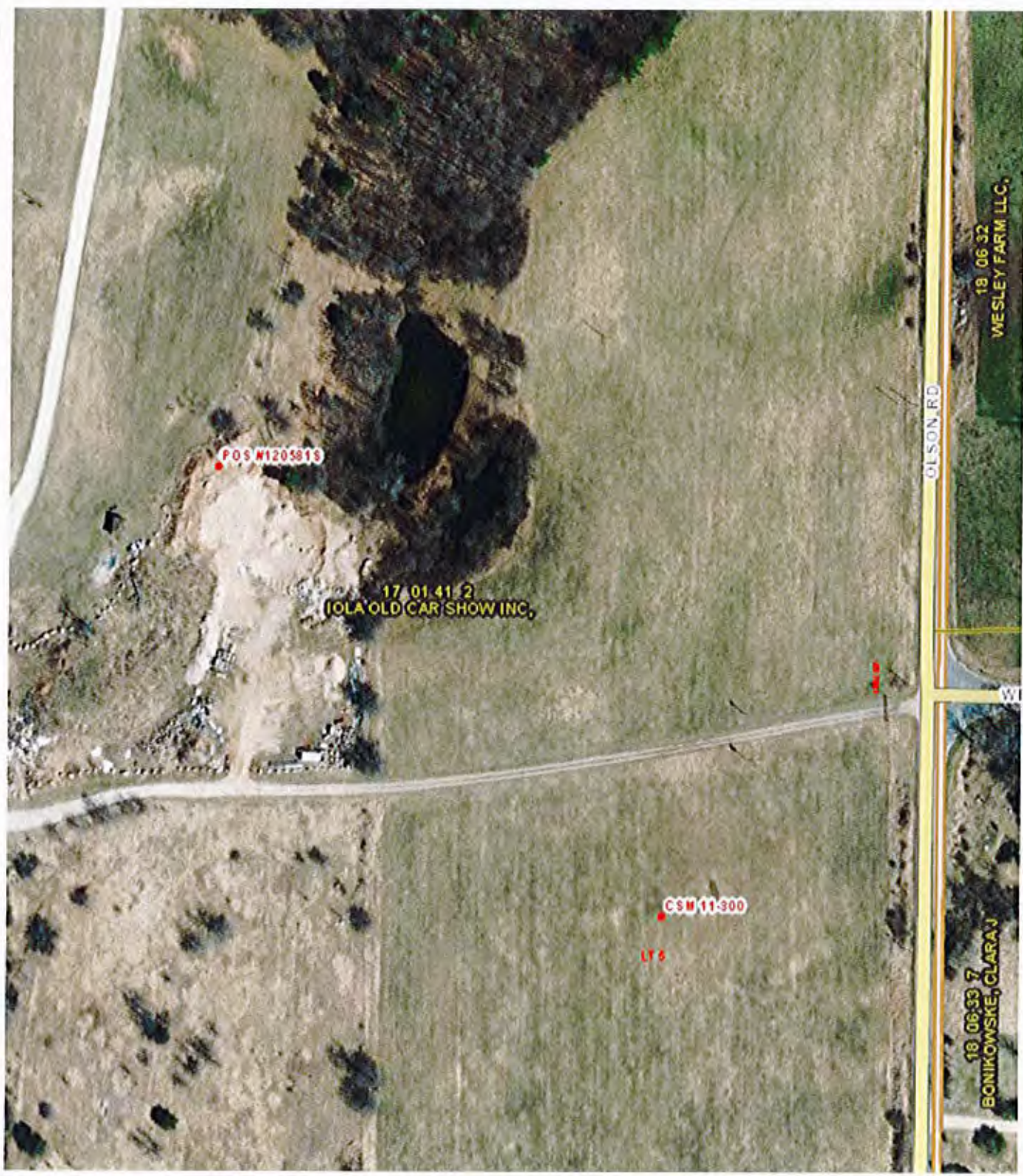
**Defer to Zoning. The Reclamation Plan gets reviewed by East Central Wis Regional Plan Commission (ECWRPC) after decision by Zoning. A new application was received by the Town on 2/21/2023 for parcel 17-01-41-2 only. The Village of Iola is no longer part of the application. The Town applied and received extension to the original permit on 3/1/2023.**

Revised 4/19/2023

<sup>1</sup>NR 135 provides in part:  
**NR 135.07 Surface water and wetlands protection.** Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with water quality standards for surface waters and wetlands contained in chs. [NR 102](#) through [105](#). Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to an applicable reclamation ordinance. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.  
**History:** Cr. [Register, September, 2000, No. 537](#), eff. 12-1-00.  
**NR 135.08 Groundwater protection.**  
**(1) Groundwater quantity.** A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.  
**(2) Groundwater quality.** Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in ch. [NR 140](#) to be exceeded at a point of standards application.



OLSON ROAD NEIGHBORS REQUIREMENTS PRIOR TO CONDITIONS FOR FAULK'S BROS. C.U.P.; 1/19/23



Source: Waupaca County Land Records Viewer, captured via screenshot, January 2023. Pictured is DNR Wetland ID 69731692401. Note two bodies of surface water and wildlife trail.



**TDS Webmail**

**gjmarx@tds.net**

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**RE: Faulks Brothers - Iola Car Show - Mining Proposal**

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**From :** Loveland, Lane G - DNR <lane.loveland@wisconsin.gov> Tue, Mar 07, 2023 09:40 AM  
**Subject :** RE: Faulks Brothers - Iola Car Show - Mining Proposal 7 attachments  
**To :** Mark Weinreis <mark@waupacasand.com>  
**Cc :** Gary Marx <gjmarx@tds.net>, Scott Konkle <skonkle@ecwrpc.org>, Ryan brown <Ryan.brown@co.waupaca.wi.us>, Loveland, Lane G - DNR <lane.loveland@wisconsin.gov>

(35)  
All,

A minor edit/modification to my email below from yesterday (please see highlighted). I added the word "not"

If anyone has any questions please let me know.

Sincerely,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Lane Loveland**

Water Management Specialist - Mining

Phone: (715) 596-0110

[Lane.Loveland@Wisconsin.Gov](mailto:Lane.Loveland@Wisconsin.Gov)

**From:** Loveland, Lane G - DNR <lane.loveland@wisconsin.gov>

**Sent:** Monday, March 6, 2023 1:55 PM

**To:** Mark Weinreis <mark@waupacasand.com>

**Cc:** Gary Marx <gjmarx@tds.net>; Scott Konkle <skonkle@ecwrpc.org>; Ryan.brown@co.waupaca.wi.us; Loveland, Lane G - DNR <lane.loveland@wisconsin.gov>

**Subject:** Faulks Brothers - Iola Car Show - Mining Proposal

Hello Mark,

Per our previous conversations as well as the pre-application meeting (January 12, 2023) – based on historical aerial photos, there appears to be two natural kettle ponds located in the area. Natural waterways and wetlands are protected in the state of WI. The two natural ponds should be avoided, as well as any associated surrounding wetlands. I do recommend a wetland delineation to decipher exactly where the wetland boundary is located (if you see the aerial photo below on WDNR SWDV, there is a wetland point). As long as the ponds and wetlands are avoided, and ponds are not being created within 500' of another natural waterbody, then no chapter 30 permits are required from the WDNR waterways program.





If you still wish to pursue disturbing the wetlands, I am not a wetland expert, but from what I understand the process is mainly to first avoid wetlands, then minimize disturbance as much as possible, and as a last resort to mitigate. In my open and honest opinion, these wetlands are easily avoidable. If you would like I can refer you to a wetland expert, just let me know and I would be happy to find someone for you to talk to about wetlands.

#### **Other recommendations**

In addition, I would recommend that you work with Scott Konkle (ECRPC 1.920.979.0387) regarding mitigating/alleviating any potential concerns with disturbance around the wetlands (wetland secondary impacts) in regards to NR135 regulations.

You may also want to consult with WDNR Stormwater staff (Sue Larson 1.920.366.2881 or [Susan.Larson@wisconsin.gov](mailto:Susan.Larson@wisconsin.gov)).

Also, it may be beneficial to consult with Waupaca County Planning and Zoning to see what requirements they may have in their ordinance(s) for wetland setbacks.

I hope this information is somewhat helpful. Thank you and please let me know if you have any additional questions that I can assist with.

Sincerely,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Bureau of Waterways/Division of External Services  
Wisconsin Department of Natural Resources  
225051 Rib Mountain Drive  
Wausau, WI 54401  
Cell Phone: (715) 596-0110  
Fax: (715) 355-5253  
[Lane.Loveland@Wisconsin.Gov](mailto:Lane.Loveland@Wisconsin.Gov)





3/14/23, 7:36 AM

(38)

TDS Webmail

MAY 11 2023

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**Attachment  
Pertinent Info**



### Attachment, Pertinent Info

1. The Town understands that public opinion is not the criteria for making a decision. As representatives of the Town of Scandinavia, we represent the community, and cannot ignore the volume of concerned residents regarding the Sand Mine application.
2. Based on input from residents of township, and the surrounding area, it appears there is overwhelming opposition to grant the permit.
  - a. Most of the 109 people attending the 1/4/2023 and the 71 people attending the 4/12/2023 public informational hearings were opposed to the CUP.
  - b. Signed petition against Sand Mine: 264 (unvetted)
3. Resolution (attached): Commitment to Sustainability, signed by the Village and Town of Scandinavia 12/11/2013. "Reduce and eventually eliminate our contribution to the progressive buildup of materials (and their associated wastes) that are extracted from the Earth's Crust."
4. Marquette County Property Values Studies (Summaries attached):
  - a. Forensics Appraisal Group (3 pages), Zoning Dept has complete 63 page report.
  - b. GZA GeoEnvironmental Rebuttal (3 pages), Zoning Dept has complete 154 page report.
5. Letter from Pines Bach dated 12/12/2022 (Ryan Brown copied) regarding CUP violations of the Faulks application. Many references to county ordinances and reclamation plan issues that the Town cannot address.
6. "Rural Character" is referenced 29 times in the Comp Plan.
7. "Wildlife habitat" is referenced 22 times in the Comp Plan.
8. In 2007, the State mandated that the Town adopt a Comprehensive Plan
9. The Township adopted a land use plan, after conducting public hearings and issuing two Comprehensive Plan Surveys:

### Waupaca County Agriculture, Natural Resources, & Land Use, First Survey:

**SURVEY RESPONSE** Over 4000 (38%) surveys were returned. The high response rate indicates strong interest in comprehensive planning, agriculture, natural resources, and land use. It is also an indication of the quality of the survey instrument. Individual community, Cluster, and County response rates are listed below (total occupied housing units from the 2000 Census are included for reference purposes only).

*Town of Scandinavia had 34.6% response rate*

**"Protecting my community's rural character is important to me."**

*Town of Scandinavia: agree and strongly agree: 93%*

## Waupaca County Comprehensive Planning Survey II:

*Town of Scandinavia had 29.5% response rate*

"For each of the following types of land use, please indicate if your community should encourage or discourage that type of land use."

*Gravel Pits – For Waupaca County, a majority (60%) stated discourage gravel pits, while 11% stated encourage, 7% does not apply, and 22% not sure. The level of encouragement was directly related to acres owned (7%, less than one acre; 55%, over 500 acres), with the owners of over 500 acres stating encourage more often than discourage. Rural farms also stated encourage more often (21%), but a slight majority (51%) still stated discourage*

*Town of Scandinavia 59% stated discourage gravel pits, while 11% stated encourage.*

Updated 5/2/2023



**RESOLUTION**

Village of Scandinavia & Town of Scandinavia  
Waupaca County, Wisconsin  
A Resolution: A Commitment to Sustainability

WHEREAS, The Village of Scandinavia & Town of Scandinavia acknowledge that the people of Scandinavia, Wisconsin, desire to create a stable, sustainable future and acknowledge that such a future is not certain.

We recognize that it will take the goodwill and determined work of individuals and communities around the world to achieve this goal. We wish to be part of this international network and declare sustainability to be a goal of both the Village and Town.

We wish to integrate our economy, environment, society and governance in ways that foster vibrant social and economic conditions and a healthy ecosystem. To that end, we commit ourselves to creating the conditions necessary for a sustainable future. By seeking innovative and flexible solutions to the challenges that confront us, by sharing our knowledge, and by coordinating our actions, we strive to:

1. Reduce and eventually eliminate our contribution to the progressive buildup of materials (and their associated wastes) that are extracted from the Earth's crust.
2. Reduce and eventually eliminate our contribution to the progressive buildup of synthetic materials produced by human society.
3. Reduce and eventually eliminate our contribution to the ongoing physical degradation of the Earth.
4. Reduce and eventually eliminate our contribution to conditions that undermine people's ability to meet their basic needs.

THEREFORE, BE IT RESOLVED that the Village of Scandinavia & Town of Scandinavia declare their commitment to sustainability as outlined above.

Sustainability Resolution (Continued)

Adopted this 10<sup>th</sup> day of December, in the year 2013 and signed,

David Mork, President David Mork

Tony Hawke, Supervisor Tony Hawke

Mike Hayes, Supervisor Mike Hayes

Bob Freedy, Supervisor Bob Freedy

Shelly Mork, Supervisor Shelly Mork

THIS IS TO CERTIFY THAT the foregoing is a true and correct copy of a resolution duly and legally adopted by the VILLAGE OF SCANDINAVIA at Village meeting held on the 10<sup>th</sup> day of December, in the year 2013.

Judy Watson, Clerk Judy Watson

Adopted this 11<sup>th</sup> day of December, in the year 2013 and signed,

Gary Marx, Chairman Gary Marx

Frank Bauer, Supervisor Frank Bauer

Brian Fuhs, Supervisor Brian Fuhs

THIS IS TO CERTIFY THAT the foregoing is a true and correct copy of a resolution duly and legally adopted by the TOWN OF SCANDINAVIA at Town meeting held on the 11<sup>th</sup> day of December, in the year 2013.

Jennifer Glad, Clerk Jennifer Glad



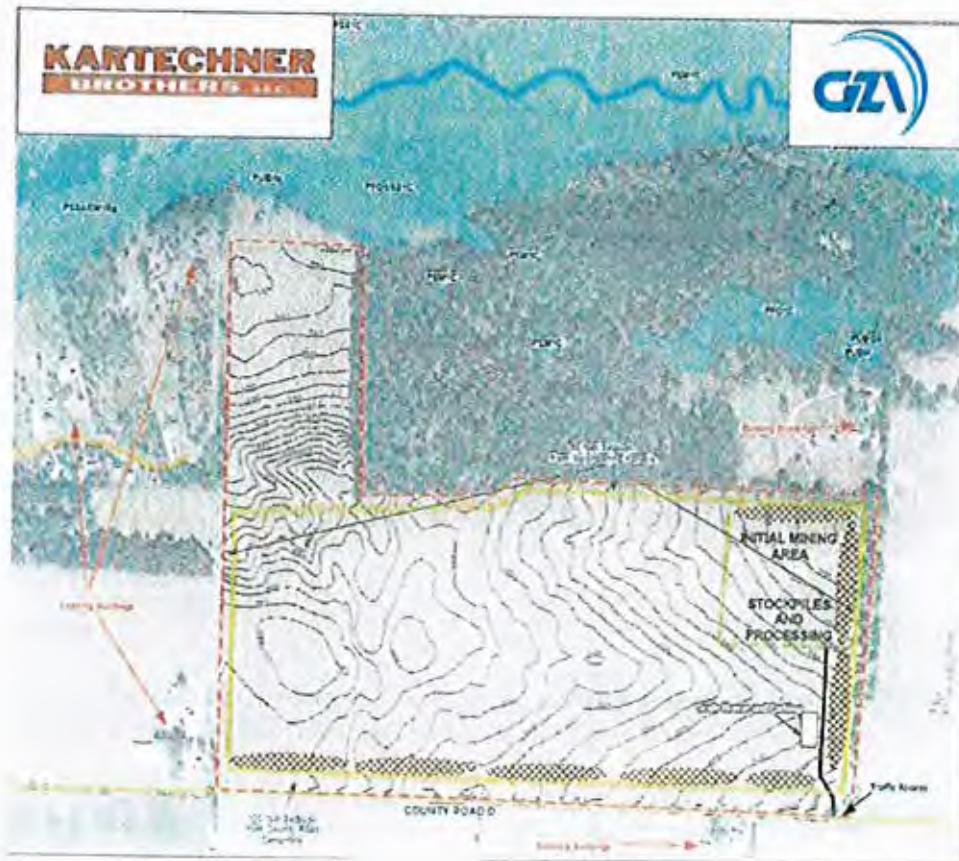
# The Impact of the Proposed Kartechner Brothers Sand & Gravel Open Pit Mine on Surrounding Residential Property Values

## Purpose of Study

This study was contracted by Marquette County, Zoning and Land Information, Montello, Wisconsin, for our opinion on the impact on residential property values located within the vicinity of the proposed Kartechner Brothers sand and gravel open pit mine ("mine" or "quarry").

