

**BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the Application of
Flambeau Mining Company
For Issuance of a Certificate of
Completion of Reclamation for Industrial Outlot Flambeau Mine
Project I.D. 14F779

TESTIMONY OF TOM WILSON

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I appreciate the opportunity to provide full testimony as part of this hearing process. I have tracked the development of this project long before the Flambeau Mining Company broke ground and have tried to make meaning contributions to the efficacy of the reclamation process since the mine closed. As an original applicant for the contested case hearing of 1998, I spent many hours a decade later compiling my accumulated research and personal knowledge into detailed testimony as a party-of-standing in the Certificate of Completion hearing in May of 2007.

Once the mining company realized the strength of our case for denial of a COC, they made a proposal for acceptance of a partial COC for the 149-acre mine pit with a postponement for the remaining 32 acres including the rail spur, high level waste storage site, water treatment building and Flambeau offices. Neither Laura Furtman nor I were in agreement with this "compromise" but when the rest of the interested parties chose to accept the offer, we acquiesced and joined the others.

It is therefore my pleasure to have the opportunity to make my case specifically with regard to the 32-acre outlot which was my primary concern anyway. At the Ladysmith hearing July 6, 2022, I provided DNR employee Molly Gardner the 72 pages of sworn testimony prepared for the COC hearing No. IH-07-05 in May of 2007 as well as a Thumb drive containing scans of 51 supporting documents referenced in that testimony and, in some cases, in this document. Although there are some issues raised in that earlier testimony which are presently moot (such as relating to revegetation over the original mine pit), much of my interest at that time was related to the Industrial Outlot and, hence, I have resubmitted this resource for the public record and will be referencing documents included therein as well as sworn testimony provided by FMC, the DNR and other parties.

These present comments are specifically related to the Outlot and the present COC petition. For the sake of brevity, I have chosen to omit my personal qualifications, general comments on

failures to adhere to the science in the permitting and approval process which were covered extensively in the previous filing.

Background

This is a particularly complex and involved issue and one that I had been particularly and personally involved in. It will be necessary for me to provide some background historical information to clarify how we got to this point, but I will try to be brief and leave the documentation in the Exhibits to fill in the details.

In January of 1998, the FMC applied to the DNR for a modification to the reclamation plan (**FMC Exhibit 36**) that set out to establish the possible alternative use for portions of the Industrial Outlot, maintain the fencing, maintain the water treatment plant, maintain the electrical service to the west wall, switch from burning the prairie restoration to a mowing regime, move the wetlands around a bit etc.

The DNR posted a very small notice in a local paper, but it was discovered, and the environmental community was up in arms that such major changes were about to be slipped by us. About a dozen of us wrote in protest and called for a contested hearing. This was just about the same time as the RTZ AGM where Rio Tinto Chairman Wilson threatened to scuttle the whole Industrial Park if their plan was challenged. We generally agreed that use of those buildings could be a good thing for the people of Rusk County.

A meeting was held in Ladysmith with all parties involved and although there were some tensions, folks were generally willing to listen to all sides and a general sense of agreement was reached. Finally, Waste Management Director Suzanne Bangert filed a Findings of Fact that laid out the Department's intent (**FMC Exhibit 37**).

We and the other contesters agreed to go along with the DNR's decision and all rescinded our objections on the basis of this new finding. Along with the rescission, however, was a qualifier that we wished to be kept informed of any future changes in the reclamation process because we didn't want to be caught off guard again. (**Exhibit 434**).

Follow-up communications were spotty, to say the least, but to make a long story short, we certainly didn't expect the mining company would claim they had completed their reclamation by 2001 and we never even heard about the NOC or any of the intervening issues relating to the reclamation process until January of 2007 when we heard that Flambeau had applied for a Certificate of Completion. Jumping forward another 15 years, we were similarly surprised to see notice of a request in January this year of a new request for a new COC (see pp 17& 18)

Here then is a fairly arbitrary list of issues I have with this COC application:

Land and water contamination and Stream C

Certainly, the most critical elements of concern for this COC application and the overall potential success of this reclamation process is the health of the ground and surface waters and the general environment within the 32 acre parcel and beyond. The whole history of the challenges with the reclamation process here was to mitigate the runoff from the most toxic portions of the original mine project: the high level waste rock storage pile and the rail spur.

Although we were originally told that the addition of powdered Calcium oxide and an impervious geotextile membrane under the rockpile would protect both the groundwater and the soil, the substitution of crushed limestone and a failure of the membrane has permanently scarred this section of the mine site.

The last quarter century has witnessed the mining company's futile efforts to mitigate this damage through an ever more complex processes to eliminate the heavy metals from the surface waters. To date I have not seen any evidence in any of the yearly reports that there has been any testing of the soils around the trailhead region itself (where the high-level waste rock had been stored and where contaminated soil was loaded onto railroad cars to be shipped out. The fact that there are still excessive levels of Copper and Manganese in the waters of stream C should be evidence enough. They haven't even looked to monitor (or reported) groundwater or soil contamination in this area.

Despite these efforts, the one critical element that was being monitored, Stream C, continues to have elevated levels of both copper and manganese resulting in an impaired waters designation from the US Environmental Protection Agency. Although I recognize the urgency of this situation, I personally do not have the technical expertise to address the impact of these levels, the monitoring protocol (or lack thereof) or the multiple reclamation efforts that FMC has tried to institute over the years. There are far more knowledgeable people than I in this regard who I am sure will be providing testimony to this issue. Solving this ongoing contamination is still the most pressing need of the reclamation process.

My Objectives

Rather, I am going to focus my comments on the irregularities demonstrated in the historic permitting and approval process, the failure of the mining company and their partners to find suitable Industrial uses for this land and other historical and legal issues that need to be addressed before issuing a Certificate of Completion.

A brief summary of my primary objective would be as follows:

The 1998 reclamation plan modification stipulated that the vegetative standards for the 32-acre outlot didn't have to meet the standards for wildlife habitat and non-consumptive passive recreational use "consistent with reclamation of the remainder of the site."

It should be noted, that at the time of the application for the NOC, there was no recognized alternative use identified for the ten acres north of the railroad spur, much less the additional unused acreage within the original 21 acres which is still vacant.

It is my contention that what is identified as the Industrial outlot does not fit that definition by any stretch of the imagination and assuming it is to be maintained according to provisions of the proposed Revised Mining Permit, then all elements of the COC should meet the same standards as applied to the original reclamation plan for the entire mine site.

Timing

First of all, I want to address a very clear-cut issue regarding the failure of the mining company to meet the timing deadline for meeting the criteria for the outlot in the 1998 reclamation plan

revision. The 1998 Reclamation plan decision very specifically required that “If the portion of the site covered by the lease agreement with the LCIDC has not been put to an acceptable alternative use *by the end of 2004*, the site shall be reclaimed in a manner consistent with reclamation of the remainder of the mining site.”

No such use was yet put into place by that date. It wasn't until January 1 ,2005 that even an agreement to rent the land to the Ladysmith Community Economic Development Corporation (LCIDC) at \$1.00/year was signed and not approved by the DNR much less actually put into use until much later.