## Proposed Sand and Gravel Mine

The proposed sand and gravel mine is a 130.80-acre parcel comprised of six parcels, all located in the NE ¼ and the NW ¼, Section 28, Town 15, Range 9 East, Town of Packwaukee, Marquette County, Wisconsin. (Please see Addendum for Petition for Special Exception for the parcel numbers.) Access to this parcel is off of CTH D, a county highway. The contour of the property is considered gently rolling to rolling with elevations of 786ft above sea level to 876ft, having a 90ft variation. (Please see Permit Application map below.)





The mine will be an open pit mine with access off of CTH D, a paved county highway. The operation is to be mined to the benefit of the applicante, i.e. Kartechner Brothers, LLC, and is expected to be in operation 1-2 months per year. However, it is noted that the permit application does not appear to limit the time and use of the mine. Therefore, it is assumed that the mine will be utilized at the maximum potential allowed by local and state permits and operation mandates.

The purpose of the quarry is to mine sand and gravel for aggregate utilizing portable equipment such as crushers, screens, and conveyer. The parcel will be used to stockpile the mined material. The mine will be improved with roadways within the parcel for transportation of the manufactured and mined materials, a scale and scale house and security gates. In addition, there will be a settling pond and the stockpiling of material to be reclaimed.

The neighborhood is rural in nature comprised of agricultural land uses with residential support structures, some scattered residential cluster developments, and two subdivisions which are in close proximity to the proposed project. Across Buffalo Lake, to the north, is a small town and two other residential developments. (See map below.)



Figure 3: the yellow circle indicates a 1.5-mile radius, the pink circled areas denote residential land use.

### Format of Study

The format of the study is in three parts. The first part is a qualitative analysis. The second is a quantitative analysis. The third is to apply the qualitative and quantitative conclusions to the subject properties.

A *qualitative* analysis is an analysis that is focused on non-empirical data to guide a conclusion of value. An example of such an analysis would be opinion surveys. Application of this type of analysis is helpful in forming a "yes/no" answer to the question "Does proximity to open pit sand and gravel mine negatively





impact property value?" and, if "yes," then, "What would that impact be as a percentage to property value?"

A quantitative analysis is an analysis that is focused on empirical or measurable data to guide a conclusion of value. An example would be a matched pair comparison of a sale of a property influenced by a sand and gravel mine as compared to one that is not. The difference in value is measurable. Another example would be a regression analysis (aka hedonic analysis) whereas the sale price of several "influenced" properties would be compared to the several "non-influenced" properties. Again, a measurable event.

The advantage of using both methods is that they have a symbiotic relationship and help give a full picture of both the motivations and results of such motivations by the buying public to a particular issue. In this case, the presence of an open pit sand and gravel mine.

The first of this study was to survey Realtors in Wisconsin as to their opinions of impact that an open pit sand and gravel mine would have on residential property values.

The second part of the study was to investigate, review, read and apply published statistical studies that related to the question "Do open pit sand and gravel mines impact residential property value?"

The third part is to apply the qualitative and quantitative studies to the residential property values within a 1.5-mile radius of the proposed mine.

**Conclusion**

The quantitative analysis provided by the statistical studies and qualitative analysis provided by the Realtor Survey are included in this report. Both analyses indicated that there will be a negative impact on residential property value within a 1-mile radius of the proposed open pit sand and gravel mine. The conclusions are found in the table below:

Conclusions of Impact of an Open Pit Sand & Gravel Mine on Residential Property Values			
distance from the mine	Realtor Survey	Statistical Studies	Average
	qualitative	quantitative	(mean)
abutting	-15%	-35%	-25%
300ft - 1,000ft	-15%	-30%	-23%
2,500ft (~ 1/2 mile)	-10%	-20%	-15%
5,000ft (~ 1 mile)	0%	-14.5%	-7%

Sincerely,

Kurt C. Kielisch, ASA, SR/WA, R/W-AC  
President/Senior Appraiser







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April 19, 2022  
File No. 20.0156871.20

Mr. Thomas Onofrey, Director  
Marquette County Planning, Zoning & Land Information Department  
77 West Park Street, Room 104  
Montello, Wisconsin 53949

Re: Review Comments to Forensic Appraisal Group's March 14, 2022, Real Estate Consulting Report, "The Impact of the Proposed Kartechner Brothers Sand & Gravel Open Pit Mine on Surrounding Residential Property Values"

Dear Mr. Onofrey:

On behalf of Kartechner Brothers ("Applicant") and Joseph and Amanda Steuck ("Owners"), GZA GeoEnvironmental, Inc. (GZA) is providing review comments to the Forensic Appraisal Group's (Forensic Appraisal) March 14, 2022, Real Estate Consulting Report, subtitled, "The Impact of the Proposed Kartechner Brothers Sand & Gravel Open Pit Mine on Surrounding Residential Property Values (the "Report"). The Report was prepared for Marquette County c/o Mr. Tom Onofrey, Director of Planning, Zoning & Land Information, and is provided as **Attachment 1**, which includes detailed review notes pertaining to the Report.

Due to serious concerns with the quality, misinformation, and biased opinion-based approach to the Report, we respectfully requested that you not post this on the Department website and provide us an opportunity to point out the shortcomings of the Report to you and the BOA before you take this to the court of public opinion. A properly performed, fact-based study would have served both parties better.

**The Forensic Appraisal Opinion Survey is Fatally Biased**

The author of the Report has used similar opinion surveys of realtors to form his expert opinions on property values for more than 20 years, a practice that appears to have originated by others circa 1998 pertaining to electrical transmission lines in Virginia, Wisconsin, and Minnesota. The issues evaluated by the author included gas pipelines, electric transmission lines, wind turbines, and now a proposed nonmetallic mine.

To have value, surveys must be carefully constructed to avoid influencing the answers of the respondents. **Attachment 2** is a report of Hans J. Wolff, Ph.D., who reviewed the Forensic Appraisal Report survey. Dr. Wolff is an expert on constructing unbiased and reliable surveys for Fortune 500 Companies. His report explains four reasons why the survey fails to follow best practices for surveys of its kind, and unfairly biased the respondents toward finding that the gravel pit would negatively affect real estate prices.

In addition to observations by Dr. Wolff, the following observations on the Report's survey should be considered:

1. The survey clearly should not have mentioned a 100-acre, open pit sand and gravel mine. The County is aware that a 100-acre, open pit sand and gravel mine is not proposed by Kartechner.
2. 69 of the survey's 189 respondents stated that they "experienced selling or buying a residential property near an open pit sand and gravel mine," yet 188 responded to questions





on the impact to value an open pit sand and gravel mine would have if it were abutting the residential property and 146 responded "yes." So, 69 have experience, yet 146 claim it would be negative. Upon whose experience is the survey relying?

Furthermore, there is little doubt that a similar survey would get the same type of responses if the term "open pit sand and gravel mine" (used 9 times) was replaced with a multitude of other land uses, such as sports field, school, church, playground, daycare, hog farm, chicken farm, vineyard, campground, tourist attraction, mobile home park, condominiums, apartments, and any and all types of institutional, government, commercial and industrial uses. In short, every land use can have an impact on neighboring land use and such questions in surveys are self-fulfilled prophecies. As such, the survey proves nothing.

**The Report's Conclusions Are Unsupported by Any Actual Studies of Real Estate Values**

According to the Report, "professional search engines" were used "to scan the internet for published studies relating to this topic" and continued, "Additionally, we researched the archives of Lum Library (Appraisal Institute) and the Right of Way Magazine (International Right-of-Way Association (IRWA))." Despite the incredible access to information available to 16,000 professionals associated with the Appraisal Institute and 7,000 professionals associated with IRWA, Forensic Appraisal "found that there are no impact studies published other than *The Value-Undermining Effects of Rock Mining on Nearby Residential Property: A semiparametric Spatial Quantile Autoregression*, by Emir Malikov, Yiguo Sun and Diane Hite, Auburn University (USA) and University of Guelph (CAN), 2017." That is astonishing, but consistent with the research I have been doing for more than a decade - there are no studies published that document impacts to property values associated with mining.

Forensic Appraisal should have stopped there and reported that finding. Instead, the Report continued to focus only on the negative, with a goal to, despite the finding that "there are no impact studies published," pursue a theory and present a Report with conclusions that no others before them could develop - that a proposed mine will negatively impact property values.

Refer to **Attachment 1** for detailed review notes on the 2017 draft paper. The Report mischaracterized the 2017 draft paper in multiple ways and reliance on the draft paper is flawed, as is Forensic Appraisal's adjustment to the 2017 draft paper's suggestions based on an opinion survey. The 2017 draft paper claims impact to 10 miles, with 3.1% property value decrease per mile closer to the mine, resulting in 31% decrease in value within 1 mile of a mine. The results are unrealistic and obviously do not pass the straight-face test. The aerial image from 2006 in **Attachment 3** identifies the limestone quarry that was referenced in the 2017 draft paper. Review of the aerial does not take an expert to recognize the absurdity of the claim perpetuated by others and now Forensic Appraisal.

Another example presented to demonstrate the absurdity that all quarries impact property values by some equal value with distance is provided in **Attachment 4**, which highlights only a small percentage of the actual number of sand and gravel pits and quarries in the area represented in southeastern Wisconsin. It is reasonable to report that real estate is not free or cheap in southeastern Wisconsin. In almost all locations, sand, gravel, and rock quarries are developed in rural areas with sparse residential use and in all locations, residential use encroaches upon the quarries. The Colgate, Wisconsin example discussed below is one of a thousand that could be reviewed with historic aerial photographs.

**Attachment 5** contains aerial photographs of a Colgate area sand and gravel pit taken in 1968 and 2020, and street view photos from 2021 obtained from Google Earth Pro. Also included in **Attachment 5** is a simple analysis of Total Assessed Value of residential properties near the mine. The data clearly demonstrates that the absurd concept of decreased property values adjacent to and for a long distance from a sand and gravel mine are not demonstrated by real data. Note some of the properties at slightly more than ¼-mile from the quarry are valued at more than \$1 million.

Similar analyses based on publicly available information are provided for sand and gravel quarries in Genesee, Muskego Lake, Portage, Waterville Lake, Shields Township, and Springfield Township in **Attachment 6, 7, 8, 9, 10, and 11**,



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Review Comments to Forensic Appraisal Group, March 14, 2022, Real Estate Consulting Report

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respectively. The analysis for the Big Bend sand and gravel pit in **Attachment 12** provides a somewhat unique example of how prudent thinking did not prohibit an opportunity for the local community to increase its tax base significantly on a 75-acre property. Similar property value analyses can be completed for many of the other 2,500 nonmetallic mines the Wisconsin Department of Natural Resources (WDNR) reports to be present in Wisconsin and tens of thousands present across the United States. If the concept propagated by Forensic Appraisal and others was true, the world would be aware.

An almost infinite number of examples could be produced to show mining does not have a regional impact on real estate values, as reported above and in **Attachments 5 through 12**. In our January 14, 2022 correspondence to the County, we summarized and referenced several studies from 1981 through 2011, that focused on evaluating the relationship. Those studies are provided in **Attachment 13** and were apparently not identified by Forensic Appraisal. As stated previously, a properly performed, fact-based study would have served both parties better than that Report produced.

The Report appears to be biased and mischaracterizes and applies a draft working model to such an extent that it is difficult to comprehend when faced with facts and reality how it can be considered serious. Although it is too late to withdraw the Report from public review, we respectfully request that Forensic Appraisal's Report be removed from consideration by the County based on the lack of facts provided within it and remove the Report from the County website as soon as practical to avoid the unnecessary spreading of such misinformation.

We remain available to answer questions from the County and appreciate your consideration of our report and analysis.

Very truly yours,

**GZA GeoEnvironmental, Inc.**

A handwritten signature in black ink, appearing to read "Mark J. Krumenacher", written over a horizontal line.

Mark J. Krumenacher, P.G.

Senior Principal/Senior Vice President

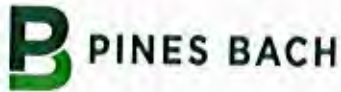
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#### Attachments

cc: Marquette County Board of Adjustment  
Mr. Ron Barger, Marquette County  
Ms. Natalie Bussan, Cross Jenks Mercer & Maffei LLP  
Mr. Mike Kartechner, Kartechner Brothers  
Mr. David McCormack, Axley Brynelson LLP





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December 12, 2022

**VIA EMAIL**

Town of Scandinavia Board  
c/o Gary Marx  
E1144 Cty. Rd. V,  
Scandinavia WI 54977

Re: Conditional Use Permit Application by Faulks Bros. Construction Inc. for N7055  
Cty. Rd. J, Iola, WI 54945

Dear Chair Marx and the Scandinavia Town Board:

This firm represents Laura Scott and Ronald Scott, and provides the following comments to the Town Board in opposition to Faulks Bros. Construction Inc.'s ("FBC's") Conditional Use Permit ("CUP") application to construct and operate a non-metallic mine in the Town of Scandinavia, N7055 Cty. Rd. J, Iola, WI 54945 ("proposed Mining Site"). For the reasons below, we ask that the Town Board recommend denial of the CUP to Waupaca County at its December 14, 2022, meeting.

The CUP cannot be approved, because the Application is incomplete and fails to comply with the County's standards for CUP approval, including consistency with the Town and County comprehensive plan. In its CUP application, FBC affirms that its proposed Mining Site will be 21 acres. However, the Town's Comprehensive Plan prohibits extraction operations larger than 10 acres (LU19). Both the County's Non-Metallic Mining Ordinance (Chapter 38) and the Zoning Ordinance (Chapter 34) prohibit approval of a mine that fails this consistency requirement. For this reason alone, the CUP application must be denied by Waupaca County and rejected by the Town.

Further demonstrating why FBC's CUP application cannot be granted or supported, the application itself is misleading and significantly devoid of required information. Waupaca County Ord. ch. 38, § 26.4, lists fifteen specific requirements that a CUP

application for a non-metallic mine must include. Astonishingly, FBC fails to meet at least ten of these fifteen requirements. Among other failures, FBC's CUP application fails to provide a lighting plan, offers no details of their mining methods, and fails to provide any information regarding its plan to control noise, dust, and vibrations from its mining and excavation operations. In other words, the factors that will most acutely impact local quality of life are missing from the CUP Application even though these details are required by ordinance.

Finally, the Application fails to satisfy the standards for issuance of a CUP, set forth in Waupaca County Ord. ch. 34, § 14.5.1.b., or show they can be met by substantial evidence. Again, these are mandatory standards, and provide another basis for denial of the CUP.

**I. FBC's Proposed Mining Site Violates the Town's Comprehensive Plan, and Therefore Violates Waupaca County Ord. ch. 38, § 27.1.4(b) and ch. 34, § 14.5.1.b.**

Under Waupaca County Ord. Ch. 38, § 27.1.4(b), a "proposed Conditional Use will be consistent with all relevant aspects of the Town and County Comprehensive Plans." In other words, a CUP may not be granted if it is inconsistent with a Town's Comprehensive Plan.

Under Section 8.9, the Town's comprehensive plan provides twenty-one different land use policies and recommendations. (Town of Scandinavia Comprehensive Plan, pages 121-125.) These policies and recommendations vary between hard rules and mere recommendations. (*Id.* at 121.) Under this section, "[P]olicies that direct action using the word 'shall' are advised to be mandatory and regulatory aspects of the implementation of the comprehensive plan." (*Id.*; see also *Hayen v. Hayen*, 2000 WI App 29, ¶ 18, 232 Wis. 2d 447, 606 N.W.2d 606.)

Under the Town's Comprehensive Plan, Land Use Policy 19 (LU19) says: "The open area of a permitted extraction operation shall not exceed 10 acres." (*Id.* at 124). The use of the word "shall" makes it clear that this is not a mere guideline, but rather a requirement.

In its CUP Application, FBC states that the planned "extraction operation will be 21 acres." (CUP App. at page 2). In that same answer, FBC admits that this proposal "exceeds the 10-acre limit set" in LU19. (*Id.*) Consequently, FBC asks for an exception to LU19. (*Id.*) However, the Town's Comprehensive Plan does not provide a process for granting exceptions to any "mandatory and regulatory aspects of the implementation of



the comprehensive plan." (Town Comp. Plan at page 121). Thus, an exception cannot be provided to FBC without violating the Town's Comprehensive Plan, or without amending the entire plan in compliance with the Comprehensive Planning law.

Because the size of FBC's proposed mining and excavation operation violates the Town's Comprehensive Plan, Waupaca County Ord. ch. 38 § 27.1.4(b) and ch. 34, § 14.5(1)(b) prohibit the issuance of the CUP. This alone should cause the Town Board to oppose the CUP, as the Town has a vested interest in following its own plan as well as the law.

There are additional grounds found throughout the Town's Comprehensive Plan that make clear that this CUP is inconsistent with the community's stated goals. For example, as FBC acknowledges, the proposed Mining Site is zoned as a Private Recreation and Forestry Enterprise (PVRF) district. (CUP App. at 2). According to the Town's Comprehensive Plan, preferred uses in PVRF districts include single family residential dwellings and limited commercial and light industrial activity associated with primary residences. (Town Comp. Plan at 116.) Discouraged uses are "[u]ses which are not compatible with or detract from forestry or outdoor recreation activities." (*Id.*) FBC's proposed extraction operation is incompatible with any common or reasonable definition of "forestry" or "outdoor recreation activities."

Thus, this CUP Application should be opposed not only because it violates the Town's Comprehensive Plan - and consequently Waupaca County Ordinance - but also because it falls within the Town Comprehensive Plan's discouraged uses of PVRF.

## II. FBC's CUP Application Is Incomplete Under Ordinance ch. 38, §26.4

Waupaca County Ord. ch. 38, §26.4 states that an "application submitted for a Conditional Use Nonmetallic Mining Permit shall be accompanied by the following information and/or plans reasonably reflecting the best information available at the time of the application." The ordinance lists fifteen different required forms of information that must be included in a CUP application for nonmetallic mining within Waupaca County. In its applications and accompanying "Iola Non-Metallic Mining Site Operations and Reclamation Plan" ("FBC Plan"), FBC fails to meet at least two thirds of these fifteen requirements.<sup>1</sup>

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<sup>1</sup> For the purposes of this letter, information from FBC's applications to both Waupaca County and the Town, as well as FBC's Plan, are evaluated together and hereinafter collectively referred to as "the CUP Application."

**1. *The CUP Application Includes No Plan for Controlling Noise, Dust, and Vibrations from the Mining Site.***

The CUP Application appears to ignore entirely the requirement set forth in Waupaca County Ord. ch 38, § 26.4.11. The CUP Application does not list any description of measures to be taken to control noise, dust, and vibrations from the proposed Mining Site. FBC's submission also fails to provide a statement of the proposed frequency of blasting that will or may be used in the mining and extraction operation. This information is highly important to neighbors and the CUP cannot be approved without it.

**2. *The CUP Application Includes No Details on FBC's Mining Methods.***

Waupaca County Ord. ch. 38 § 26.4.12, requires a description of mining methods, machinery, and equipment that will be used to extract and the process the nonmetallic material. However, there is no complete information in the CUP Application describing extraction or processing methods, or even what kind of deposit they are intending to mine. The Application states that blasting or crushing may be required, but the fact that FBC is not sure whether these activities will be required indicates it may not have sufficiently reviewed the site and deposit.

**3. *The CUP Application Provides No Explanation for What Type of Lighting Will Be Used at the Mining Site.***

The CUP Application does not include a lighting plan or any information regarding lighting other than a single sentence: "No overhead or portable nighttime lighting has been proposed for the site." (FBC Pl. at 10). This description is not a plan, does not clarify what type and style of lighting will be used, or when it will be used. This is particularly problematic given that FBC lists its weekday hours of operation for the proposed Mining Site as 6:00 AM to 6:00 PM. (*Id.* at 8.) For a significant period of the year, there will be total or near darkness for several hours during that proposed 12-hour operations window.

FBC's single sentence explanation fails to comply with the requirement in Waupaca County Ord. ch. 38, § 26.4.14, which calls for "A lighting plan for the Nonmetallic Mining operation, including the type and style of lighting to be used and its power source." Not only does the CUP Application fail to meet the requirement of this section, but FBC's plan to use little to no lighting at the proposed Mining Site, if true, would create very dangerous conditions for both its employees and people in the surrounding area.



**4. *The CUP Application Omits Dates Regarding Planned Mine Site Construction and Operation.***

Waupaca County Ord. ch. 38 § 26.4.6 requires CUP applications to include “[t]he dates of the proposed commencement and cessation of proposed mine construction and mine operation.” FBC’s CUP Application fails to provide any commencement or cessation dates for construction or operation of the proposed Mining Site. The only date-adjacent information they provide is in the Executive Summary of the FBC Plan, in which FBC states that the mining activity will take place “over a period of 10 to 15 years depending upon market conditions.” (FBC Pl. at 3.) This information does not meet the requirement set forth in Waupaca County Ord. ch. 38, § 26.4.6.

**5. *The CUP Application Fails to Include Water Usage and Disposal Information.***

The CUP Application further fails to provide any information regarding water usage and disposal as required under Waupaca County Ord. ch. 38, § 26.4.7. This ordinance requires a CUP application to provide information about the “estimated daily water budget that describes all the ways that water will be used in the Nonmetallic Mining operation.” (*Id.*) The only water usage information provided within the CUP Application is found in Section 4.3.1 of the FBC Plan and states “The construction of a well on the site is not planned for this site at this time. Any water used, such as for dust control applied by water trucks, will come from outside sources.” (FBC Pl. at 8.) This is plainly insufficient and violates the detailed requirement Waupaca County Ord. ch. 38, § 26.4.7.

**6. *The CUP Application Lacks a Plan Related to Hazardous Materials.***

The CUP Application claims that no hazardous materials will be stored on site. (FBC Pl. at page 10.) If true, then FBC may be in compliance with Waupaca County Ord. ch. 38, § 26.4.8, which requires “[a] description of all hazardous materials and hazardous wastes as defined by this Ordinance and state and/or federal standards, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing all hazardous materials and hazardous wastes stored on site in accordance with Wis. Stats. Ch. 323.60.”

However, this section explicitly lists fuel supplies as a hazardous substance. According to the CUP Application, the proposed Mining Site will use common large mining machinery such as “front end loaders, screening equipment, rock crushers, conveyors,

small generators, dump trucks, haul trucks, bulldozers, excavators, tractors, tractor-trailers, graders, skid steers, discs, seeders, pick-up trucks, water trucks and employee personal vehicles." (FBC Pl. at page 9.) It is common knowledge that most of these vehicles use significant amounts of fuel, as well as substances like lubricants. Blasting also commonly requires the use of chemicals,<sup>2</sup> and the plan admits that blasting may occur if large boulders are encountered during extraction. This claim that no hazardous substances will ever be stored on the proposed Mining Site is dubious on its face and demands additional scrutiny.

**7. *The CUP Application Includes No Plan on Containing and Remediating Accidental Spills or Discharges.***

Waupaca County Ord. ch. 38, § 26.4.9 requires "A description of the measures that will be used to contain and remediate any spill or accidental discharge in accordance with Wis. Stats. Ch. 323.60." The CUP Application provides zero description of any measures that will be used to contain and remediate any spill or accidental discharge.

**8. *The CUP Application Does Not Include a Map with All Buildings Within One Quarter Mile of the Mining site.***

Under Waupaca County Ord. ch. 38, § 26.4.5, CUP Applications are required to include several different pieces of information in one or more general locations maps. One of these requirements is to "[l]ocate and label all existing buildings within one quarter (¼) mile of the outer perimeter of the mining site." Waupaca County Ord. ch. 38, § 26.4.5(2). While the Plan includes a general location map that lists existing buildings near the proposed Mining Site in Appendix A5, this map fails to mark whether the map's area covers all buildings within one quarter mile of the outer perimeter of the proposed Mining Site as required. (FBC Pl. at page 5.) Rather, this map only shows buildings within 500 feet of the proposed Mining site. (*Id.*) Under Section 3.2.2 of the FBC Plan, FBC makes clear that their concern is with buildings within 500 feet of the Mining site. (*Id.*) Please note that 500 feet is less than half of one quarter of a mile, which is 1,320 feet.

**9. *The CUP Application Fails to Provide a Map with Necessary Well Information.***

The CUP Application's next failure involves the requirements set forth in Waupaca County Ord. ch. 38, § 26.4.4. This section requires the inclusion of a map that includes

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<sup>2</sup> See Illinois Department of Natural Resources, FAQ Aggregate Blasting (noting the most common blasting explosive is ammonium nitrate and fuel oil),

<https://www2.illinois.gov/dnr/mines/EAD/Pages/FAQAggregateBlasting.aspx#h2>



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"all residential, agricultural and municipal wells within one quarter ( $\frac{1}{4}$ ) mile of proposed mining site boundaries." The map found under Appendix A6 includes a map of some wells located within one quarter mile of the proposed mining site (FBC Pl. at page 6), but we understand this map omits at least six wells. Additionally, the map fails to confirm whether these are residential, agricultural, or municipal wells.

***10. The CUP Application Fails to Identify Correct Property Owners***

The CUP Application is supposed to include all property owners within  $\frac{1}{4}$  mile pursuant to Ord. § 38(26.4.4), but it does not. At least one property owner is misidentified, as our clients will explain on December 14, 2022.

***11. The CUP Application Does Not Include a Map with All Proposed Transportation Routes.***

According to Waupaca County Ord. ch. 38, § 26.4.10, CUP applications must include "a map of all proposed transportation routes, within the County, to be used to transport the Nonmetallic Mine materials from the mine to off-site processing plants or markets, including the frequency of traffic." (Emphasis added.) This map must also include all types of "vehicle used in transport, average loaded weight of vehicle, and the common schedule of travel to be used for transporting." The CUP Application filed by FBC fails to comply with the map requirement in this section. Under Appendix A20, the CUP Application lists only proposed routes heading north and south of the proposed Mine Site. (FBC Plan, page 33.) This map omits all of the other required information.<sup>3</sup>

***12. The CUP Application Does Not Include a Topographical Map that is Confirmed to Extend One Quarter Mile Beyond the Proposed Mining site.***

Under Waupaca County Ord. ch. 38, § 26.4.3, a CUP Application must include a "topographic map of the property to be affected by the mine operation" that extends at a minimum "of one quarter ( $\frac{1}{4}$ ) mile beyond the proposed mine boundary." FBC did not submit a map that meets this criterion. Of the seventeen maps included in the FBC Plan, only the "contour map" found in Appendix A7 meets some of the requirements of the ordinance. (FBC Pl. at page 20.) However, even the map found in Appendix A7 fails

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<sup>3</sup> Elsewhere in the CUP Application, some of the required information is provided. Under Section 4.4.2 of the FBC Plan, the frequency of dump trucks per day is described as varying "with market demand." (FBC Plan, page 9). Each load is described as "approximately 22 tons." (*Id.*) The application to Waupaca County also states that dump trucks will be used. (CUP Application to Waupaca County, page 2). This collective information still fails to meet all of the requirements under Waupaca County Ord. § 38(26.4.10). The CUP Application has no information about County-wide transportation routes or the common travel schedule for transporting extracted materials.

to include a scale confirming whether the map extends beyond the proposed mine boundary of at least one quarter mile beyond the mine boundary. Therefore, this map, along with the other sixteen maps, fails to provide required information under Waupaca County Ord. ch. 38, § 26.4.3.

These are the deficiencies we have identified in our initial review. We reserve the right to raise other arguments regarding the application's completeness in the future.

### III. The Application Fails to Satisfy the Standards for a CUP in Ord. § 34(14.5.1.b)

Under, Wis. Stat. § 59.69(5e)(b)1., an applicant may be granted a conditional use permit only if the applicant "meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board." Additionally, "any condition imposed must be related to the purpose of the ordinance and be based on *substantial evidence*." (*Id.*, emphasis added.) "Substantial evidence" is defined as "facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion." *Id.* § 59.69(5e)(a)2.

The County's zoning ordinance reinforces these principles. It states, "[i]t is the applicant's responsibility to demonstrate that the application and all requirements and conditions established by this ordinance and by the Planning & Zoning Committee are or shall be satisfied." Ord. ch. 34, §14.5(1)(b).

The applicants have not met these responsibilities here. In fact, the application does not mention the CUP standards at all. It is impossible to demonstrate compliance by substantial evidence when you do not even mention the applicable standards.

Furthermore, FBC cannot meet these standards based on substantial evidence that is available, including expected neighbor testimony and information. *Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App 42, ¶ 27, 388 Wis. 2d 375, 933 N.W.2d 179 (noting neighbor testimony supported denial of a CUP for a cell tower under similar law); see also *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 277, 461 N.W.2d 827 (Ct. App. 1990) (affirming denial based on personal knowledge of area traffic congestion). Taking each CUP standard in turn:

- (1) *The proposed conditional use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character*



*of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.*

The mine is not compatible with the general vicinity, which is zoned PVRF and is essentially a residential bedroom community. The mine is *surrounded* by homes. Many of the homeowners in this area selected their home sites because of the peace and quiet of the area. An industrial use in this area will reduce enjoyment of existing uses; most acutely, Mr. Scott is a Vietnam veteran (Purple Heart and Air Medal recipient) who suffers from severe PTSD, which his VA physician states is exacerbated by loud noises. Exacerbation of his PTSD in turn risks decline in his overall mental health. His quiet home is his therapy, but the mine will ruin it. Home values will also be impaired by the mine, based on studies of home values around mines,<sup>4</sup> and as will be further explained on December 14, 2022.

- (2) *The proposed conditional use will not materially impact the established character and quality of the area, architecture and aesthetics, and is generally compatible with surroundings, traffic impact and circulation, environmental impacts, the demand for related services, the possible hazardous, harmful, noxious, offensive, or nuisance effects resulting from noise, dust, smoke, or odor.*

The CUP cannot meet this standard. Mines typically emit significant noise from blasting and crushing, both of which the application admits may occur at the site. (FBC Plan at 3.) Even if these activities do not occur, however, neighbors will still have to deal with banging truck grates, backup beepers, engine and equipment noise, as well as dust. Again, these noises and activities will likely exacerbate Mr. Scott's PTSD. The Scotts do not anticipate that 10-foot berms, with gaps for traffic, will reduce these effects.

- (3) *The proposed conditional use will be consistent with all relevant aspects of the Town and County Comprehensive Plans.*

This standard is not satisfied, for reasons stated in Section I, above.

- (4) *The proposed conditional use will not substantially increase the erosion potential of the site; negatively affect wetlands, floodplains, or water bodies; or otherwise compromise*

<sup>4</sup> E.g., Forensic Appraisal Group, *The Impact of the Proposed Kartechner Brothers Sand & Gravel Open Pit Mine on Surrounding Residential Property Values* (commissioned by Marquette County Planning & Zoning, March 14, 2022)

<https://www.co.marquette.wi.us/home/showpublisheddocument/15352/637837090967630000>

*surface or ground water quality based on topography, drainage, slope, soil type, vegetative cover, means of waste disposal and other relevant factors.*

The application raises concern about groundwater impacts, as well as stormwater runoff from construction and operation. FBC implicitly agrees that stormwater runoff may occur during construction, but then states that the mine will be internally drained during operation due to the berms that will be constructed, and that no stormwater plan will be submitted. (FBC Plan at 10.) Even if berms could contain most stormwater, there will be gaps in the berms for truck ingress and egress.

Moreover, while FBC states the soils are permeable enough that there is little runoff, this creates a greater risk for groundwater contamination from chemicals used onsite, or even from the rock itself if sulfide minerals are present in the deposit. FBC does not provide any information about the deposit, so this factor cannot be properly assessed.

FBC does include a vague map to show depth to groundwater and indicates groundwater is 20-50 feet below ground surface (BGS). (FBC Plan at 7.) However, FBC's appendices indicate it will mine up to 40 feet below the current ground surface (FBC Plan, A15 & A16), meaning it will need to dewater the aquifer. This raises two significant environmental concerns: first, that the dewatering will disrupt the aquifer and flow to nearby residential wells, and second, that a retention pond will need to be constructed onsite for dewatering. Water in the retention pond could pick up contaminants onsite and deliver them to groundwater, again raising groundwater quality issues. The application does not address any of these significant issues.

*(5) The proposed conditional use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies.*

Applicants have provided little information about this factor, such as whether they will require connection to a water or power utility.

*(6) The proposed conditional use is in a location where access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.*

The applicants cannot meet this provision based on reasons that will be presented December 14. The Scotts and their neighbors have significant concerns about sight lines and steep hills on roads that will be utilized by trucks visiting and leaving the site.