Some might say that being one day late in signing a lease is not important, but I might ask, hypothetically, were Mandela Barnes or Ron Johnson one day late in filing nomination papers, would their candidacy still be accepted...or more to the point, were a plurality of the litigants challenging the original reclamation plan a day late in voicing their complaints, would we be having this discussion now?

The law is the law, and the mining company failed even to have a firm plan for the outlot by the end of 2004, much less approval and certainly not “..put to an acceptable alternative use” which means actually functioning as that use. Signing a lease is not the same thing as having an acceptable alternate use in place. In fact, the intent of this “acceptable alternative use” is really nothing more than a last-minute attempt by the mining company to find *some* alternate use designation for these most polluted acres and this was the best they could come up with.

What is the acceptable use?

The term acceptable alternative use for an Industrial site is vague at best, but it is instructive to see what other Wisconsin statutes consider industrial activity.:

66.1101 Promotion of industry; industrial sites.

- (3)** Sites purchased for industrial development under this section or under any other authority may be developed by the city, village or town by the installation of utilities and roadways but not by the construction of buildings or structures. The sites may be sold or leased for industrial purposes but only for a fair consideration to be determined by the governing body.

History: [1999 a. 150](#) s. [494](#); Stats. 1999 s. 66.1101.

Wisconsin statute 66.1103 Industrial development provides a pretty extensive list of possible suitable uses for industrial sites:

(k) “Project” and “industrial project” mean any of the following:

1. Assembling, fabricating, manufacturing, mixing or processing facilities for any products of agriculture, forestry, mining or manufacture, even though the products may require further treatment before delivery to the ultimate consumer;
2. Generating, manufacturing, transmission or distributing facilities for electric energy, gas or water;
3. Telecommunications and telegraph facilities;
4. Pollution control facilities, including any connected environmental studies and monitoring systems;
5. Sewage and solid and liquid waste disposal facilities;
6. Printing facilities;
7. Hospital, clinic or nursing home facilities;
- 7m. Animal hospitals and veterinary clinics;
8. Industrial park facilities;
9. Dock, wharf, airport, railroad or mass transit facilities;
10. National or regional headquarters facilities;
11. Recreational facilities, convention centers and trade centers, as well as related hotels, motels or marinas;
12. Facilities to provide service activities, including but not limited to warehousing, storage, distribution, research and data processing, which are directly related to and used in conjunction with a project enumerated in this paragraph having the same principal user;
13. Facilities required for compliance with a lawful order of the U.S. occupational safety and health administration or any similar governmental agency; and
14. In addition to subd. 12., facilities used primarily for the storage or distribution of products described under subd. 1., materials, components or equipment, but not including facilities regularly used for the sale of goods or services to ultimate consumers for personal, family or household purposes.
15. Facilities for compliance with a lawful order of any state or federal governmental agency controlling the use of land with respect to any of the industries, activities or facilities enumerated in this paragraph.
16. Repair or new construction of dry dock facilities, storage facilities or other harbor improvements.
17. Nonresidential facilities including, but not limited to, one or more shopping centers, office buildings, convention or trade centers, hotels, motels or other nonresidential buildings, with respect to which an urban development action grant has been made under 42 USC 5313 as in effect on April 30, 1990.
19. Facilities for research and development activities relating to the production of products described under subd. 1. regardless of whether the use of the facilities is also engaged in the production of one or more of those products.
20. A shopping center, or an office building, convention or trade center, hotel, motel or other nonresidential facility, which is located in or adjacent to a blighted area as defined by s. 66.1105 (2) (ae), 66.1331 (3) (a) or 66.1333 (2m) (b) or in accordance with a redevelopment plan or urban renewal plan adopted under s. 66.1331 (5) or 66.1333 (6).
21. Cable television facilities which provide services only in a municipality having a population of 2,500 or less.
22. Facilities with respect to which is issued either a recovery zone facility bond under 26 USC 1400U-3 or a qualified Midwestem disaster area bond under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, subtitle A, section 702 (d) (intro.) and (1).

And further, [\(2\)\(c\)3.3](#). "Industrial development project" means any site, structure, facility, or undertaking comprising or being connected with or being a part of an industrial, manufacturing, commercial, retail, agribusiness, or service-related enterprise established or to be established by an industrial development agency.

[710.02\(2\)\(e\)\(e\)](#) Manufacturing activities specified under division D of the standard industrial classification manual published by the U.S. printing office, 1972 and later editions.

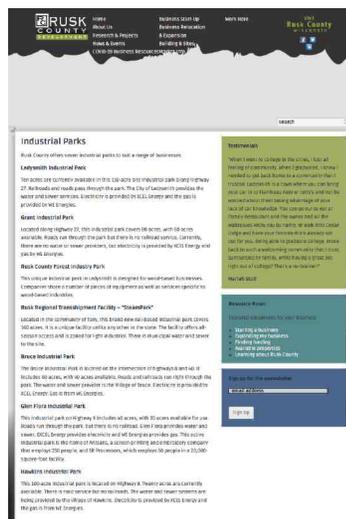
It would be a real stretch to include a 20-acre equestrian trail head within any of these categories or definitions.

Although the DNR correctly (legally) continues to refer to this area as an Industrial Outlot, the Flambeau mining company has long-since replaced that designation with "the Copper Park Business and Recreation Area"

If that is their intention, why isn't this opportunity being promoted? If it is for recreation, then have paths, shelters, bathroom facilities, available water campsites and clear access to the recreational property just to the north. None of this exists. Except for one lone picnic table probably used only by DNR or Xcel employees' lunch break, none of these low-impact recreational facilities available.

If it is supposed to be a business park, then provide attractive building sites with enticing landscaping. Who would want to locate a corporate headquarters or other business venture in the middle of a deteriorating asphalt heat island brownfield in the middle of nowhere?

In fact, Ladysmith and Rusk County apparently have given up on the possibility of using use this site for any of these purposes. Rusk County Development website list seven industrial parks in the County to suit a range of businesses, one if which is right down the road from the Copper Park site, but not The Copper Park is not listed.



**XCEL ENERGY READY SITE
LADYSMITH INDUSTRIAL PARK
LADYSMITH, WISCONSIN**




READY SITE DETAILS	
Location	Site is N of Sarfen Rd and E of Jez Rd. in Ladysmith, WI
Owner	City of Ladysmith, WI Alan Christianson 716-532-2653 achristianson@cityofladysmithwi.com
Site	20.69 acres
Zoning	I-2 Industrial
Asking price	\$21,000 / acre Incentives available
Highway access	3 miles to State Trunk Hwy 27 3.6 miles to Hwy B 60 miles to I-94
Air access	54 miles to Chippewa Valley Regional Airport
Rail access	None

<http://developruskcounty.com/business-relocationexpansion/building-sites/industrial-parks/>

<https://www.transmission.xcelenergy.com/staticfiles/microsites/Economic%20Development/Ladysmith%20Ready%20Site.pdf>