(60)

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*(7) The proposed conditional use will meet all applicable standards of this Zoning Ordinance, particularly any performance standard in Section 6 that is applicable to the particular conditional use being sought.*

There are multiple standards that apply to non-metallic mines in Chapter 38. FBC has not provided a sufficient application under this chapter, much less shown compliance with it.

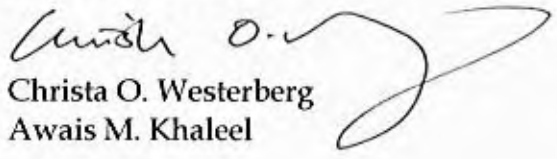
In sum, and as the law makes clear, an application for a conditional use permit must be supported by substantial evidence showing that all standards are or can be met. FBC's CUP Application is incomplete and fails to show compliance with the standards. Thus, there is no question that there is not substantial evidence that the application requirements have been or can be met.

Most importantly for the Town's purposes, the CUP Application requests an exception to the Town's Comprehensive Plan. However, the Town's Comprehensive Plan offers no exceptions to its mandatory rules, including limiting extraction sites to 10 acres. Providing FBC an exception in violation of the Town's Comprehensive Plan would also violate Waupaca County Ordinance.

Thank you for your consideration. We respectfully ask that the Town Board recommend denial of the CUP.

Sincerely,

PINES BACH LLP

  
Christa O. Westerberg  
Awais M. Khaleel

cc: Ryan Brown, Waupaca Co. Planning & Zoning Director

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**Attachment**  
**Conclusions & Recommendations**



### **Attachment, Conclusions & Recommendations**

1. The proposed use is not compatible with the use of the densely populated adjacent lands. (Attachment, Existing Uses)
2. The preferred land use of the proposed plan is Private Recreation Forestry (PVRF). This is not consistent with the land use policies laid out in the Town's comprehensive plan. (Attachment, Consistency with Town Comp Plan)
3. The proposed plan is not consistent with the Town goals, objectives, and development strategies set forth in the comprehensive plan. (Attachment, Consistency with Goals, Objectives, Development Strategies)
4. Should Waupaca County Planning & Zoning decide to approve the application, the Town has submitted a list of recommended conditions for consideration. (Attachment, Recommended Conditional Uses)
  
5. **In Summary: The CUP does not meet the overall vision of the Town Comprehensive Plan.**
6. Motion to accept/deny

Updated 4/30/2023

## CONDITIONAL USE PERMIT APPLICATION

### IOLA OLD CAR SHOW INC.

July 12, 2023

Prepared by the Waupaca County Planning and Zoning Office  
811 Harding Street, Waupaca, WI 54981 (715) 258-6255

### SUMMARY OF RECORD

#### Request:

Applicant requests approval of a Conditional Use Permit application (Nonmetallic Mining) within the Farmland Preservation area in the Private Recreation and Forestry (PVRF) District on approximately fifty-nine (58.75) acres- approximately twenty-two (22) acres are proposed to be mined.

#### Legal Description:

Located in the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 1, Town of Scandinavia, lying between County Road J and Olson Road, Waupaca County, Wisconsin (parcel 17-01-41-2).

#### Exhibits:

1. Conditional Use Permit application, received January of 2023 (revised application after parcel within the Village was excluded from the proposal).
2. Iola Non-Metallic Mining Site Operations & Reclamation Plan.
3. Town Plan Commission and Board recommendation dated May 3<sup>rd</sup> and May 10<sup>th</sup>, respectively.
4. Certificate of Liability Insurance.
5. Chapter 38 Waupaca County Nonmetallic Mining Ordinance.

Based on the exhibits, the Planning and Zoning Office offers the following Findings and Conclusions:

### FINDINGS

#### Project Background:

1. *Proposal.* Applicant requests approval of a Conditional Use Permit application (Nonmetallic Mining) within the Farmland Preservation area in the Private Recreation and Forestry (PVRF) District on approximately fifty-nine (58.75) acres- approximately twenty-two (22) acres are proposed to be mined.
2. *Permit Type.* According to Chapter 34 Waupaca County Zoning Ordinance Section 6.7(6) and Table 5.1 as well as Chapter 38 Waupaca County Nonmetallic Mining Ordinance Section 14.1 and 26, a conditional use permit is required to approve a nonmetallic mining operation in the Private Recreation and Forestry (PVRF) District.



3. Conditional Use Permit applications for nonmetallic mines are processed in accordance with Section 14.5 of the Waupaca County Zoning Ordinance and Section 27.1.4 of the Waupaca County Nonmetallic Mining Ordinance.
4. *Permit Processing.* The Conditional Use Permit application was received in January of 2023. This application is an amended version of the application as the original application included a parcel that was within the Village limits. The proposal now includes only a parcel located in the Town of Scandinavia. Interested parties were sent notification of the application on June 20<sup>th</sup> and 21<sup>st</sup>, 2023.
5. *Site Characteristics.* The subject property is located on the southern end of the lola Old Car Show grounds. It contains areas that are utilized for parking for the Old Car Show and includes a driveway that currently provides access on to County Rd J and to Olson Rd. The property is sloped from west to east, losing approximately forty feet in elevation. An isolated wetland pond, approximately less than one acre in size, is located at the base of the slope. Portions of the property also contain wooded areas.
6. *Adjacent Land Uses and Zoning.* Adjacent parcels are zoned as Private Recreation and Forestry (PVRF), Agriculture Enterprise (AE) and Agriculture Retention (AR). The parcel also borders a parcel located within the Village of lola that is also owned by th Old Car Show Inc. Surrounding uses include agriculture, the Old Car Show grounds, and also parcels that include dwellings.
7. *Town of Scandinavia Recommendation.* The Town of Scandinavia has recommended denial of this request but has also recommended conditions should the Planning and Zoning Committee decide to grant the proposal. The proposed conditions, see pages 25 through 31 of the Town Recommendation for full description, are as follow (please note that the bolded words are notes from the Town of Scandinavia and alternate recommendations to the conditions):
  - a. Perform independent forensic property value assessment for properties in the surrounding area.
  - b. All wells within 1,320 feet are identified and documented.
  - c. Conduct a hydrologic study of the site to determine effects on adjacent water levels (groundwater quantity). Study to include DNR Wetland ID 69731692401 on parcel 17-01-41-2 to determine water flow and necessary setbacks.  
**Reference letter from Lane Loveland dated 3/6/23. Town recommends wetland delineation to determine wetland boundary and a 50' setback from that boundary.**
  - d. The open area of the permitted extraction operation shall not exceed 10 acres, as stated in the Town of Scandinavia comprehensive plan (LU 19).
  - e. Conditional use permit is for the extraction and trucking of material only. **No crushing, processing, hot mix processing, cold mix processing, or**

- blasting allowed for a period of one year after commencement date, then do review at that time to determine if there are crushing & blasting requirements.**
- f. Permit shall expire in five (5) years from commencement date. Per Town of Scandinavia comprehensive plan (LU18), a time limit should be defined for completion of the project. This time is determined by the 10-acre limit and extracting 2-4 acres per year. **Town recommends a time limit to be established and, at a minimum a review in five years.**
  - g. Conditional review to be set three (3) months from commencement date. This is to ensure the established conditions are working and determine what may need to be added as additional conditions. **Town recommends conditional review 12 months after commencement date.**
  - h. An emergency plan shall be established and communicated to all public service departments servicing the location.
  - i. Any significant change to or expansion of the business operation, designated mine are and/or of its facilities shall require a new Conditional Use Permit. **There are at least four (4) additional parcels in the Town owned by the Old Car Show. Town recommends that these parcels shall be addressed by County Zoning with Old Car Show now to determine any future Conditional Use Permits.**
  - j. The permit is only valid for operator Faulk's Bros. and Lola Car Show, it is not transferable to another individual or entity. **Town defers to County Zoning for proper ruling.**
  - k. Hours of operation Monday through Friday 9:00 am to 5:00 pm. Maintenance and repair may be conducted at other times providing it does not constitute a nuisance. **Town recommends hours of operation to be 8:00 am to 6:00 pm Mon thru Fri. Town recommends no Weekends or Holidays.**
  - l. No well shall be installed on the property for the life of the conditional use permit. **Town also recommends no onsite fuel storage for the life of the conditional use permit.**
  - m. Shall comply with 21.4 Groundwater Monitoring in the Waupaca County Nonmetallic Mining Ordinance, no waivers to be authorized by Waupaca County Zoning per section 21.4. Per conditional use item #9 (l. above) no well shall be installed, which only alleviates the concern of drawdown. Section 21.4 of the ordinance states procedures for testing and monitoring of the quality of groundwater at off-site properties. Per Wisconsin DNR the area is in a higher groundwater contamination susceptibility area. A reasonable person will have to agree that once overburden has been removed the filtering that had been taking place has been modified.
  - n. At least one portable restroom shall be onsite at any time the site is occupied.
  - o. Erosion control and stormwater management plans completed by qualified independent engineers must be submitted to and approved by the Waupaca County Land and Water Conservation Department. **Town defers to County Zoning and ECWRPC reclamation plan.**
  - p. The driveway from the scale to County Rd J shall not be within five hundred (500) feet of a dwelling unit, commercial structure or active farm building. **The**



- Town recommends the County Highway Departments shall be consulted to determine driveway placement on County J per established standards for safety. Warning signs (e.g. Truck Entrance) and 35 mile per hour speed limit shall be considered in accordance with policies.**
- q. The Waupaca County Highway Commissioner shall determine if acceleration or deceleration lanes are required for the site and the width of the driveway based on public safety concerns. Operator shall be responsible for installation of said lanes, which shall be installed prior to mine being operated. **Town Recommends County Hwy Dept be engaged to determine this.**
  - r. The operator and other haulers shall only use authorized routes. **Town also recommends that except for emergency, no traffic will be allowed to/from the proposed mine site via and Town Roads. This also includes third party haulers. It is up to Old Car Show and Faulks to ensure that this is adhered to and properly communicated. Towns of Iola, Helvetia, and St. Lawrence shall also be notified.**
  - s. The driveway from the scale to County Rd J shall be paved. **Faulks indicates a 50' tracking pad between scale and the exit/entrance. Town recommends the proposed tracking pad length be increased from 50' to 100'.**
  - t. All dust, mud or gravel tracked onto the highway from the mine site shall be removed by the end of the day of operation. **Town recommends 100' tracking pad, and this is to be reviewed 3 months after commencement date to determine what, in anything else, needs to be done.**
  - u. No hauling during spring road limit. **Town recommends this shall be determined by the County Highway Department Spring Weight Limit schedule for County Roads.**
  - v. Owner and operator shall have a road damage agreement with Waupaca County.
  - w. All loads shall be covered when leaving the excavation site.
  - x. Operator shall require all trucks, excavation, and equipment to have exhaust systems that meet or exceed current industry standards to ensure that noise levels are kept at or below allowable limits.
  - y. No yard or area lighting shall be permitted on the site. **Town recommends there shall be no nighttime activity allowed.**
  - z. No storage of any material of any type other than soil and aggregate taken from the site (and related operator equipment). **Town also recommends no outside material of any type to be brought in for storage, or as part of the reclamation.**
  - aa. Property owner shall create and maintain monarch butterfly habitat to replace the current habitat to be destroyed. It shall be placed on land at least 15% the size of the total proposed project, or about 1.5% of total land owned. **Town recommends the current habitat needs to be identified. Proper action to be taken at that time. This should be considered as part of the Reclamation Plan.**
  - bb. For the reclamation, plan operator shall be responsible for the cost of independent monitoring the quality of import soil and routine inspection. **Town's understanding is Old Car show and Faulks have indicated that**

**only original material from inside the mine site shall be used for reclamation, so there shall not be any import soil. Town recommends this shall be included in the Reclamation plan if not already done so.**

- cc. Noise measured at the boundary of the property shall be below 60 dBA. Town has concerns about monitoring, enforcement, and noise from local traffic. **Town does not have a noise ordinance in place, and defers to Zoning and ECWRPC.**
  - dd. The boundary of the property shall be fenced, in addition to the construction of the berms. **Town recommends that the 10' berm is sufficient as a boundary/barrier.**
  - ee. Surrounding properties within 1 mile of the sand mine that are sold during the life of the conditional use permit shall have three (3) independent appraisals completed, paid by the operator and/or owner. The off-site property owner will take the average loss of the 3 appraisals to set the amount to be reimbursed by the operator and/or owner within 30 days of closing. **Town has concerns about the other contributing factors that determine value: state of the economy; inflation; interest rates; physical condition of the property; and supply demand.**
  - ff. Planning, Zoning, Land Information, Land and Water Conservation, Highway Departments, and Town of Scandinavia board are authorized to enter the mine to ascertain compliance with the operation plan, conditions of approval and reclamation plan. **Town Comp Plan LU20 supports this request. Compliance and enforcement of the plan is the responsibility of County Zoning and ECWRPC.**
  - gg. If the Town of Scandinavia finds, after a public hearing, that the owner or operator is not in compliance with the permit conditions the permit may be revoked. Violation of the conditions, standards, or requirements of the permit shall subject the owner and/or operator to a \$10,000 per day fine until the violation is resolved. **The Town has no ability to do this. County Zoning is responsible for compliance and enforcement. All fines would be levied by County Zoning.**
  - hh. **Old Car Show and/or Faulks must clean up debris designated east of the County Highway J entrance Gate 19, before any work is done.**
    - ii. **Old Car Show and/or Faulks must establish a focal point of contact, along with a backup representative to address any issues that may arise during operation of the mine. This contact info shall be made available to all residents within 500' of the area to be mined.**
8. Consistency with the Town of Scandinavia Comprehensive Plan. The Town of Scandinavia's Preferred Land Use Map is planned for Forestry, which is consistent with the Private Recreation and Forestry (PVRF) District that it is located in. The township determined that the proposal is inconsistent with their comprehensive plan; see pages 17 through 23 of the Town Recommendation.
9. Consistency with the Waupaca County Comprehensive Plan. The preferred land use map found in the County Comprehensive plan is planned for Forestry, which is



consistent with the Private Recreation and Forestry District (PVRF), which allows nonmetallic mining through the conditional use permit process. See further analysis in Conclusions, below.

Consistency with Development Standards:

10. *Zoning*. The subject property is situated in the Private Recreation and Forestry (PVRF) District.

a. *Land Use*. The proposed nonmetallic mine is subject to the provisions found in Chapter 38 Waupaca County Nonmetallic Mining Ordinance, including, but not limited to:

i. *Setback Requirements Section 16:*

16.1 The setbacks in this section shall apply to all Nonmetallic Mining activity including, without limitation, the storage of waste materials, stockpiling, inventory, and equipment. The setback requirements do not apply to berms or other methods of landscape screening.

16.2 Where berms or screening of any kind is deemed unnecessary, the active Nonmetallic Mining operation shall be located at least **fifty (50) feet\*** from all exterior lot lines.

16.3 The active Nonmetallic Mining operation shall be located at least **one hundred fifty (150) feet** from public road centerline or **one hundred (100) feet** from the road right-of-way, whichever is greater. Adjoining Nonmetallic Mining operations are not subject to the exterior lot line setback for the lot line that is shared by those operations, if agreed to by the adjoining landowner or operator. This written agreement shall be recorded with the Register of Deeds as a deed restriction.

16.4 No active Nonmetallic Mining operation shall be conducted within **five hundred (500) feet** of a dwelling unit, commercial structure, or active farm building other than that of the owner or operator unless a written agreement with the adjacent landowner is approved by the Planning and Zoning Committee. This written agreement shall be recorded with the Register of Deeds as a deed restriction. This setback may also be increased depending on the size and scope of the mining operation on a case by case basis at the discretion of the Planning and Zoning Committee.

16.5 No active Nonmetallic Mining operation shall be conducted within **thirteen hundred twenty (1320) feet** of a recorded State or County Subdivision Plat.

16.6 The Planning & Zoning Committee may authorize berm construction to within \* **twenty-five (25) feet** of any exterior boundary of the tract.

ii. Property Protection Safety and General Operating Section 19

19.1 Gating: The Nonmetallic Mining Site shall be gated and locked during nonoperating hours at all site entrances.

19.2 Lighting: Lighting shall be limited to that which is minimally necessary for safe mining operations, site accessibility and security. All lighting shall be shielded and pointed downward to avoid illuminating offsite. Nighttime lighting is limited to that reasonably necessary for security purposes, operations consistent with the permit and for any emergency repairs or hour extensions approved by the County.

19.3 Site Enclosure: Enclosures shall be installed so as to enclose and control access points and areas along highways, roadways or thoroughfares of the Mining Site. Enclosures may be solid wood slat, metal chain link or other fencing materials; vegetative; or berms.

19.4 On-site Fuel Storage: All petroleum products kept onsite and related to the mining operation shall be stored in state approved fuel storage and fueling areas. All petroleum product storage tanks shall provide leak proof containment consistent with applicable state and federal law. Where fueling trucks are used to refuel equipment onsite, all fueling must occur according to applicable state and federal law.

19.5 Hours of Operation: Nonmetallic Mining operations shall be limited to reasonable hours consistent with the characteristics of the property and neighborhood surrounding the operations, the impact of the operations on the community and 11 residents thereof and the Operator's needs. The Nonmetallic Mining site shall only haul, produce and remove nonmetallic material from 6:00 a.m. to 6:00 p.m. Monday - Friday and 8:00 a.m. to 12:00 p.m. on Saturdays and no Sundays or Holidays, unless the Operator applies for and is granted alternate hours of operation as a condition of the conditional use permit. In order to be eligible to receive approval, the operator shall give the zoning office thirty (30) days' notice of a special exception to the granted hours of operation. The use of blasting will only be allowed between the hours of 8:00 a.m. and 4:00 p.m. Monday – Friday, and not on any holidays.

19.6 Hazardous Materials Storage: Hazardous materials shall be stored in compliance with all state, federal and local laws.

19.7 Berms and Screening: Where practical, an earth berm and/or vegetative screen providing adequate screening of the mine site shall be erected and



maintained to screen the mine site. The Planning and Zoning Committee shall determine the practicality and necessity of aesthetic screening in each individual mining operation and include it as a permit condition. At a minimum, all mine sites shall comply with the following:

1. A berm shall be constructed along the adjacent road right-of-ways. The use of berms to create a "S" curve on a entrance or exit may be required;
2. The berm shall be at least ten (10) feet above the surface of the center adjacent road right-of-ways;
3. The outward-facing slopes of said berm shall not be steeper than three (3) horizontal units to one (1) vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to remain stable;
4. Prior to construction of said berm, the applicant shall present a detailed berm construction plan to the Planning and Zoning Office for approval. The plan shall include drainage, erosion control, seeding and any landscape features;
5. The berm shall be constructed within fourteen (14) days of stripped overburden and topsoil becoming available from the mine site or from suitable outside sources. The berm may be installed in phases at the discretion of the Planning and Zoning Committee;
6. Only clean overburden from the mining site or suitable outside sources shall be used in constructing the berm;
7. The exterior of the berm shall be kept free of invasive species (as determined by NR 40), trash and debris;
8. Additional fencing, screening or landscaping may be required as deemed necessary.

b. Wis Stats 59.69 (5e) Conditional Use Permits

(a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.
2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements

and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

**(b)**

1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

**(c)** Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.

**(d)** Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board.

**(e)** If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10).

## **CONCLUSIONS**

### **Jurisdiction**

Pursuant to Section 14.5 of the Waupaca County Zoning Ordinance, the Waupaca County Planning and Zoning Committee has decision making authority on conditional use permit applications.



## Criteria of Approval Chapter 34

A. Required Showing for a Conditional Use Permit: The proposal must demonstrate consistency for approval of a Conditional Use Permit:

- The proposed action will be consistent with the Local/Town Comprehensive Plan and the Waupaca County Comprehensive Plan.

- Town Comprehensive Plan: The Town has made a determination that the proposal is inconsistent with their comprehensive plan- see Town Recommendation packet. The Town also included conditions that it felt would be appropriate to be included should the Planning and Zoning Committee decide to grant the conditional use permit application. It is in our opinion that through the use of recommended conditions that the factors associated with inconsistency will be mitigated to become consistent.
- County Comprehensive Plan: The preferred land use map identifies this area as planned for Forestry, the zoning of the parcel of Private Recreation and Forestry (PVRF) is consistent with the preferred land use designation. The PVRF district allows nonmetallic mining through the conditional use permit process.

i. Agricultural, Natural, and Cultural Resources Goals: *“Goal to balance future needs for the extraction of mineral resources with potential adverse impacts on Waupaca County.”* Applying ordinance standards and conditions to proposed nonmetallic mining proposals provides the balance necessary between the operation and adjacent uses.

ii. Natural Resources Goal 6: *“Balance future needs for the extraction of mineral resources with potential adverse impacts on Waupaca County. Objectives*

*6.a. Encourage the registration of known economically viable non-metallic mineral deposits.*

*6.b. Require the consistent regulation of non-metallic mineral extraction operations to minimize adverse impacts on adjacent land uses and to ensure proper site reclamation.*

*6.c. Consider the potential adverse impacts of proposed metallic mineral extraction operations, and ensure that the siting of such facilities will not negatively impact Waupaca County’s natural resources.”*

iii. Land Use policy Number 9 gives the following directive:

1. *“Where a proposed development is found to be inconsistent with comprehensive plan policies, an applicant shall be advised to petition the local unit of government for a revision to the*

*comprehensive plan preferred land use map. Note: The applicant may also revise the design of the proposed development to attempt to achieve consistency with the plan.”*

The preferred land use map is already consistent with this proposal.

iv. Land use policy number 11 gives the following criteria to be considered with a conditional use permit application

1. *“Proposed conditional uses shall meet the following criteria in order to gain county approval:*

- a. Complies with the requirements of the applicable zoning district.*
- b. Use and density are consistent with the intent, purpose, and policies of the applicable preferred land use classification.*
- c. Use and site design are compatible with adjacent uses in terms of aesthetics, scale, hours of operation, traffic generation, lighting, noise, odor, dust, vibration, and other external impacts.*
- d. Does not diminish property values in the surrounding neighborhood.*
- e. Provides assurance of continuing maintenance.”*

- The proposed action is consistent within the zoning district in which it is located and in the vicinity of the subject property.
  - A nonmetallic mining operation in the Private Recreation and Forestry (PVRF) District and farmland preservation is allowed through the conditional use permit application and if it is compliant with Wis Stats 91.46.6, which it would be since the use will be reclaimed to the same open space or existing use.
- The proposed action will have no unreasonable adverse impact on the surrounding land uses which cannot be mitigated through the application of reasonable conditions.
  - Conditions will be needed to be applied to offset any unreasonable adverse impacts to the surrounding area. Please see recommended conditions listed below that may address these concerns. The Committee may, at its discretion apply additional conditions to satisfy this requirement.
- The proposed conditional use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.



- Chapter 38 provides ordinance standards for the design, construction, operation, and maintenance that this proposal is compliant with. Additional conditions will be necessary to address standards not regulated through Chapter 38.  
Please see recommended conditions listed below that may address these concerns. The Committee may, at its discretion apply additional conditions to satisfy this requirement.
- The proposed conditional use will not materially impact the established character and quality of the area, architecture and aesthetics, and is generally compatible with surroundings, traffic impact and circulation, environmental impacts, the demand for related services, the possible hazardous, harmful, noxious, offensive, or nuisance effects resulting from noise, dust, smoke, or odor.
  - Some of these standards are regulated through Chapter 38. Additional conditions may be necessary to satisfy these standards. Please see recommended conditions listed below that may address these concerns. The Committee may, at its discretion apply additional conditions to satisfy this requirement.
- The proposed conditional use will not substantially increase the erosion potential of the site; negatively affect wetlands, floodplains, or water bodies; or otherwise compromise surface or ground water quality based on topography, drainage, slope, soil type, vegetative cover, means of waste disposal and other relevant factors.
  - Erosion control and stormwater will be addressed with the operation and reclamation plan.
  - Setbacks will be recommended to the delineated boundary of any wetland/pond located on the property.
  - There is no floodplain located on the property.
  - Mining is not to take place below the groundwater level and no well will be installed on the property.
  - The only hazardous chemicals to be onsite will be contained within the equipment used for extraction i.e. Diesel fuel, oil, hydraulic fluids etc, not dissimilar to any other property that includes the operation of equipment or vehicles. Emergency plans for spills will be in place and training for onsite operators will need to be supplied.

- The proposed conditional use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies.
  - There is no public agency providing service to this facility.
- The proposed conditional use is in a location where access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.
  - The operation is not proposed to utilize any township roads. The operators will work with the Waupaca County Highway Department for access and safety concerns.
- The proposed conditional use will meet all applicable standards of Chapter 34 and Chapter 38, particularly any performance standard in Section 6 that is applicable to the particular conditional use being sought.
  - All required standards of Chapter 34 and 38 shall be maintained for the operation.
- The Planning and Zoning Committee may attach to any permit approval such reasonable conditions as may be necessary to assure that development will comply with the above criteria for approval.
  - See recommended conditions below.
- If an applicant for a Conditional Use Permit meets or agrees to meet all of the requirements and conditions specified in this ordinance and conditions imposed by the Planning and Zoning Committee, the Conditional Use Permit shall be granted.

#### Criteria of Approval Chapter 38

- The proposed Conditional Use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.
  - See above responses for criteria for approval to Chapter 34.
- The proposed Conditional Use will be consistent with all relevant aspects of the Town and County Comprehensive Plans.
  - See above responses for criteria for approval to Chapter 34.



- The proposed Conditional Use will not substantially increase the erosion potential of the site; negatively affect wetlands, floodplains, or water bodies; or otherwise compromise surface or ground water quality based on topography, drainage, slope, soil type, vegetative cover, means of waste disposal and other relevant factors.
  - See above responses for criteria for approval to Chapter 34.
- The proposed Conditional Use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies.
  - See above responses for criteria for approval to Chapter 34.
- The proposed Conditional Use is in a location where access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.
  - See above responses for criteria for approval to Chapter 34.

#### Additional analysis

There has been quite a bit of discussion in regard to Section 21.4 of Chapter 38 (see attached ordinance) in regard to groundwater monitoring. When looking at local hydrology the concern is focused on two parameters, water quantity and water quality.

The proposed operation does not include mining below the water table or the installation of any wells. Water quantity in the area will not be impacted by the operation.

Hazardous chemicals to be onsite will be contained within the equipment used for extraction i.e. Diesel fuel, oil, hydraulic fluids etc., not dissimilar to any other property that includes the operation of equipment or vehicles. Emergency plans for spills will be in place and employees will be trained in proper handling of any spills. Provided that the emergency precautions are in place for any spills water quality also will not be impacted.

With these issues in mind the decision was made to exercise the waiver option found in Section 6.1 which states:

“The requirements of this Ordinance apply to any and all operators of Nonmetallic Mining Sites within Waupaca County whose Conditional Use Permit application has not been approved prior to the Effective Date and any existing mines that are legal nonconforming, unless an operator is exempt from regulation in accordance with Section 12 of this Ordinance. The Planning and Zoning Director may waive portions of the specified information request associated with the permit application process if in the Director’s opinion it is determined that, because of the nature or method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. The Director shall provide notice to the Committee no later than at the public hearing on the permit application regarding what information has been waived by the

Director. The Committee, in its discretion, may demand an applicant provide any application information requested that was waived by the Planning and Zoning Director.”

An additional discussion point is that one of the conditions recommended for consideration is that the operation be only valid for Faulks Bros and the lola Car Show. Conditional use permit approvals cannot be tied to an individual operator or property owner. The permit and restrictions applied are transferrable to new operators and owners.

Another condition recommended for consideration is that there be decibel limit for the operation. As highlighted by the Town note, monitoring and enforcement are problematic at best.

Another condition proposed was that if the operator were to fail to comply with restrictions that a \$10,000 fine be levied against the owner and/or operator. Enforcement and citation authority found in Chapter 38 outline the applicable fines and penalties that may be levied.

The impacts on property values from the nonmetallic mine have also been discussed quite a bit during this process. As alluded to in the Town’s Recommendation, additional analysis may not be beneficial or actionable based on the number of contributing factors that determine a property’s value.

#### Conclusions Based on Findings

**The proposal is consistent with and will have no unreasonable adverse impact on the public health, safety, and welfare:** Granting approval of the conditional use permit request will not adversely affect the uses of surrounding properties.

### RECOMMENDATION

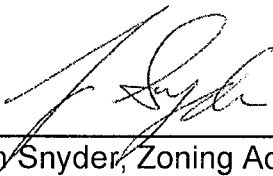
Upon consideration of the above Findings and Conclusions, the Planning and Zoning Office recommends **approval** of Conditional Use Permit with the following conditions:

1. A fifty (50) foot setback for all mining operations shall be maintained from the delineated boundary of any wetland/pond found on the subject property.
2. The open area of the permitted extraction operation shall not exceed ten (10) acres.
3. The operation shall be for the extraction and trucking of material only. No crushing, processing, hot mix processing, cold mix processing, or blasting shall be allowed for a period of one (1) year. A review will then be conducted by the Planning and Zoning Committee to determine if crushing and blasting is necessary and, if so, what conditions would need to be applied.



4. A review of the permit shall take place one (1) year after the commencement of the mine.
5. An emergency plan shall be established and communicated to all public service departments servicing the location.
6. The hours of operation shall be from 8:00 am to 6:00 pm Monday through Friday, with no activity on weekends or holidays.
7. No well shall be installed on the property for the life of the conditional use permit.
8. No onsite fuel storage shall be allowed for the life of the conditional use permit.
9. No mining shall occur below the groundwater level.
10. A portable restroom shall be onsite at any time the site is occupied and shall be maintained and the waste disposed of by a properly licensed individual.
11. The driveway location and access off of County Road J shall be approved by the Waupaca County Highway Commissioner. As part of the approval the Highway Commissioner shall evaluate the need for any signage (e.g Truck Entrance, speed limit, etc).
12. The Waupaca County Highway Commissioner shall determine if acceleration and deceleration lanes are required for the site and the width of the driveway based on public safety concerns. If required the applicant shall be responsible for the cost of installation of the lanes. If required the lanes shall be installed prior to the start of the operation.
13. The operator and third party haulers shall only use authorized haul routes. Except for emergencies no traffic shall be allowed to or from the mine via Town Roads. It is the responsibility of the Old Car Show and Faulks Bros to ensure that the haul routes are adhered to and properly communicated to haulers. The Towns of Iola, Helvetia, and St Lawrence shall also be notified.
14. A reclamation plan shall be completed and approved by the East Central Wisconsin Regional Planning Commission.
15. A one hundred (100) foot long tracking pad shall be installed prior to the start of operations. Three months after commencement of the mine the situation shall be reviewed administratively to determine whether it is sufficient to keep materials off the road.
16. Haulers shall remain compliant with all road regulations including any seasonal weight restrictions applied by the County Highway Department.

17. Owner and operator shall have a road damage agreement with Waupaca County.
18. All loads shall be covered when leaving the site.
19. Operator shall require all trucks, excavation, and equipment to have exhaust systems that meet or exceed current industry standards to ensure that noise levels are kept at or below allowable limits.
20. No yard or area lighting shall be permitted on the site.
21. No storage of any material on the site of any type other than soil and aggregate taken from the site (and related operator equipment). No outside material of any type shall be brought in for storage, or as part of reclamation.
22. Monarch habitat shall be considered as part of the reclamation plan.
23. Only original material from inside the mine site shall be used for reclamation. No additional soil may be imported for reclamation.
24. A ten (10) foot tall berm shall be installed so as to meet the standards in Chapter 38 Waupaca County Nonmetallic Mining Ordinance.
25. Planning and Zoning representatives shall have the ability, with advance notice to the operator and owner, to enter the site to verify that permit conditions and ordinance standards are being met.
26. Old Car Show and/or Faulks Bros shall clean up any debris on the property prior to the start of operation.
27. Old Car Show and/or Faulks must establish a focal point of contact, along with a backup representative, to address any issues that may arise during operation of the mine. This contact info shall be made available to all residents within
28. Emergency plans for spills shall be in place and training for onsite operators will need to be supplied prior to the start of operation.



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Jason Snyder, Zoning Administrator





**WAUPACA COUNTY**  
**NON-METALLIC MINING ORDINANCE**

**CHAPTER 38**

Creation of Chapter 38 of the General Code of Ordinances, Nonmetallic Mining Ordinance. Created and enacted by the Waupaca County Board of Supervisors on May 19, 2015. Published and effective as of May 28, 2015.

Be it known, that the Waupaca County Board of Supervisors enacted amendments to the Waupaca County Non-Metallic Mining Ordinance, Chapter 38 of the Waupaca County General Code of Ordinances on June 16, 2020. Effective upon publication of June 25, 2020.