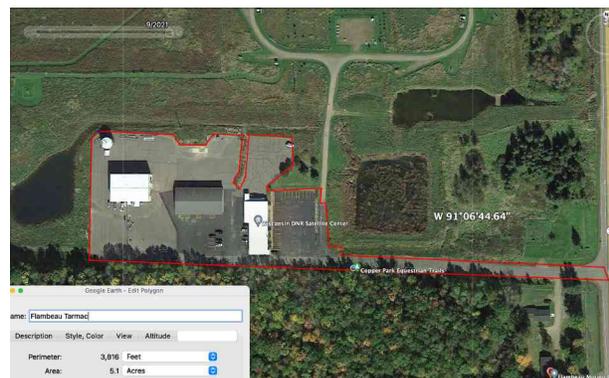
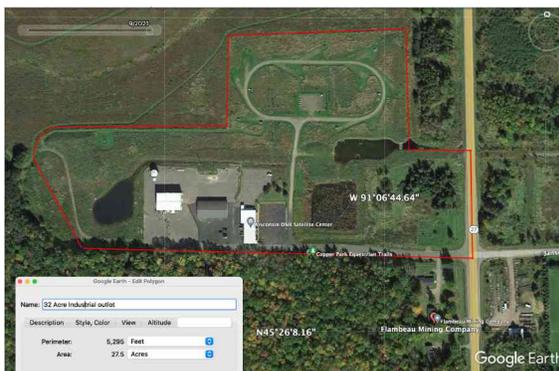
Why are they not interested in developing the rest of the unused acreage at the Copper Park site including the vacant land to the west and north of the Xcel buildings? Could there not be some more productive use of the totally unused 50 parking spots associated with the DNR office or the asphalt-covered acreage to the north?

It should also be noted that Ladysmith Community Industrial Corporation (LCIC) has no web presences other than being listed as a member of a group called Momentum West.org chaired by an executive of Xcel Energy. Other than that, there is no indication of any efforts to promote more meaningful use of the vacant land in the Industrial Outlot.

(<https://www.momentumwest.org/business/regional-chambers-of-commerce/p/item/433/ladysmith-community-industrial-development-corporation>)



Even on the day of a major public hearing, it was only my own car and that of a Rio Tinto employee occupying the lot.



The proposed Revised Mining Permit submitted with the draft COC states:

Flambeau Mining Company shall maintain the mining site to manage surface water runoff and minimize, to the extent practicable, erosion and sedimentation, and shall repair any areas of excessive erosion, perform routine maintenance, and augment, as necessary, any components of the surface water

management system to ensure effective and controlled drainage from the site. Any construction activities affecting the surface water drainage system shall be conducted in compliance with applicable regulatory authorities.

How does over five acres of largely-unused asphalt with zero permeability encourage sound environmental surface water management? Much of the asphalt is already cracked and rapidly deteriorating. What is the mining company's future intention with this area? Repave it? Tear it all out (and will they test the soil beneath it? Or just leave it as an aging urban blight in the middle of a low-impact recreation park?

And then there is question about all of the land to the East of the Xcel building. What is its use? Is that part of the Rider's lease? Is this considered part of the trail head? From what I can tell from the hand drawn sketch on page 2 of the lease between the LCDIC and the City of Ladysmith (FMC Exhibit 44), this is nothing more than a gerrymander attempt to squeeze every remaining square foot of space within the 32-acre outlot into a \$1 per year sub-lease with *someone*. A lease is not the same as an alternative acceptable use.

In fact , in Flambeau Mining's own publication from 2002 "Reclamation Update 2001" (**Exhibit 442**) includes a promotion for the outlot where they report "Sites for Economic development have been set aside on 32 acres of the reclaimed site." That implies that all 32 acres are suitable for industrial economic development. This was never realized, and it wasn't until 2004 that they claimed all unrented property now part of an Equestrian trail head.

The mining company has unilaterally changed its designation from "Industrial Outlot" to "Copper Park Business *and Recreational Area*." They don't even refer to it as such in their Petition for COC. The DNR continues to legally/accurately refer to the site as the Industrial Outlot, but all of the proposed uses other than the existing buildings conform to that of a recreation area. The problem is a recreational area should be reclaimed to standards suitable for "passive recreation and wildlife habitat." This is fine by us but such designation demands higher standards of reclamation than has occurred so far. Who is going to "recreate" in the weed patch to the west of the Xcel warehouse? They can't have it both ways. It is either an environmentally compromised Industrial outlet maintained for economic development for the Rusk County community as originally planned in the 1998 reclamation revision, or it is a recreation area like the rest of the 149 acres of the original mine site with all the higher environmental standards and reclamation requirements as proposed in the original reclamation plan.

Economic development

If one goes back to the compromise decision over the revised reclamation plan and the impending contested case hearing, the only thing the plaintiffs (myself included) agreed to was the preservation of the existing building structures for the economic benefit of the impoverished Rusk County community. Even that goal is more of a contrived arrangement to make the project look good but with little meaningful economic development potential

One building was rented to Xcel Energy (possibly an "industrial activity") and the other was rented (at \$125,000 per year--2007 figures) to the DNR as a substandard and underutilized DNR

Service Center. A sweetheart deal for whom, but clearly bad optics as the regulatory body is beholding to its charge.

Why would the DBR chose this site as a resource center. As I recall, there is no signage on Route 27. It is a substandard pole barn in the middle of an asphalt heat island with no natural elements around it. And why isn't it being used? Almost all other State governmental facilities have reopened since the height of the pandemic. Why not this one?



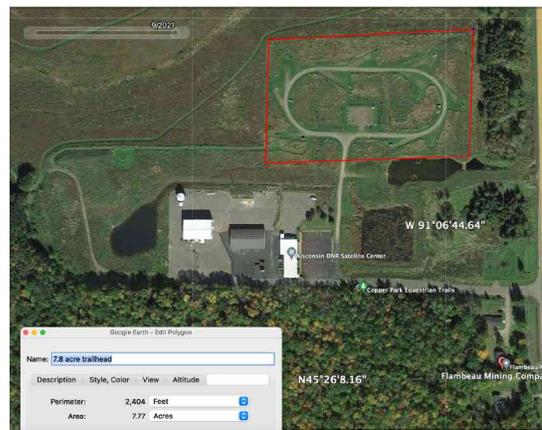
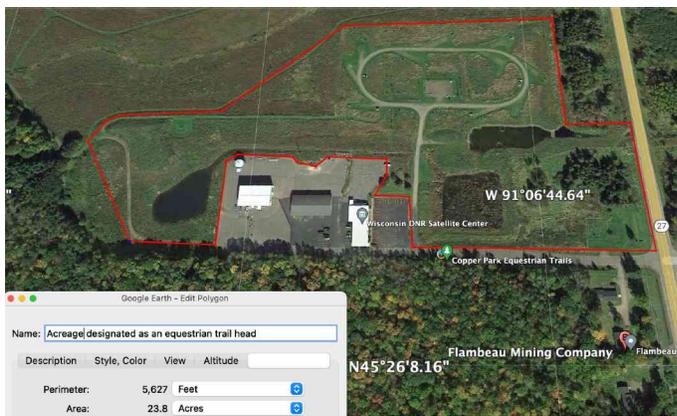
Most DNR service centers have attractive landscaping and some reflection of the beauty of Wisconsin's natural resources. The Flambeau office has asphalt.