# Waupaca County Non-Metallic Mining Ordinance

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## Part I General

- 1 **Title.** This ordinance shall be cited as the Waupaca County Nonmetallic Mining Ordinance and referred to herein as “this Ordinance”.
  - 2 **Preamble and Findings.** Nonmetallic Mining constitutes a legitimate and permissible activity in the State’s economy and, when performed responsibly, has the potential to beneficially impact County residents, natural areas and economics. Nonmetallic Mining may provide employment opportunities, needed construction, industrial and road-building materials and significant economic benefits to local communities. However, Nonmetallic Mining is not appropriate in all land use designations and, therefore, is regulated herein in accordance with county procedures for conditional use permits.
  - 3 **Statutory Authority.** This Ordinance is adopted under authority of the Wisconsin Statutes including, without limitation, Secs. 59.51, 59.69, 295.12(1)(a) and Wisconsin Administrative Code, sec. NR 135.32.
  - 4 **Effective Date.** The provisions of this Ordinance shall take effect upon proper adoption by the County Board of Waupaca County with an effective date of May 28, 2015.
  - 5 **Intent, Purpose and Objectives.** The purpose of this Ordinance is to establish a County Ordinance which systematically considers nonmetallic mining permit applications, and promotes the health, safety, prosperity, and general welfare of the people and communities of Waupaca County. The general intent of this Ordinance is to regulate the location, construction, installation, alteration, design, operation, and use of all Nonmetallic Mining Sites while considering the appropriate conservation, land and water resources objectives of the County. The objectives of this ordinance are to set forth rules and procedures to govern all aspects of Nonmetallic Mining within the County, establish procedures for the administration and enforcement of this Ordinance, and provide penalties for its violation. This Ordinance shall supplement the existing procedures set forth in Chap. 34 (Waupaca County Zoning Ordinance). In the event a specific process, procedure, standard or requirement in this Ordinance is different from or in conflict with Chapter 34 (Waupaca County Zoning Ordinance), this Ordinance shall control.
- 6 Applicability**
- 6.1 The requirements of this Ordinance apply to any and all operators of Nonmetallic Mining Sites within Waupaca County whose Conditional Use Permit application has not been approved prior to the Effective Date and any existing mines that are legal nonconforming, unless an operator is exempt from regulation in accordance with Section 12 of this Ordinance. The Planning and Zoning Director may waive portions of the specified information request associated with the permit application process if in the Director’s opinion it is determined that, because of the nature or

method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. The Director shall provide notice to the Committee no later than at the public hearing on the permit application regarding what information has been waived by the Director. The Committee, in its discretion, may demand an applicant provide any application information requested that was waived by the Planning and Zoning Director.

- 6.2 An operator subject to Nonmetallic Mining and Reclamation ordinances of a municipality within Waupaca County is not required to comply with this Ordinance unless that municipality has adopted County zoning provided, however, that the Applicant is required to comply with Chapter 43 of the Waupaca County Ordinances (Reclamation) in its entirety if the specific municipality does not have an approved Reclamation Ordinance consistent with Wis. Adm. Code Ch. NR 135.

## 7 Definitions

- 7.1 For the purposes of this Ordinance, unless specifically modified in this Section 7, all definitions contained in Wis. Admin. Code Ch. NR 135 are adopted herein. It is the intent of this Ordinance to apply common meanings to common terms that are used in this Ordinance and Wis. Admin. Code Ch. NR 135.
- 7.2 **Active Mine Site and Active Mine Boundary:** The expression upon the land surface of a more or less continuous series of points that when taken together enclose all activities and operations that occur at the mine site on a daily or weekly basis, together with all structures, processing areas, facilities, parking areas and interior haul roads that are integral to or directly serve the mining operation and all stockpiles, waste piles, settling ponds, retention ponds, detention ponds, and lay-down areas that are utilized by the mining operation.
- 7.3 **Applicant:** A person who has applied for a Nonmetallic Mining permit under this Ordinance.
- 7.4 **Application:** The application form, fees, information and any materials required to be submitted in accordance with this Ordinance. The Application is the basis for a permit decision by the Committee.
- 7.5 **Board:** The Waupaca County Board of Adjustment.
- 7.6 **Committee:** The Waupaca County Planning and Zoning Committee.
- 7.7 **Discontinued Use:** A property associated with a Non-Metallic Mining Site that at one time was an active Non-Metallic Mining Site, but has not paid the annual NR 135 operator fee by March 31<sup>st</sup> of any year.
- 7.8 **Enlargement:** Any increase in dimensions beyond the terms of the original permit.



- 7.9 **Exploratory Boring:** An excavation or opening deeper than it is wide that extends more than ten (10) feet below the ground surface for the purpose of obtaining information on the physical, chemical, radiological or biological characteristics of geological formations or depth to groundwater, excluding any drill holes regulated by Wis. Admin. Code Ch. NR 141.25.
- 7.10 **Compliance.** Unless otherwise defined, Compliance means the Operator maintains legal authority to operate under required permits and safety guidelines issued and/or overseen by local, state or federal issuing or regulatory authorities. State or federal regulatory authorities shall exclusively determine the Operator's Compliance, unless the permit or regulation has been exclusively established by the County, in which case the County shall determine Operator's Compliance.
- 7.11 **Floodplain:** That land which has been or may be covered by flood water during a regional flood regardless of the length of time the area holds the flood. It includes the floodway, flood fringe, shallow depth flooding, flood storage, and coastal floodplain areas. Other relevant and related terms have the definitions established by Wis. Adm. Code Ch. NR 116.
- 7.12 **Hazardous Materials:** Any substance or combination of substances regulated as a "hazardous material" as that term is defined in state and federal law.
- 7.13 **Based on the Life of the Mine:** With respect to all un-reclaimed lands that are part of the mine site, the time period beginning at mine permit issuance and extending through the day on which the land is restored in accordance with the approved reclamation plan and all associated costs to be borne by the mine or mine Operator and payable in fulfillment of the mine permit and reclamation plan have been paid in full.
- 7.14 **Permit:** The Nonmetallic Mining Permit subject to the requirements of this Ordinance.
- 7.15 **Modification:** Any change or amendment to the original permit or conditions required under the permit whether requested by the Operator and approved by the County or determined by the County to be necessary.
- 7.16 **Native Plant Species:** One that is indigenous in a particular region, state, ecosystem and habitat without direct or indirect human activity.
- 7.17 **Nonmetallic Mining:** All of the activities, processes, operations and all other actions described under Wisconsin Admin. Code Sec. NR 135.03(13) that occur on a Nonmetallic Mining Site or Site.
- 7.18 **Nonmetallic Mining Structures:** Any buildings, facilities, permanent equipment or framework that is located on the Site. It includes, but is not limited to, mining and

processing equipment, storage facilities and improvements, mechanical shops, paved parking surfaces and office space.

- 7.19 **Nonmetallic Mining Waste:** The non-marketable materials removed from the land prior to or during the Nonmetallic Mining process including an industrial sand mining process. It includes waste soil, rock, mineral, sand and all other materials, including but not limited to flocculants, that results directly from the operator's Nonmetallic Mining, and that is designated for disposal at the operator's designated Nonmetallic Mining site or elsewhere as authorized by the operator's licenses, permits, approvals and reclamation plan.
- 7.20 **Nonmetallic Mining Site or Site:** All of the areas defined by Wisconsin Admin. Code Sec. NR 135.03(16)(a).
- 7.21 **Nonmetallic Mining Reclamation Plan** has the meaning and incorporates the requirements established by NR 135.
- 7.22 **Registered or Licensed Professional:** A person who is licensed as a professional pursuant to Wis. State Statute or Wis. Admin. Code.
- 7.23 **Significant subsidence:** Any cave ins, sinkholes, depressions, or settling of the surface or mine sides that will likely result in Stormwater Pollution Prevention Plan (SWPPP) violations or run-off, mudslides or releases to neighboring properties associated with a Nonmetallic Mining Site under this Ordinance.
- 7.24 **State Natural Area:** Has the meaning set forth in Wis. Stat. 23.27.
- 7.25 **Wetland:** Has the meaning established by Wisconsin State law: An area where water is at, near, or above the land surface long enough to be capable of supporting hydrophytic vegetation and which has soils indicative of wet conditions.
- 8 **Severability.** Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.
- 9 **Restrictions Imposed Under Other Authority.** The purpose of this Ordinance is to establish a County program for Nonmetallic Mining permitting in accordance with state law, including but not limited to, Wisconsin Administrative Code Chs. NR 135 and NR 340. This Ordinance is not intended to repeal, abrogate, annul, impair or interfere with any existing laws, regulations, ordinances, rules, standards or permits that are not specific to Nonmetallic Mining previously adopted pursuant to other Wisconsin law. This Ordinance does not repeal, abrogate, annul, impair, limit or interfere with any existing requirements under Chapter 43 (Waupaca County Non-Metallic Mining Reclamation Ordinance). In the event of a conflict between this Ordinance and Chapter 43, Chapter 43 shall control. In the event a specific process, procedure, standard or requirement in this Ordinance is different from or in



conflict with Chapter 34 (Waupaca County Zoning Ordinance), this Ordinance shall control.

- 10 **Interpretation.** In both interpretation and application, this Ordinance shall be held to be the applicable requirements for Nonmetallic Mining in Waupaca County and shall not be considered a limitation or repeal of any other power granted by Wisconsin Statutes. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation of this Ordinance shall apply. Where a provision of this Ordinance is specifically required to comply with Wisconsin Statutes Sec. 295, or environmental standards of Wisconsin Statutes, or Wisconsin Administrative Code Chapter NR 135 or environmental regulations, and where the provision is deemed to be unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and Wisconsin Administrative Code requirements.
- 11 **Limitation of Action Challenging Validity of Ordinance.** Pursuant to Wisconsin Statutes Sec. 59.69(14), a land owner, occupant, County citizen or other person impacted by this Ordinance or any potential future amendment hereto, who claims that this Ordinance or its amendment is invalid because procedures prescribed by the statutes or other ordinance were not followed must commence a court action within six (6) months after adoption of this Ordinance or forever be barred from asserting such a claim.
- 12 **Exemptions.** The Ordinance does not apply to:
  - 12.1 The exempt activities listed in Wisconsin Administrative Code NR 135.02(3)
  - 12.2 Any excavation, construction, dredging or enlargement subject to a permit under the requirements of Wis. Stat. Ch. 30 when the activity is not for the purpose of Nonmetallic Mining. However, should a Nonmetallic Mining Operation require a Chapter 30 permit this exemption shall not apply.
  - 12.3 Any excavation required pursuant to an order from a regulatory authority to abate environmental pollution.
  - 12.4 This Ordinance does not apply to the lawful use of a building, structure or lot for Nonmetallic Mining Operations which existed at the time this Ordinance, or an applicable amendment to this Ordinance, took effect and which is not in conformity with the provisions of this Ordinance, subject to the following conditions:
    - 12.4.1 If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this Ordinance.
  - 12.5 A legal nonconforming mine operating in accord with the common law diminishing asset rule.

12.6 In the event the County or a town within the County has prior to the effective date of this Ordinance entered into a local agreement to which the County or town is a party, including a development agreement or road agreement, that addresses Nonmetallic Mining activities, Nonmetallic Mining shall be permitted pursuant to the terms of the local agreement until such time that all activities under the local agreement are discontinued for a period of at least twelve (12) consecutive months.

### **13 Registration**

13.1 Wisconsin Admin. Code Ch. NR 135 allows landowners to register land which contains economically viable Nonmetallic Mineral deposits. All registrations must comply with the requirements of NR 135 subchapter VI.

## **Part II Nonmetallic Mining Standards**

### **14 Permits Required**

14.1 **Conditional Use Permit Required.** Nonmetallic Mining is authorized pursuant to a Conditional Use Permit.

14.2 **Reclamation Permit Required.** Nonmetallic Mining Reclamation is authorized pursuant to a permit applied for and obtained in accordance with the requirements of Wis. Admin. Code Ch. NR 135 and Chapter 43 of the Waupaca County Nonmetallic Mining Ordinance. All Applicants intending to operate a Nonmetallic Mining Site subject to the review and permit requirements of this Ordinance must follow applicable Waupaca County reclamation requirements.

### **15 Prohibitions**

15.1 Nonmetallic Mining is prohibited in all zoning districts other than Agricultural Enterprise (AE), Agricultural Retention (AR), Private Recreation and Forestry (PVRF), Agriculture and Woodland Transition (AWT), Rural Industrial-General (RI-G) and Rural Industrial-Intensive (RI-I).

15.2 Nonmetallic Mining activities are prohibited within any of the following described areas unless it can be demonstrated that the activities will not have an adverse impact upon the described area. The areas include both the above-ground portion and the underground portion extending vertically from the site boundaries within the specified setback areas.

(1) Within one hundred fifty (150) feet of any State Natural Area.



(2) Within a floodplain.

## **16 Setbacks**

- 16.1 The setbacks in this section shall apply to all Nonmetallic Mining activity including, without limitation, the storage of waste materials, stockpiling, inventory, and equipment. The setback requirements do not apply to berms or other methods of landscape screening.
- 16.2 Where berms or screening of any kind is deemed unnecessary, the active Nonmetallic Mining operation shall be located at least fifty (50) feet from all exterior lot lines.
- 16.3 The active Nonmetallic Mining operation shall be located at least one hundred fifty (150) feet from public road centerline or one hundred (100) feet from the road right-of-way, whichever is greater. Adjoining Nonmetallic Mining operations are not subject to the exterior lot line setback for the lot line that is shared by those operations, if agreed to by the adjoining landowner or operator. This written agreement shall be recorded with the Register of Deeds as a deed restriction.
- 16.4 No active Nonmetallic Mining operation shall be conducted within five hundred (500) feet of a dwelling unit, commercial structure, or active farm building other than that of the owner or operator unless a written agreement with the adjacent landowner is approved by the Planning and Zoning Committee. This written agreement shall be recorded with the Register of Deeds as a deed restriction. This setback may also be increased depending on the size and scope of the mining operation on a case by case basis at the discretion of the Planning and Zoning Committee.
- 16.5 No active Nonmetallic Mining operation shall be conducted within thirteen hundred twenty (1320) feet of a recorded State or County Subdivision Plat.
- 16.6 The Planning & Zoning Committee may authorize berm construction to within twenty-five (25) feet of any exterior boundary of the tract.

## **17 Compliance with all County, Local, State and Federal Legal Requirements**

- 17.1 The Operator must comply with all local, state and federal laws, permits, regulations, other requirements or obligations and amendments thereof.
- 17.2 Compliance with law includes, but is not limited to building permits, roadway limits, Department of Transportation licensing, blasting and noise standards, environmental, and occupational safety and health requirements.

17.3 Road Agreements. The Operator must comply with Road Agreements from the town and the County highway department for the transportation haul route in conformance with standards and requirements set forth by the town or county in substantial conformance with any Road Agreement.

17.4 Where other County approvals are necessary those approvals shall be incorporated into a permit upon issuance. The Applicant/Operator is responsible for ensuring that the County receives copies of any approval, permit extension, revision and reissuance.

17.5 For operations located within a Farmland Preservation Area, said operation shall also satisfy the requirements of Wis. Stats 91.46 (6).

## **18 Monitoring**

18.1 Operator agrees to conduct monitoring activities, annually or more often if necessary, to ensure compliance with this ordinance and conditions associated with the permit. A checklist will be created using the conditions of the permit to track and archive compliance.

## **19 Property Protection Safety and General Operating**

19.1 **Gating:** The Nonmetallic Mining Site shall be gated and locked during non-operating hours at all site entrances.

19.2 **Lighting:** Lighting shall be limited to that which is minimally necessary for safe mining operations, site accessibility and security. All lighting shall be shielded and pointed downward to avoid illuminating offsite. Nighttime lighting is limited to that reasonably necessary for security purposes, operations consistent with the permit and for any emergency repairs or hour extensions approved by the County.

19.3 **Site Enclosure:** Enclosures shall be installed so as to enclose and control access points and areas along highways, roadways or thoroughfares of the Mining Site. Enclosures may be solid wood slat, metal chain link or other fencing materials; vegetative; or berms.

19.4 **On-site Fuel Storage:** All petroleum products kept onsite and related to the mining operation shall be stored in state approved fuel storage and fueling areas. All petroleum product storage tanks shall provide leak proof containment consistent with applicable state and federal law. Where fueling trucks are used to refuel equipment onsite, all fueling must occur according to applicable state and federal law.

19.5 **Hours of Operation:** Nonmetallic Mining operations shall be limited to reasonable hours consistent with the characteristics of the property and neighborhood surrounding the operations, the impact of the operations on the community and



residents thereof and the Operator's needs. The Nonmetallic Mining site shall only haul, produce and remove nonmetallic material from 6:00 a.m. to 6:00 p.m. Monday - Friday and 8:00 a.m. to 12:00 p.m. on Saturdays and no Sundays or Holidays, unless the Operator applies for and is granted alternate hours of operation as a condition of the conditional use permit. In order to be eligible to receive approval, the operator shall give the zoning office thirty (30) days' notice of a special exception to the granted hours of operation. The use of blasting will only be allowed between the hours of 8:00 a.m. and 4:00 p.m. Monday – Friday, and not on any holidays.