In all my visits to this site I have rarely seen any activity at all around the Xcel warehouse. Their large, fenced lot area has never enclosed than one of two transformers or other equipment. Another asphalt zeroscape.

Trailhead

It would be a real stretch to include any trail head within any of the categories of industrial or business activity and there is significant ambiguity as to what actually is counted as the trailhead of Equestrian Park.

That is not to say a trail head is a bad idea but the fact that the only three approved acceptable uses for this property include the DNR station are the Xcel warehouse (including all surrounding unused paved parking lot areas), leaves about 23 gerrymandered acres as a designated equestrian trail head.



The portion of this land has been arbitrarily identified as an Equestrian Park with approximately 7 plus acres of land dedicated as parking lot but somehow now seems to be designated as an acceptable use for all other unused portions of the 32 acres. Given the fact that the 149 acres of the rest of the original the mine site *also* allows horses on its trails, why should this outlot section have lower environmental standards than the rest?

Not a long-term alternative use.

The lease between the LCDIC and the City of Ladysmith for this property can be terminated by either party with only a 1-month notice and the six-foot high chain link fence that was left in place is totally inappropriate for a trailhead use though perhaps useful should the mining company choose to reactivate this mine site at a later date or put the trailhead to another use. The original lease between FMC and the LCIDC from May 12 1997 (**FMC Exhibit 44 pp 10-20**) includes specific stipulation to that effect that the mining company has the right to reclaim this land as part of any future mining projects adjacent to this site. None of this, of course, occurred until *years* after the FMC applied for their NOC.

This alternative "acceptable use" has little economic or social benefit to the local community.

One would assume from the revised reclamation plan that an acceptable alternate use would be of some meaningful benefit to the community. It is true that the Department of Administration pays the LCIDC \$10,517.75 *per month* or \$126,213.00 per year. —utilities included. (Figures provided by Al Christianson). The DNR facilities are approximately 5,000 square feet, so this amounts to about \$ 25 per square foot per year. That's pretty good rent for what is essentially a pole barn. (**Exhibit 426**) I don't know what Xcel pays to or whom, but it is not clear how much the community is benefiting from the equestrian trail. The rent from the Riders' club is \$1 per year.

I have visited the site several numerous times and have seen evidence of perhaps one horse on the trail and only one set of trailer tracks in the parking lot. Not that I don't think a riding trail is a nice addition to a community, but you really don't need 10 acres for a trail head, especially as far away from the trail itself as it is when there is a perfectly suitable space right by the southwest corner of the mine site that would suffice.

There is very little evidence that this tourist draw receives any significant usage or economic benefit to the community. The plans for this area submitted by FMC in 2005 were very different than what was anticipated as an "Industrial Outlot.." Rather than creating an opportunity for direct economic benefit to the community through rental of industrial/business sites as with the DNR and Xcel properties, the new designation as a trail head results in only \$10 per year in direct economic gain and is being justified solely on its potential secondary economic benefits as a tourist draw –much as is the rest of the 149 acres. In fact, the Rusk County website <https://ruskcountywi.com/recreation/> doesn't even include equestrian trail riding as one of the area's attractions.



Fencing

Perhaps the most obvious and egregious disregard for the details of the alternate reclamation plan was this tacit insistence of the mining company to maintain the chain link fence between the outlot and the rest of the mine site. It was clear from the beginning back in the 1970s that the Kennecott Corporation wanted to exploit this site for far more than the \$500,000,000 worth of minerals the got from this little pit. There is good evidence that there are far richer ore deeper into earth and on adjacent land but these can only be accessed thorough more extensive underground mining operation and likely with on-site beneficiation. Even the lease with the LCDIC and the City recognize this desire to mine further and include clauses allowing that access. **(FMC case hearing Exhibit 44).**

With the announcement of the proposed mine reclamation plan modifications in January 1998. The first public mailings to interested parties on this plan conveniently eliminated page 13 that included mention of the fence and other critical issues, but fortunately this was discovered, and questions were raised.

3.4 Miscellaneous and Ancillary Facilities

In addition to the surface reclamation plan adjustments discussed above, Flambeau is proposing to add or leave the following additional miscellaneous ancillary facilities in place.

- A light-duty accessway will be constructed to allow intermittent access to groundwater monitoring wells and vegetation monitoring sites.
- Fencing will be retained around the industrial outlot area and the H&H Haulers area. All other fencing will be removed following reclamation and receipt of the certificate of completion from WDNR.
- The power supply to the mine site will be retained to service the industrial area and to provide power to the vicinity of the west pit wall for use during monitoring.
- To provide access to the topsoil stockpiles, the visitor's center building will be relocated. The visitor's center parking lot will be retained until the end of the summer of 1998, at which time a decision will be made whether to remove it or to keep it in place as parking for access to a potential hiking trail. The final resolution of the parking lot will be discussed with WDNR before any decisions are made.
- The H & H Haulers concrete block building is proposed to be retained by Flambeau as a place to store monitoring and various site maintenance equipment and supplies. This facility will be fenced to enclose a small outlot of approximately 150 x 258' (-0.89 acres).

The major thrust of these proposed reclamation plan changes in 1998 were to leave as much as possible of the mine infrastructure left in place for possible future use should the mine be reopened. This included all the office and industrial buildings, the high-tech water purification plant that would have no other use than metals processing, the electrical system to the west side of the mine site, and the fencing. At that time, we challenged all these issues with the exception of the outbuildings themselves. We could see how these buildings could be of benefit to the economy of Rusk County and didn't want to scuttle that option (as RTZ Board Chairman had threatened at the Rio Tinto AGM). We insisted the rest had to go. Waste Management Director, Suzanne Bangert, in her July 30, 1998 decision agreed with our position that all the fencing should go. The first point listed on the Mining Permit Modifications is "The perimeter fence shall be removed prior to completion of reclamation activities. Site reclamation will not be considered complete until the fence has been removed."

Mining Permit Modification

Flambeau Mining Company is hereby issued a modification, under s. 293.55, Stats., to its Mining Permit for its mining operation in Rusk County. All other provisions of the Mining Permit remain in full force. Under this modification, the proposed changes as outlined in the request from January 8, 1998 and the abovementioned supplement are approved with the following conditions:

1. The perimeter fence shall be removed prior to completion of reclamation activities. Site reclamation will not be considered complete until the fence has been removed.

What isn't there to understand in these very straight forward instructions? She didn't say "some of the fence" or "most of the fence" or "most the fence going around the area to be reclaimed for passive recreation and wildlife habitat." She didn't say "All the fence except around the industrial outlot." She said "The fence shall be removed." And if you don't remove it you don't get your NOC much less your COC. The DNR should *never* have accepted Rio Tinto/Flambeau's notice of completion with this obvious disregard for the rules.

A letter from Larry Lynch dated July 9, 1998 reaffirmed that all fencing would be removed.. (Exhibit 431)



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

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July 9, 1998

20070503

Mr. Tom Wilson
Headwaters Group of Northern Thunder
P.O. Box 124
Fairchild, WI 54741

Dear Mr. Wilson:

Department staff have reviewed the issues detailed in your letter of June 26, 1998 regarding the proposed modifications to the Flambeau Mining Company Reclamation Plan. In addition, as indicated in the enclosed letter from Flambeau Mining Company, the company agrees that it will accept the five items. Based on our review and in light of the company's position, Department staff have determined that the items delineated in your letter could be incorporated into our approval of the modification request.