**19.6 Hazardous Materials Storage:** Hazardous materials shall be stored in compliance with all state, federal and local laws.

**19.7 Berms and Screening:** Where practical, an earth berm and/or vegetative screen providing adequate screening of the mine site shall be erected and maintained to screen the mine site. The Planning and Zoning Committee shall determine the practicality and necessity of aesthetic screening in each individual mining operation and include it as a permit condition. At a minimum, all mine sites shall comply with the following:

1. A berm shall be constructed along the adjacent road right-of-ways. The use of berms to create a "S" curve on an entrance or exit may be required;
2. The berm shall be at least ten (10) feet above the surface of the center adjacent road right-of-ways;
3. The outward-facing slopes of said berm shall not be steeper than three (3) horizontal units to one (1) vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to remain stable;
4. Prior to construction of said berm, the applicant shall present a detailed berm construction plan to the Planning and Zoning Office for approval. The plan shall include drainage, erosion control, seeding and any landscape features;
5. The berm shall be constructed within fourteen (14) days of stripped overburden and topsoil becoming available from the mine site or from suitable outside sources. The berm may be installed in phases at the discretion of the Planning and Zoning Committee;
6. Only clean overburden from the mining site or suitable outside sources shall be used in constructing the berm;
7. The exterior of the berm shall be kept free of invasive species (as determined by NR 40), trash and debris;
8. Additional fencing, screening or landscaping may be required as deemed necessary.

**19.8 Boring holes:** The Operator shall maintain compliance with Chapter 281 of the Wisconsin Statutes and NR 141.25 with respect to the abandonment of boreholes and exploratory drilling sites.

## 20 Insurance

20.1 **Insurance.** The Applicant must provide the County with a certificate of insurance prior to the commencement of any activity at the site. The certificate must demonstrate sufficient levels of insurance, as determined by the Committee, and be in accordance with general industry standards. In addition to any other review rights provided in this Ordinance, the Committee reserves the right to review permits granted under this Ordinance for purposes of evaluating the sufficiency of insurance and may order that the Applicant provide additional levels of insurance as a condition of the continued issuance of the permit.

## 21 Environmental Protection Standards

21.1 **General Compliance.** The Operator must comply with all applicable local, state and federal environmental protection laws.

21.2 **Air Emissions.** The Operator must comply with all state and federal requirements including but not limited to Wis. Adm. Code Sec. 407, 415, 440 and 445 and ensure proper air permitting.

21.3 **Groundwater.** The Operator must comply with all state and federal requirements intended to regulate groundwater in any manner. The Operator shall comply with relevant requirements of NR 809, 810, 812, 815, 820, 850 and 856 and Wis. Stats. Ch. 280.

### 21.4 Groundwater Monitoring.

1. The applicant shall send a certified letter, with receipt requested, to all neighboring properties, which have assessed structures in excess of a value of five thousand dollars (\$5,000), which are located within thirteen hundred twenty (1,320) feet of the proposed perimeter of the mining extraction area. The letter shall notify the owner of the owner's right to have a baseline test performed within sixty (60) days of receipt of the letter on the landowner's well. The applicant shall be responsible for all well testing where the property owner has indicated in writing within the sixty (60) day period mentioned that they want to have their well tested and have granted permission for access and testing on the property. Mine operators are strongly encouraged to get written evidence from all property owners that choose not to participate in the baseline testing. Baseline testing shall test for, at a minimum, bacteria, turbidity and drawdown, or any chemicals which are in use by the nonmetallic mine operation. Testing must be completed and results obtained prior to commencing any permitted activity on site. Drawdown tests shall be conducted when requested in writing by a well owner who believes the quantity of water in the well has been impacted by the mining activities. All tests shall be performed by a qualified third party professional. Through baseline testing, if a well is found to be out of



compliance, it must be brought up to code prior to being eligible for the well guarantee program.

- a. Groundwater well guarantee. Mining operations will not adversely affect the quantity or quality of groundwater at off-site properties. If mining operations adversely affect an off-site water-supply well, the operator will repair or replace the well to provide the same quantity of groundwater obtained from the well prior to the mining operations. This guarantee applies to all existing wells located within thirteen hundred twenty (1,320) feet of the nonmetallic mine. The mining operator shall make a reasonable effort to measure the water levels in these wells prior to beginning quarry operations, so that property owners and operators will have a record of baseline conditions if a dispute arises.
2. All test results shall be provided to both the owner and the County within ten (10) days of receipt of the test results. If test results show that the well is not suitable for use as a result of the mining activity, the applicant shall take all reasonable steps to alleviate any problems including, but not limited to, immediately providing a temporary water source, well repair, or code compliant well replacement. In no case shall bottled water be provided as a permanent solution. The applicant shall also be responsible for, at the applicant's option, either repairing the well, drilling a new well or casing a well, which was found compliant and safe at the time the Conditional Use Permit was issued which later revealed turbidity, or drawdown problems as a result of the mining activity. Wells that were not included in the baseline testing, due to the installation date, or an owner indicating a willingness to be exempt from the baseline testing, are not subject to these provisions.
    - a. Any eligible owner claiming an adverse effect on groundwater supply shall provide written notice to the operator and the county, by certified mail, explaining the nature and the extent of the problem. Within thirty (30) days of written notice to the operator, the operator will make a written determination as to whether the groundwater problem was caused by its operations, and, if so caused, the amount of compensation to be provided to the owner. The operator will file its written determination with the County Zoning Director and send a copy by certified mail to the owner. The owner shall have seven (7) days to accept or decline the determination of the operator and any specific amount of compensation.

21.4.1 The owner shall, within thirty (30) days of his election not to accept the operator's determination, make a written determination as to whether the groundwater problem was caused by the operator's operations, and, if so caused, respond with the owner's resolution to the operator with a copy sent to the County Zoning Director. The owner shall file a written determination with the County Zoning Director. The Planning and Zoning Committee shall review the materials submitted by the operator and property owner and may request that the parties attend a meeting to further explain their positions. The Committee shall have no jurisdiction to force a resolution to a dispute under this paragraph and resolution of any dispute shall not impact an operator's permit hereunder unless operator fails to follow the procedures herein.

3. An applicant may install a residential well for use in the Nonmetallic Mining operation. High capacity wells and high capacity well systems, both as defined in Wis. Admin. Code NR 812.07, as amended, shall comply with Wisconsin State Law and Wisconsin Administrative Codes, concerning high capacity well systems.

4. As part of the Conditional Use Permit, the Planning and Zoning Committee may require a qualified person to conduct a hydrologic study of the site if the mining activity will occur below the groundwater level. The study should characterize proposed dewatering effects on on-site and adjacent property water levels (groundwater quantity). On-site water supply wells or nearby private wells completed in the uppermost aquifer may also be used for monitoring purposes. Water levels should be measured in these wells on a quarterly basis for at least three (3) years, and annually thereafter, in order to understand natural seasonal variation in water levels and to be able to differentiate the effects of natural variation from those related to mining operations

21.5 **Surface Waters.** Due to the prevalence of surface waters in Waupaca County it is likely that some applications will be for sites near waterways. The Operator must comply with all state and federal requirements intended to regulate surface waters. Applicants must comply with NR 200 et. seq., NR 135, 140, 299 and 340 requirements, Wis. Stats. Chs. 30, 31, 281 and 283.

21.6 **Wetlands.** The operator must comply with all federal and state requirements related to wetland regulations. Operators must receive proper DNR and US Army Corps of Engineers permits and approvals in accordance with Wis. Stats. Ch. 299, Wis. Adm. Code Chs. 103, 350, 351, 352 and 353 and under Section 404 of the Federal Clean Water Act should its operation require such permits and approvals.

21.7 **Stormwater.** The operator is required to comply with state stormwater permitting requirements. Should the site discharge stormwater off site and/or to surface waters the operator must prepare and implement a Stormwater Pollution

Prevention Plan (SWPPP) and comply with Wis. Stats. Admin. Code Ch. 216 and NR 151.

21.8 **Wastewater Discharges.** The operator is required to comply with all state, federal and local wastewater discharge requirements which may include specifications for wastewater discharge and pit dewatering.

## 22 Emergency Actions.

22.1 The operator must comply with all state and federal requirements for emergency actions, spills reporting, safety and human health emergencies. For example, the operator must comply with spill reporting requirements and Department of Labor reporting. Relevant legal standards include NR 600 and 700-749 and Wis. Stats. Chs. 291 and 292.

22.2 The operator shall maintain emergency contact information with the County. In the event the County must respond to an emergency at the Site the contact shall be notified as soon as reasonably possible. If the emergency contact is unavailable, the County shall notify the applicant or his/her agent identified on the application materials.

22.3 The County is not responsible for any damage it may cause to the Site in carrying out an emergency response.

23 **Waiver of Liability.** Issuance of a permit in no way creates any Site responsibility for the County. The Operator releases, waives and discharges any liability claims or causes of action against the County related to the issuance of a permit.

24 **Dust and Mud.** The Operator shall utilize appropriate Best Management Practices as specified by Wisconsin DNR. The Planning and Zoning Committee may require additional practices as deemed appropriate.

24.1 The operator shall make every effort to prevent tracking of dust, mud and debris to public roads. The operator will be required to clean up any dust, mud and debris that is tracked on a public road.

24.2 The Planning and Zoning Committee may require the paving of any access onto a public road.

## 25 Blasting and Logs.

25.1 **Blasting:** All blasting shall be done in compliance with State and Federal guidelines and requirements, including Chap. SPS 307.41 of the Wisconsin Administrative Code. In addition to the regulations on blasting in Section 19.5, blasting hours may be regulated by the conditions placed on the Conditional Use Permit.



25.2 **Blasting Logs:** Blasting logs shall be provided to the County within forty-eight (48) hours, excluding weekends, of a written request from the County. Blasting logs shall include only the date, time and location of any blasting activities.

### **Part III Permitting**

26 **Permit Requirements.** Nonmetallic Mining shall be permitted only as a Conditional Use in accordance with County zoning and only if a permit is obtained pursuant to the requirements of this Ordinance. Any permit obtained under this Ordinance shall be conditioned upon Operator obtaining all other applicable permits pursuant to any other applicable federal law, state law, Section of this Ordinance and the County Code of Ordinances in its entirety. A permit granted under Chapter 38 shall be also be deemed a permit granted under Chapter 34 (Waupaca County Zoning Ordinance). All operators seeking a Conditional Use Permit under this Ordinance shall apply on forms provided by the County and according to the policies of the Zoning Office as applicable to the Conditional Use Permit.

26.1 An application for a Nonmetallic Mining permit shall not be considered under this section unless all other necessary permits, licenses and approvals have been properly applied for in accordance with any applicable local, County, state and federal regulations. Complete regulatory approval applications must be submitted for all applicable local, county, state, federal permits and approvals and to each town in which any part of the proposed Nonmetallic Mine will be located. The Applicant is solely responsible for providing of all required information associated with the Nonmetallic Mining Permit. Any failure to provide information will result in an incomplete application and a process delay.

26.2 **Reclamation Plan:** Chapter 43 Non-Metallic Mining Reclamation Ordinance for Waupaca County must be followed. East Central Wisconsin Regional Planning Commission (ECWRPC) administers the Reclamation Ordinance. Approval of a reclamation plan and issuance of a reclamation permit must be received and placed on file with the County prior to commencement of extraction activities.

26.3 **Permit Application Form:** The Applicant shall complete and submit the application form provided by the Planning & Zoning Office. The application shall include the following:

1. Filing Fees

- a. The Applicant shall submit a fee in accordance with the Waupaca County Planning and Zoning Fee Schedule. The fee is intended to cover the anticipated actual costs of reviewing the Nonmetallic Mining Permit including, without limitation, any reasonable investigative, exploratory, review, analysis or similar activities undertaken by Waupaca County or experts.

2. A Signed and Notarized Statement. The permit application must be complete with all notarized signatures and attachments.

**26.4 Operation Plans.** The application submitted for a Conditional Use Nonmetallic Mining Permit shall be accompanied by the following information and/or plans reasonably reflecting the best information available at the time of the application:

- 26.4.1 A land survey completed by a land surveyor registered in the State of Wisconsin showing the location of the tract or tracts of land with parcel identification numbers marked, to be included in the proposed mining operation, including the proposed mine boundary.
- 26.4.2 The lateral extent of the proposed mine site at a scale not smaller than six hundred sixty (660) feet to the inch, with the mine site boundaries clearly shown.
- 26.4.3 A topographic map of the property to be affected by the mine operation at contour intervals no greater than ten (10) feet and extending a minimum of one quarter ( $\frac{1}{4}$ ) mile beyond the proposed mine boundary at a scale not smaller than six hundred sixty (660) feet to the inch, with the mine site boundaries clearly shown.
- 26.4.4 A map of all residential, agricultural and municipal wells within one quarter ( $\frac{1}{4}$ ) mile of proposed mine site boundaries.
- 26.4.5 A general location map showing the location of the site vicinity and political boundaries of included towns and the County, including the following:
  1. Names of owners of the tract or tracts of land to be mined and the property owners of the land within one quarter ( $\frac{1}{4}$ ) mile of the Mine Site;
  2. Locate and label all existing buildings within one quarter ( $\frac{1}{4}$ ) mile of the outer perimeter of the mine site;
  3. The location and name of all surface water, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within one quarter ( $\frac{1}{4}$ ) mile of the proposed mine boundaries.
  4. Cross-sections of the proposed nonmetallic mine at intervals of not more than three hundred (300) feet or at interval otherwise approved by the County, but including at least three parallel cross sections and one perpendicular cross section.
  5. A map at a scale of not less than four hundred (400) feet to the inch, showing the proposed sequence of mining, direction of mining, depth of mining, and estimated volumes of material to be removed. The map should also show the following existing or proposed features:
    - a. Stockpiles and storage yards.
    - b. On-site haul roads.

- c. Proposed permanent or temporary structures with their identity marked.
  - d. Location of roadway access points.
  - e. Parking areas.
  - f. Buffer Zone.
  - g. Existing structures.
- 26.4.6 The dates of the proposed commencement and cessation of proposed mine construction and mine operation.
- 26.4.7 An estimated daily water budget that describes all the ways that water will be used in the Nonmetallic Mining operation including, but not limited to: the water required for the entire site whether for mining, human use, dust control or any function; the sources of water and all processes in which the water will be used, methods for treating, handling and disposing of water; volume of water consumed and discharged from the site as run-off, stormwater, dewatering or any other mechanism.
- 26.4.8 A description of all hazardous materials and hazardous wastes as defined by this Ordinance and state and/or federal standards, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing all hazardous materials and hazardous wastes stored on site in accordance with Wis. Stats. Ch. 323.60.
- 26.4.9 A description of the measures that will be used to contain and remediate any spill or accidental discharge in accordance with Wis. Stats. Ch. 323.60.
- 26.4.10 A map of all proposed transportation routes, within the County, to be used to transport the Nonmetallic Mine materials from the mine to off-site processing plants or markets, including the frequency of traffic, type of vehicle used in transport, average loaded weight of vehicle, and the common schedule of travel to be used for transporting.
- 26.4.11 A description of measures to be taken to control noise, dust and vibrations from the operations, along with a statement of the proposed frequency of blasting, if any, to be used in the operation.
- 26.4.12 A description of the mining methods, machinery and equipment to be used for extraction and processing of extracted material.
- 26.4.13 A description of measures to be taken to screen the operation from view with earth banks, vegetative or other screening devices.
- 26.4.14 A lighting plan for the Nonmetallic Mining operation, including the type and style of lighting to be used and its power source.



26.4.15 A description of all fencing, gating and security measures in accordance with Section 19 of this Ordinance.

## **27 Application Review**

### **27.1 Permit Application Procedures**

27.1.1 Ten (10) hard copies and one (1) digital copy of the Application and all required materials shall be submitted in the County Zoning Office.

27.1.2 The Zoning Office will distribute one (1) copy of the Application to each member of the Planning and Zoning Committee, to other County Departments as necessary, to municipalities within five (5) miles of the proposed mine and file several copies for citizen review. Citizen review copies will be retained and made available by the Planning and Zoning Office.