It is my intent to address the five items through conditions placed on the modification approval rather than requesting that Flambeau amend the request for modification. Specifically, the conditions will provide the following:

1. The perimeter fence will be removed as part of the reclamation activities. Reclamation will not be deemed complete until the fence has been removed. Following completion of reclamation and prior to site certification, it may be necessary to conduct certain maintenance measures if damage by wildlife or human activity becomes a problem, particularly in regard to the woody vegetation. These maintenance activities will be subject to department approval and may include such things as replacement of damaged trees or implementation of various prescriptive measures.
2. The electrical supply line to the west end of the pit area will be removed as part of the reclamation activities.
3. The interior workings of the water treatment plant building will be removed and the discharge pipeline plugged as part of site reclamation. The building will be left in place for possible alternative use.
4. If the site has not been put to an acceptable alternative use by the end of 2004, the site will be reclaimed in a manner consistent with reclamation of the remainder of the mining site. Any demolition waste resulting from such reclamation must be disposed of in a properly licensed solid waste facility.
5. The company will revert to the original maintenance plan for the mining site. This entails controlled burning of grassland vegetation over a ten year period. Burn frequency will be approximately every 3 to 5 years as specified in the approved plan. The company has



Quality Natural Resources Management
Through Excellent Customer Service



The decision from the May 14, 2007. Ruling on Statement of Issues in the Matter of the Application of Flambeau Mining Company for Issuance of a Certificate of Completion Administrative Law Judge Jeffrey Boldt also reaffirmed the need for:

"Removal of all surface structures, unless they are converted to an alternate use." and
"The Reclamation Plan as approved by the Division proposed the following reclamation activities: back filling the pit; removal of surface facilities...."

RULING ON STATEMENT OF ISSUES In the Matter of the Application of Flambeau Mining Company for Issuance of a Certificate of Completion of Reclamation Case No.: IH-07-05 G:\DOCS\GENORDERS\FLAMBEAURULING.JDB.DOC

At various stages during this review process, it has been specifically noted that fences could remain around the H&H building site and the security fence around the Xcel warehouse, but at no time has anybody suggested that a half-mile-long fence between the 149-acre parcel and the 32-acre parcel was an acceptable option.

In fact, as early as 2001 as part of the original Notice of completion, the mining company made the claim that the fencing had been removed.

Conditions 1 and 2, Table 1 requires that the perimeter fence and electrical supply line to the west end of the former pit be removed as prescribed by the WDNR's July 30, 1998 Conditional Modification of the Mining Permit. The perimeter fence and the electrical supply were both removed during Spring 2001. During a routine site inspection on May 22, 2001, WDNR personnel observed that the electrical supply line had been removed and that the perimeter fence substantially removed. Subsequent to the WDNR inspection, the perimeter fence removal was completed during June 2001. During the week of August 20, 2001, WDNR personnel were again on site to observe vegetation monitoring and the condition of the site and had the opportunity to observe that fence removal was complete.

What am I missing here?

Neither the DNR witnesses nor the FMC witnesses at the 2007 COC hearing mentioned anything about any sections of fence to be left in place. In fact, both Ms Murphy and Mr. Hutchison again specifically claim in pre-trial sworn testimony that the fence *had* already been removed.

Jana E. Murphy Pre-Filed Testimony

1 habitat; and seeded and planted hundreds of native plant species to create prairie
2 grasslands, woodlands, and wetlands.
3 Activities since 1998 included seeding, plug planting, tree planting,
4 erosion control, mowing, invasive species control, trail construction, prescribed
5 burning, and continuing maintenance of a pre-mine existing wetland. Further, in
6 partnership with the City of Ladysmith, FMC opened a 4-mile nature trail system
7 for use by the public for non-motorized recreational activities. A copy of a map
8 outlining the trail system is included as Exhibit 16. A river "rest-stop" for
9 picnicking, fishing, and river access was also established as part of the trail
10 system.
11 FMC also decommissioned electrical service to the former pit west wall
12 and removed the perimeter security fence.

.....

19 Q. Was the perimeter fence removed?
20 A. Yes.

.....

22 Q. Do you have a chart or table which lays out these reclamation standards?
23 A. Yes. Table 1 to FMC's Notice of Completion dated September 4, 2001, lays out
24 these standards. It also lists the requirements to remove the perimeter fence and
25 the electrical supply line to the west end of the former pit. A copy of Table 1 is
26 included as Exhibit 58.
27 Q. Have all reclamation requirements been met?
28 A. Yes. All reclamation requirements have been met or exceeded.

James B. Hutchison Pre-filed Testimony

1 *Removal of Project Site Facilities*
2 Q. Have all surface facilities been removed consistent with the original
3 Reclamation Plan and the 1998 Modification?
4 A. Yes. All surface facilities have been removed, except for those approved to
5 remain by way of the 1998 Modification. Further, electrical service to the former
6 pit west wall was decommissioned and the perimeter security fence was removed.
7 Further, an Equestrian Trailhead and access was constructed.

There may be a case for perjury here, but at least we need an explanation from the mining company for making such outrageous claims. We have also not seen any documentation where the FMC somehow got permission from the DNR or some other authority to ignore Ms Bangert's instructions or otherwise modify the reclamation standards but perhaps this was just another case where the DNR chose not to inform parties to the 2007 Stipulation what

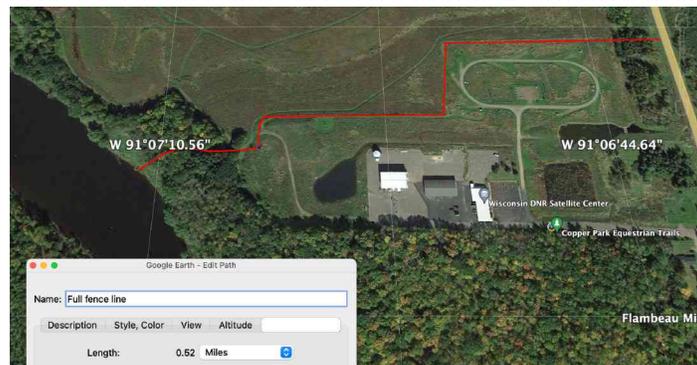
In addition, Wisconsin Mining reclamation law is quite clear on this matter:

293.01(23) (23) "Reclamation" means the process by which an area physically or environmentally affected by prospecting or mining is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability. Reclamation shall provide the greatest feasible protection to the environment and shall include, but is not limited to, the criteria for reclamation set forth in s. [293.13 \(2\) \(c\)](#).

(c) Minimum standards for reclamation of exploration and bulk sampling sites, where appropriate, and for prospecting and mining sites shall conform to s. [293.01 \(23\)](#) and include provision for the following:...

..4. Removal of all surface structures, unless they are converted to an alternate use.