27.1.3 The Zoning Office will forward a copy of the Application to the clerk of the town where the proposed mine is located, or the town chair if that particular town has designated the chair as the receiving party, along with a Town Recommendation Form. The consultation process may vary from town to town, and may involve the Town Plan Commission and/or Town Board. The town shall have forty-five (45) days from the date the application materials and Town Recommendation Form were forwarded by the Zoning Office to provide the Planning and Zoning Committee with a recommendation regarding the Application. After forty-five (45) days, if the affected town has not provided a recommendation to the Committee regarding the Application, and provided the applicant has attempted to meet or has met with representatives of the Town, the Committee shall schedule the public hearing. The Zoning Administrator may, in his or her discretion, extend the deadline for a town to provide its recommendation to the Planning and Zoning Committee.

27.1.4 Factors to be considered. The Committee shall consider the following provisions consistent with Section 14.05(2) of the Waupaca County Zoning Ordinance;

- a. The proposed Conditional Use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.
- b. The proposed Conditional Use will be consistent with all relevant aspects of the Town and County Comprehensive Plans.
- c. The proposed Conditional Use will not substantially increase the erosion potential of the site; negatively affect wetlands, floodplains, or water bodies;

or otherwise compromise surface or ground water quality based on topography, drainage, slope, soil type, vegetative cover, means of waste disposal and other relevant factors.

- d. The proposed Conditional Use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies.
- e. The proposed Conditional Use is in a location where access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.

27.1.5 Request for additional information. The County reserves the right to request additional information from the Applicant throughout the review process. Such requests will be in writing. The Applicant shall supply such information with urgency so as not to delay the review and subsequent proceedings. Should the County require additional time for review upon receiving the requested information it shall supply the relevant parties with a revised hearing schedule. This additional review time shall be limited to another thirty (30) days. However, if the Applicant does not respond within a reasonable time frame or supply appropriate and relevant information all time frames shall be suspended until such time as that occurs. The County must then supply a new notice with an adjusted schedule.

27.1.6 County's Ability to Employ Licensed Professionals. The County reserves the right to retain or appoint Licensed Professionals accredited in the field for which the individual is retained and/or legal professionals as it deems prudent to examine the application and to make recommendations to the County on whether the Nonmetallic Mining Operation proposed by the applicant will meet the standards of this Ordinance, to assist in evaluating Conditional Use Permit requests, consider conditions, and to assist the County in administering and enforcing the Ordinance.

## **27.2 Allowed Time for Review**

27.2.1 Allowed Time for Review and Notice. Within thirty (30) days of receiving a Nonmetallic Mining Permit application the County shall determine the completeness of the application. If the application is deemed to be complete the County shall provide notice to the Applicant of the completeness determination. The County shall also provide notice within thirty (30) days of receiving a complete application as required in accordance with Subsection 27.3. A complete Application is one which meets all requirements for a Nonmetallic Mining permit application and the applicable standards of this Ordinance.

27.2.2 If the County determines that the application is not complete it shall notify the Applicant in writing of the deficiencies. The County shall have another thirty (30) days for review and to make a subsequent completeness determination upon receiving the additional materials.

27.2.3 When a completeness determination is made, the County shall include all hearing information in the Notice provided to the Applicant. The information should include the date, time and location of the hearing. The County must schedule the hearing within forty-five (45) days of the completeness determination.

27.3 **Public Notice.** The County shall post notice outside the County land use offices, other relevant offices, and publish a Class 2 notice pursuant to Wis. Stats. 985.07(2) that briefly describes the proposed mine and the material to be mined and states that a completed application is being reviewed by the County, is available at the County zoning offices, or online at <http://www.co.waupaca.wi.us/zoning/Home.aspx> for review and that a hearing will be held on a specific date for consideration of the Application, the mining operation plan and various conditions.

27.3.1 The notice shall be forwarded to all adjacent towns and cities/villages local boards or committees and all landowners within three hundred (300) feet of the site.

27.4 **Public Comments.** During the review period, prior to the public hearing, the County shall accept public comments regarding the project. Comments shall be in writing and submitted to the attention of the Planning and Zoning Office.

27.5 **Public Hearing.** The Committee shall conduct a public hearing to hear testimony on the Nonmetallic Mining Permit application at a date, time, and location specified in the public hearing notice. In the event that the scope, range of uses, or geographic area of the request is substantially increased from that noticed or presented at the public hearing, the Committee shall cause to be noticed and conduct an additional public hearing before taking action on the request. As soon as possible following the final public hearing, the Committee shall approve, conditionally approve, or deny the proposed Conditional Use Permit requested through the application.



## **27.6 Permit Conditions.**

- 27.6.1 The County may impose conditions that include, but are not limited to, restrictive provisions and proof of financial security for county and town road maintenance and repair, restrictions on hours of operation, restrictions on truck routes on town and county roads, restrictions on truck and traffic volume into and out of the mine site, and any other restrictions deemed necessary and appropriate to protect the public health, safety and welfare consistent with state and federal law. The County reserves the right to impose conditions or restrictions that are more stringent than the minimum conditions or restrictions imposed by this Ordinance.
- 27.6.2 Proposed permit conditions shall be published upon the notice of a permit decision. If the County determines that the permit should be issued, it shall provide the permit conditions to the Operator and others who received notice in accordance with Section 27.3.1. Permit conditions shall be reviewed by the operator and the operator shall file a statement that the Operator agrees to comply with all conditions.
- 27.6.3 The Operator must promptly disclose any and all notices received from any other governmental body or regulatory authority wherein Operator is notified that its operations are or may be ordered to be ceased or otherwise materially impacted.

## **27.7 Application Decision.**

- 27.7.1 Decision on Mining Operation Plan. The County shall approve, conditionally approve or deny the Mining Plan and Application submitted in accordance with this Ordinance. Permit Applications that satisfy the requirements of this Ordinance shall be approved or conditionally approved. Any denial shall comply with the requirements of Subsection 27.8. A decision regarding the issuance, denial and conditions of a mining permit shall be made within sixty (60) days of the completion of the hearing required under Subsection 27.5. The decision shall be in writing. The decision does not constitute final action. Upon approval or conditional approval of the Application and Plan, a determination by the County that all necessary fees are paid, and permits have been received, the County shall issue the Conditional Use Permit which shall become immediately effective. The Operator shall retain a copy of the Nonmetallic Mining permit approved under this subsection at the Mining Site, or if not practicable, at the Operator's nearest place of business.

27.7.2 Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of Chapter 43 of Waupaca County Code of Ordinances and provisions by the Applicant of financial assurance required in compliance with the reclamation permit and payable to Waupaca County prior to beginning mining. Nonmetallic Mining shall not be permitted without a valid reclamation permit and necessary financial assurances whether required by this Ordinance or in accordance with the reclamation permit requirements.

27.8 **Permit Denial.** If the review by the County results in a permit denial, the reasons for permit denial shall be supplied in a written statement to the Applicant. Reasons for denial shall be specifically stated and reflect reasoned consideration by the County. Denial shall occur if the Applicant cannot demonstrate compliance with this Ordinance.

27.8.1 Prior to denial, the County shall provide the Applicant with an opportunity to make corrections. If, after this opportunity, the Applicant fails to provide the County with adequate permit applications, reclamation plan, operation plan, financial assurance or any other submittal required by Wis. Admin Code Ch. NR 135, Subchapter I of Wis. Stats. Ch. 295 or this Ordinance, the permit shall be denied.

27.8.2 Denial shall occur if the proposed Nonmetallic Mining Site cannot be reclaimed in compliance with the reclamation standards contained in this Ordinance, Chapter NR 135, Wisconsin Administrative Code or subchapter I. of Wis. Stats. Ch. 295.

27.9 **Appeals Process.** Following any decision made by the Board of Adjustment, the Applicant may appeal in accordance with Wis. Stats. Sec. 59.694(10).

## **Part IV Administration**

### **28 Mining Permit Modification.**

- 28.1 A Nonmetallic Mining permit issued under this Ordinance may be modified in the event that the County determines that circumstances or factors that should have been properly considered when approving the permit were not considered because of inadvertent oversight or in the event that circumstances or factors have changed since the date that the permit was issued such that the permit should be modified to reflect the changed conditions or factors. Any applicant seeking a modification of the permit shall follow the procedures contained within this Ordinance related to the granting of a new permit.
- 28.2 The operator of any nonmetallic mine that holds a mining permit issued under this Ordinance shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other material aspects of mining required by the operation plan or reclamation plan approved pursuant to this Ordinance. A modification of the permit will require a new permit approval process pursuant to Section 27 of this Ordinance.

### **29 Permit Transfer.** When one operator succeeds to the interest of another in an uncompleted site, the department shall release the first operator of the responsibilities imposed by the permit only if:

- 29.1 Both operators are in compliance with the requirements and standards of this Ordinance.
- 29.2 The new operator assumes the responsibility of the former Operator to complete the Nonmetallic Mining operation and reclamation of the entire project site in writing and consistent with all representations and warranties made in the application for a permit.
- 29.3 The new operator shows proof of financial responsibility in substantially the same manner and amount as required of the previous operator and agrees to maintain the fee deposit. A permit transferee may request modifications consistent with Section 27 of this Ordinance.
- 29.4 The new operator provides a certified statement attesting that it will continue to operate in accordance with all material elements of the operation plan and permit requirements.



## **30 Permit Suspension Termination or Revocation.**

**30.1 Grounds.** Waupaca County may suspend or revoke a Nonmetallic Mining permit issued pursuant to this Ordinance if it finds the Operator has done any of the following:

30.1.1 Failed to submit a satisfactory reclamation plan within the time frames specified in this Ordinance or Chapter 43.

30.1.2 Failed to submit required reports or answers to allowable inquiries by the County.

30.1.3 Failed to comply with requirements of the reclamation permit.

30.1.4 Failed to submit or maintain financial assurance as required by this Ordinance.

30.1.5 Failed on a repetitive or material basis to follow the material elements of the approved Mining Operation plan.

30.1.6 Failed to comply with notices of violation and/or right to cure time frames.

30.1.7 Failed to obtain or maintain appropriate permits or authorization to conduct mining activities under state and federal law and regulations provided that the County shall impose revocation or suspension commensurate with the action taken by state and federal regulatory authorities.

30.1.8 Failed to maintain Compliance with any state or federal permit, law, regulation or rule that results in Operator being ordered to not conduct mining activities provided that the County shall impose revocation or suspension commensurate with the action taken by state and federal regulatory authorities.

30.1.9 Failed to supply the County a complete list of current or past compliance issues.

**30.2 Procedures.** If the County finds grounds for suspending or revoking a Nonmetallic Mining permit issued under this Ordinance, it will issue a special order suspending or revoking such permit in writing.

**30.3 Consequences.**

30.3.1 If the County makes any of the findings in sub. 30.1.1-30.1.9, it may suspend a Nonmetallic Mining permit for up to thirty (30) days. During the time of suspension, the Operator may not conduct Nonmetallic Mining at the Site, except for reclamation or measures to protect human health and the environment as ordered by the County pursuant to this Ordinance.

30.3.2 If the County makes any of the findings in sub. 30.1.1-30.1.9 and the Operator has been previously notified, the County may revoke a Nonmetallic Mining permit. Upon permit revocation, the operator shall forfeit any financial assurances associated with the Nonmetallic Mining Permit it has provided pursuant to this Ordinance to the County. The County may use forfeited financial assurances to cover any past, current or anticipated future costs, including without limitation staff costs, professional fees and related costs, associated with the permit revocation, including reclamation. Any remaining funds shall be returned to the Operator.

31 **Emergency Review.** The County may, with five (5) days notice to the Operator, require an emergency review for the Nonmetallic Mining permit. Emergency reviews shall be based on instances of significant non-compliance or immediate concerns for human health, safety or the environment. Should the County, through the emergency review, determine instances of non-compliance or other violations of the permit or county ordinance, the County may allow the operator not less than thirty (30) days to rectify any instances of non-compliance or other violations or show substantial improvement in addressing the matter of noncompliance. If after the time allowed, unresolved compliance violations remain, the permit may be revoked. The County is the sole determiner of revocation in emergency review.

32 **Cancellation.** An Operator may apply for a cancellation of a Nonmetallic Mining permit. The request for the cancellation shall be submitted by the Operator to the County in writing. Cancellation of the mining permit does not alleviate responsibility for reclamation requirements in accordance with the reclamation permit.

## **Part V Enforcement**

33 **Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, or this Ordinance, any authorized officer, agent, employee or representative of Waupaca County may inspect any Nonmetallic Mining Site subject to this Ordinance as provided below:

33.1 No person may refuse entry or access onto a Nonmetallic Mining site of a duly authorized officer, employee or agent of Waupaca County or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for Compliance with the Nonmetallic Mining permit, this Ordinance, Chapter NR 135, Wisconsin Administrative Code or subchapter I of Wis. Stats. Ch. 295.

- 33.2 Approved agents of the County shall be granted access to only those site records related to topics that the County has the authority to regulate under applicable law or this Ordinance. All such required records shall be made available to an approved agent within a reasonable time.
- 33.3 Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the Nonmetallic Mining Site.

### **34 Orders and Citations.**

- 34.1 **Enforcement Orders.** The County may issue orders as necessary to effectuate the purposes of this Chapter and to promote and protect the public health, safety and general welfare.
- 34.2 **Mining Permit Orders.** Any order issued by the County to modify permit requirements, enforce the permit or notify the Operator of any suspension or revocation, or requiring a temporary cessation of activity shall be in writing and specify the necessity of the action, requirements of compliance, any time frames for right to cure and other information specific to the order.
- 34.3 **Citations.** The County may issue a citation under Wis. Stats. sec. 66.0113 and Chapter 25 of the Waupaca County General Code of Ordinances, to collect forfeitures to enforce subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.
- 34.4 **Enforcement.** The County may submit any order issued under Section 35 to abate violations of this Ordinance to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.
- 35 **Penalties.** Any violation of subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, this Ordinance or a permit issued pursuant to this Ordinance may result in forfeitures as follows:
- 35.1 Any person who violates Chapter 43, Waupaca County Reclamation Ordinance, Wisconsin Administrative Code or an order issued pursuant to this Ordinance may be required to forfeit not less than twenty-five dollars (\$25) nor



more than one thousand dollars (\$1,000) for each violation. Each day of continued violation is a separate offense. While an order issued under this Ordinance is suspended, stayed or enjoined, this penalty does not accrue.

35.2 Activity prior to permit issuance. Any activity, including building, construction, excavation or other site preparedness activities at the site prior to issuance of the Mining Permit shall result in a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each violation. Each day of violation constitutes a separate offense.

35.3 Violations of this Ordinance are further subject to the forfeitures and penalties established in Chapter 25 of the Waupaca County General Code of Ordinances.

## **Part VI Fees**

36 **Application/Plan Review Fees.** This Ordinance requires the regulatory authority to use its fees only for the administration of its mine permitting ordinance. The County shall establish a fee schedule which lists the fee associated with each requirement discussed in this section.

36.1 **Application Fee for Nonmetallic Mining Permit.** An Applicant for a Nonmetallic Mining Permit shall submit an application and plan review fee at the time the license applications and plans are submitted.

36.2 **Fee Applicability.** The fee shall cover all costs associated with the permitting process including review of mining application and plans, notices, publications, mailings, conducting public hearings and initial site inspections.

36.3 **Fee List.** The Planning and Zoning Office shall keep a Schedule of Fees bearing the pertinent effective date. The fees required by this Ordinance shall be established periodically but not greater than annually or on a semi-annual basis by the County in order to accurately reflect costs associated with review. Required fees may be established on an hourly basis for work to be performed by third-party experts accredited in the field for which the individual is retained, where reasonable and necessary.

37 **Modification Review Fee.** Any operator requesting a permit modification shall pay a modification review fee which shall be established in the same manner as application review fees.

38 **Previously Permitted Sites.** Any Applicant intending to re-open a previously permitted Nonmetallic Mining Site shall submit the Nonmetallic Mining Site Application Fee required by this Ordinance.

## Part VII Financial Assurance

39 **Application Fees.** An Application Fee is required for each Applicant for a Nonmetallic Mine Permit under this Ordinance.

39.1 The Application Fee is intended to fund all application review, analysis and investigation activities including, without limitation, inspection costs, experts accredited in the field for which the individual is retained, legal fees and any other reasonable costs related to the issuance of a permit incurred by the County.

40 **Insurance.** In accordance with Section 20 of this Ordinance and in accordance with general industry standards, the County may require proof of appropriate insurance to protect the County from costs associated with damage, improper operation, environmental spills, releases or accidents and any other activity which may result in financial costs to the County. Such insurance shall be only for operational concerns and shall not be intended to fund any manner of reclamation.

40.1 Any insurance required in accordance with this Section and Section 20 may be discontinued only upon mine closure or the end of mining activities, though reclamation may still be ongoing.