This was reinforced in Administrative Law Judge Jeffrey D. Boldt's decision of 2007 and reiterated in the Stipulation signed by all parties at that time. A half-mile long chain link fence surely qualifies as a surface structure and serves no useful alternative use.



In short, to paraphrase President Ronald Reagan, "Mr. Stausholm, tear down that fence."

The 2001 Notice of Completion to be voided

As per Ms Bangert's order, the fence has to go **before** a valid NOC is accepted, not just a COC granted and certainly not as a stipulation associated with the granting of a COC. In short, Rio Tinto/Flambeau, due to its flagrant disregard for the law and rules of this process and their willingness to perjure themselves before this authority, should be required to remove the fence (and make other corrections) and then, and only then, resubmit a Notice of Completion and let the clock start ticking before a Certificate of Completion can even be considered.

Item 12 of the Findings of Fact distributed with this proposed COC application does not negate the need for the mining company to submit a *valid* NOC indication that they believe the site has been successfully reclaimed:

12. The Stipulation and Order provides that Flambeau Mining Company would not request a Certificate of Completion of Reclamation for the Industrial Outlot for at least three years from the date of the Stipulation and Order. Further, the Stipulation

and Order specifies that Flambeau Mining Company *need not* file a separate notice of completion of reclamation for the Industrial Outlot, finding that the notice of completion of reclamation submitted by Flambeau Mining Company in 2001 covered the Industrial Outlot. (Emphasis added)

However, as has been already shown, FMC failed to meet the timeline criteria established in the 1998 permit revision such that the original 2001 notice of completion was then and *still* is invalid, despite the DNR's assumption that a 20-acre trailhead meets the criteria for an acceptable use for an Industrial outlot and its failure to note the tardiness of the proposal. Item 12 above indicates that the company need not file a separate notice, but if they expect their [present application to be approved, they should modify their original NOC to meet the standards applicable to their COC request.

Significant additional reclamation work continued long past the NOC

The DNR acknowledged that not all the required reclamation work in this area had been done at the time of the acceptance of the NOC. A letter from Larry Lynch to Jana Murphy (**FMC Exhibit 40**), February 18, 2005 (over three years after approving the NOC and after the 2004 plan modification deadline for having an alternative use in place but five months before the trailhead was approved) regarding the outlot site north of the railroad spur last paragraph clearly indicates that as of that time, there still remained reclamation work to be done in that area:

“Upon receipt of the requested documents and subsequent approval of the proposed construction activities the Department will consider the entire industrial outlot to be used for acceptable alternate purposes. As such Flambeau will not be required to conduct any additional reclamation work on the outlot area as contemplated in the July 30, 1998 modification approval”

This was before any significant regrading or planting had occurred as stipulated in the DNR's approved plans for this portion of the outlot and over four years since the DNR accepted FMC Notice of Completed reclamation.

As recently as November 2005 Foth and Van Dyke presented plans for removing contaminated soil for purposes of hauling off to an approved waste facility (**Exhibit 439**) This requirement was there in the original reclamation plan for the entire mine site from the very beginning. Just because the mining company did not remove this contaminated soil in a timely manner does not change this activity from reclamation to remediation. The copper was there in the soil and the ballast from the time the mine closed although it was supposed to be removed as part of the reclamation process. To simply to call these activities “remediation” instead of reclamation or to say that it is exempt from the all-encompassing requirements of the reclamation plan just because the land has been designated an alternate use from a wildlife habitat is totally unacceptable and makes the 2001 Notice of Completion a farce.

Since 2001, the mining company has made substantial changes to the contours, drainage patterns, filtration and drainage basins and almost every aspect of the outlot reclamation process. How can they possibly claim that a Notice of Completion describing a far different conditions and mitigation strategy is still valid today and they don't need to submit a new NOC for DNR approval? A Notice of Completion is a statement by the mining company that they believe they have met all the criteria of the applicable mining permit. The DNR then has a set

period of years to monitor the site to see if the conditions from the reclamation attempt are effective and can be expected to remain so in perpetuity. Obviously, the historical record shows that the conditions at the time of the NOC failed to meet monitoring standards and the company had to time-and-time-again go in and modify their installations and even their broad strategy on how to protect the surface water runoff from the outlot. The mining company was grossly premature in 2001 in claiming the site was successfully reclaimed. If they believe now that they have finally stabilized the site(though we don't) then they can provide a new Notice of Completion, but you can't claim a job is complete when you still have to go back and change your entire plan and mitigation processes.

There have been numerous other alterations since the 2007 hearing for which we were not noticed. One obvious example is the culvert under the main access road. As late as October 2009, this galvanized culvert was badly rusted out from the acid mine drainage coming from the site of the high level waste rock storage site (now the equestrian trail head).



Since that time the mining company had the prudence to replace these galvanized materials with non-rusting plastic. As far as I can find, we never received notice of this change either before or after the changeout.

The mine site isn't reclaimed until the COC says its reclaimed

Just as an aside, one of our greatest peeves with regard to the whole process is how the Flambeau Mining Company and their parent companies consistently refer to this project as "The Reclaimed Flambeau Mine" and use this terminology to promote the falsehood that the entire project has been declare environmentally sound and an example of successful sulfide mining. Since they received a COC for a portion of the mine site in 2007, they could legitimately claim the mine to be *partially* reclaimed, but until they receive their final COC for the entire project, it is still a work in progress.

What is even more egregious is that our own DNR has followed in lockstep with the mining company as it too refers to this entire project as the "Reclaimed Flambeau Mine," even on the webpages announcing this hearing and COC process.

» TOPIC » MINES

RECLAIMED FLAMBEAU MINE

The department has received Flambeau Mining Company's petition for a certificate of completion of reclamation for the remaining 32 acres of the permitted mine site, referred to as the industrial outlot. Additional information regarding the industrial outlot, the petition for certification, the notice of public hearing, the draft revised mining permit and other related materials are available under the 'Industrial Outlot' tab below.

[Register for the July 6 virtual public hearing](#)

While there are other examples of successfully operated and reclaimed metallic mines in Wisconsin, the Flambeau Mine near Ladysmith in Rusk County is the only example of a metallic mine that was permitted, constructed, operated and reclaimed under the state's existing regulatory framework.

The open-pit, copper-gold mine began operations in July 1991, and reclamation activities were substantially completed by the end of 1999. As specified in the Reclamation Plan and Mining Permit, the open-pit was backfilled with waste rock and other materials removed during the mining process. The backfilling process involved blending the stockpiled waste rock with a prescribed amount of limestone. Limestone, because of its neutralization capacity, was used to neutralize any acidity that developed while the rock was stored in the waste facility and also to minimize the potential for the development of acid conditions prior to reflooding. Once groundwater saturated the backfilled

Mining in Wisconsin	
Metallic Mining/Ferrous	
Metallic Mining/Non-ferrous	
Nonmetallic Mining	
Additional Resources	
Metallic Mining Permitting Process	
Metallic Mining Publications and Regulations	
Recent and Potential Metallic Mining Projects in Wisconsin	
Reclaimed Flambeau Mine	

A mine is not reclaimed until it has been settled by the authorities in charge of such decisions and have officially declared it complete and issued a certificate accordingly. To promote the entire project as predetermined to be complete and fully reclaimed at this time shows an incredible lack of sensitivity and a great deal of bias on the part of the agency.

Further examples of bias or incompetence from the DNR

This perception of bias was reflected in the May 14, 2007. RULING ON STATEMENT OF ISSUES In the Matter of the Application of Flambeau Mining Company for Issuance of a Certificate of Completion when Administrative Law Judge Boldt declared:

In its response brief, the DNR also agreed with Mr. Wilson and the Allied objectors that the following issues are properly a part of this proceeding:

1. Whether there have been modifications to the Reclamation Plan without notice to interested parties, and, if so, the legal effect? (DNR Response Brief, p. 9)

RULING ON STATEMENT OF ISSUES In the Matter of the Application of Flambeau Mining Company for Issuance of a Certificate of Completion of Reclamation Case No.: IH-07-05 G:\DOCS\GENORDERS\FLAMBEAURULING.JDB.DOC

My testimony from 2007 outlines many of these instances and I won't reiterate them here (they are in the record as a supporting document) but I would like to make it clear that this failure to communicate to interested parties has continued to this day.

The Flambeau Petition for a Certificate of Completion from November 4, 2021 was date stamped in the DNR office on November 8th, but it was not received and processed at my local post office until February 9, 2022. One could possibly blame the USPS, or it could be the envelope was never put in the DNR outgoing mail basket until three months after processing.

In addition, communication with parties of interest was made solely with hard copy mailings with no electronic communication. Searching for electronic versions of these texts at the DNR website included an image of links to relevant support documents, but no clickable links. The one access point available led one to a massive historical archive where I found little success

accessing the referenced texts. Admittedly, once I gave up on my own search, I contacted Greg Pils directly and he graciously sent me the electronic versions I sought.

Even this hearing itself was a model of deception. Although the hearing was publicly noticed as an "informational hearing" lasting two hours, the DNR provided no new information about the project that wasn't in the notice and no one from the mining company presented anything. As it turns out, there were just four individuals indicating they wished to testify --all opposed to the Certificate of Completion-- (3 online, and just myself in person at the hearing site at DNR service center in Ladysmith). When the hearing opened, the DNR staff host in Madison announced that each of us who wished to testify would have n only three minutes to do so...strictly enforced. I was dumbfounded. The meeting was scheduled for 4:00 to 6:00 pm, but the hearing was announced as "over" before 4:30. Each of the four of us could have spoken for 20 minutes and we would still have finished before 6:00. I neither had the opportunity to speak meaningfully and nor did I gain any relevant information from either the DNR or any other parties.

It should be noted that the DNR's responsibility to keep us informed is far greater than that of just general public notification of official actions. The May 31, 2007 stipulation and order signed by all parties representing FMC, the DNR and ourselves states very clearly:

When FMC does apply for this COC, the WDNR shall notify the parties in writing within 10 days. FMC will provide copies of the January list of anticipated reclamation activities, the mid-summer progress report, the annual fall reclamation report, and copies of all correspondence between FMC and WDNR regarding work at the Industrial Outlot, to the signatories to this agreement or their designated representatives.

Other than once-a-year Progress reports and the above-mentioned Petition for Certification of Completion, Notice of hearing, and Findings of fact and proposed Mining Permit revision, I don't recall seeing any other communications on this project.

It should be noted, most of these objections and documentation of historical facts in the case are not new to this testimony. The 2007 agreement and stipulation ended the COC hearing for the Industrial outlet before our objections to the NOC could be formally presented to the hearing examiner, but almost all of this information was readily available to the mining company and the DNR as part of our pre-filed sworn testimony, and both the mining company and the DNR knew our objections even though they were not adjudicated at that time.

Just because the mining company doesn't *have* to resubmit an NOC, it should have been obvious that their original NOC was insufficient, would be challenged and it would have been prudent for them to recognize the deficiencies of the earlier filing and make appropriate modifications to submit a new NOC based on those modifications that would pass muster in a timely manner for their intended request for a Certificate of Completion.

Issues with the fence

The fence serves no positive purpose whatsoever in its present use. It is wide open at either end (to people, not horses) so it provides no security. The Xcel building has its own modest security fence which is appropriate. The fence is unsightly. It unnecessarily restricts the natural

movement of wildlife through this so-called “wildlife habitat”. I’ve never seen a DNR headquarters anywhere else in the state that is sequestered behind a chain link fence. Do they think the horses are going to break loose and ruin their prairie or are they afraid some deer might eat the crabgrass by their front door??

From an environmental perspective, leaving this fence in place is a major disruption to wildlife habitat movement. Fragmentation of habitat is universally near the top of all lists of critical challenges to endangered species and general health of the environment.



What's more, at the western edge of the Industrial Outlet where the access trail from the trailhead to both wooded bridle path to the south and the rest of the reclaimed mine site equestrian trails is gated off with a padlocked gate with only a narrow (30"?) pedestrian pathway to access either trail beyond the outlet. The few trampled wildflowers in the pedestrian access were my own, so it is obvious that no one other than myself has passed this way in some time, and certainly it is not an equestrian access point.



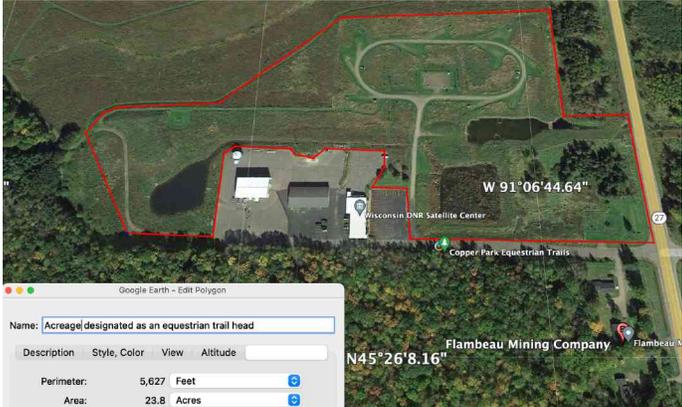
To what possible end does the DNR approve this fence that does nothing but fragment the ecosystem and isolate the hiking/equestrian trails in the so-called reclaimed mine pit from access from the trail head?

Is a trail head and bridle path an acceptable alternative use for an industrial enterprise zone?

I assume there is no statutory definition for “acceptable alternative use” for 20+ acres of open land, but it might be instructive to look at other DNR operated trailheads to see what might be a more typical design. **(Exhibit 425 2007 hearing testimony)**. At the 400 state park equestrian

trail head outside of Wonewoc Wisconsin, the parking lot measures approximately 50 by 100 feet and the entire trailhead area is *maybe* one acre including separate toilet facilities, hitching rail, watering trough and shade trees, none of which exist at the Flambeau facilities.

The sublease from the LCIDC to the City of Ladysmith (**FMC Exhibit 44 pp. 1-8**) was originally for 10 acres (at an annual rent of \$1.00), but the initial plan submitted to the DNR on May 19, 2004 (**FMC Exhibit 41**), the trailhead parking lot measured only 240 x 240 ft, about 3/4 of an acre. But somehow before the DNR got around to accepting the application for a COC, this trailhead expanded to fill every corner of the remaining acreage not already defined as having been put to an acceptable alternative use.



On July 6, 2022 before the hearing on the COC, I spent an hour or so walking the site. I must admit, at least superficially, the site looks far better than it did in 2007...natural vegetation can hide many sins. What struck me at first, however, was how little the equestrian trail head seemed to be used. I saw no signs of recent truck or trailer tracks. Although this is the height of the tourist season and right after a long weekend, I saw very little evidence of recent activity. Although the manure bins had larger accumulation of material than previously, it appeared that was the case because they hadn't been cleaned out probably since 2007.



There are now hitching posts but I could see no source of water. There is a kiosk with posted trail maps and other information, but no available paper trail maps.

Although not technically part of the 32-acre outlot, I think it is useful to look at the bridal path itself. (It is within the 1,200 ft compliance boundary for the mine itself). Also, an appraisal of its applicability and historic usage says a lot about the economic and social validity of this vast area being designated as a trailhead.

As has been said, it appears only to be accessible from the main 149-acre mine site reclamation network, but not the official trail head. On July 6, perhaps the height of the season when one might expect to see trail use, I saw minimal signs of rider activity for only maybe a hundred yards down the red trail from station # 2.



Although there were a few hoof prints and manure droppings near station #3 the trail had not been cleared recently and it seemed obvious that the riders determined it was unpleasant and turned around and went back. Particularly for folks who are concerned about tick exposure, the entire trail is decidedly uninviting.



It's probably just as well, because right near this point, I also identified a fairly healthy stand of wild parsnip growing right along the trail that would have irritated both horses and riders (if horses are susceptible ÷).

As I continued my traverse around the perimeter of the trail, I saw *no* further signs of human or equine presence other than a lone Bush Lite beer bottle. I wish it were a sign of general environmental awareness of the trail users, but I am afraid it is really just another sign of inactivity.



The picnic table near the river appeared not to have been used all season and certainly wasn't inviting.

Most disturbing of all was when bushwacking up along Stream C, perhaps 100 yards from the outlot, I came upon a discarded auto tire that looks like it has been moldering there for many years. Obviously, nobody is monitoring this stream too closely.



Approved uses in the 2022 proposed Revised Mining Permit

Perhaps most telling element for my argument is item J. of the 2022 proposed Decision and Revised Mining Permit:

- j. The approved land uses for the site are: wildlife habitat; light recreation including, but not limited to, hiking and equestrian trails; an equestrian trailhead; limited-use access roads and parking areas; and occupancy and use of the existing buildings.

The goals of promoting wildlife habitat light recreation including, but not limited to, hiking and equestrian trails a trail head and parking areas are *not* industrial activities. These are, in fact, the same approved land uses that are allowed in the rest of the 149-acre mine site which had far more stringent vegetative requirements and environmental monitoring as was documented by the mining company in Jana Murphey's 2001 Notice of Completion.

Flambeau has met all of the requirements for the NOC. The surface reclamation of the reclaimed mine site has been a success as evidenced by the extensive monitoring of the site as presented in Flambeau's Annual Reclamation Reports. The 2000 Annual Reclamation Report submitted to the WDNR in November 2000 included monitoring data supporting Flambeau's NOC. The 149-acre area reclaimed for wildlife habitat and passive recreation exceeds the minimum requirements for cover, diversity, density and tree species survival. Collection of biomass samples for NOC has been completed. The conditions of the 1998 approval of modification of the mining permit have been met.

As part of the revised mining permit process, the 32-acre Industrial Outlet was exempted from these reclamation requirements so that it could be put to industrial purposes with important economic benefit for the local community. Other than the financial contribution of taxpayer money from the very agency that is supposed to be monitoring the success of this project and whatever Xcel is paying for their warehouse, this is an exceedingly low-yield industrial enterprise.

If the primary usage of the land is supposed to be identical with that of the rest of the original mine site, then both areas should be required to meet the same environmental safeguards and reclamation standards. When the twelve of us rescinded our request for a contested state hearing in 1998 it was assumed that the full 32 acres would be put to meaningful economic benefit the people of Rusk County. If it is now reverting back to wildlife habitat and passive recreation, then the reclamation standards should also revert back to that of the original reclamation plan for the entire mine site.

Reclamation oversight

And finally, a critical question regarding the acceptance of the proposed new mining permit is whether the DNR has either the personnel, the resources, or the will to adequately monitor this site once a COC has been granted. I must admit I have trouble wading through the details of the Revised Mining Permit and can't say for sure whether the reclamation bond proposed is sufficient or not. It does seem as though the permit places a great deal of responsibility to assure the compliance of monitoring standards. I would like, however, to share one last example outside of this mine site:

Down in my part of the world, in Mineral Point, there is a project called the Brewery Creek Water Quality Cleanup Project. **(Exhibit 446 from contested hearing testimony)**. This is an old sulfide zinc mine that was operated by the Mineral Point Mining Company that went bankrupt during the great depression. In the early 1990s the DNR spent \$900,000 Wisconsin tax dollars (about \$1,850,000 today) to remediate about 180,000 cubic yards of mine wastes (less than 4% Flambeau Mine backfill material). In 1995, they wrote a report extolling their success and promised they would go back and check on how it is doing. The DNR website indicated no further monitoring **(Exhibit 447 2007 hearing testimony)** and DNR Staff confirmed this.

I visited that site on May 14, 2007 and observed lots of scarring and erosion of the ground cover on the waste pile, considerable vegetative damage, brilliant orange and multicolor discoloration of the run-off water implying both the presence iron bacteria and apparent acid

mine drainage and mineral leachate. I measured PH as low as 2 using pharmaceutical-grade litmus paper strips. **(Photos at Exhibit 448 & 449 2007 hearing testimony)** The lock on the monitoring well was rusted solid and didn't look like it had been touched in years.

Whatever comes out of this Certificate of Completion process we are now engaged in, we must make sure that the DNR has the financial resources, the manpower, the authority and the access to all critical opportunities to assure extensive compliance zone perimeter groundwater at all relevant depths, surface water quality, downstream fish, invertebrate and endangered species, surface and sub soils irrespective of where on the former mine site they are located and continued monitoring of all vegetative cover. And most importantly, they must have the *will* to enforce these standards.

Conclusion

Given the evidence submitted here I would propose the following actions by the DNR on this COC proposal:

- Deny the application for a Certificate of Completion
- Void the Notice of Completion from 2001 as being insufficient, not reflecting either the historic or present conditions, and misrepresenting the facts of the reclamation process
- Require the Mining Company to remove the chain-link fence
- Tear up and dispose of all unnecessary asphalt
- Test all soil locations and dispose of any contaminated material to an approved landfill
- Revert the temporary mining reclamation plan to the environmental and vegetative standards under which the entire mine site was originally permitted with no further Industrial/business development beyond the present buildings
- Consider finding a new more suitable Service Center for the benefit of both its employees and the public.
- Reduce the land allocated for the equestrian trailhead to maybe five acres.
- Develop the rest of the 32 acres for light recreation with attention to habitat restoration.
- Maintain the present reclamation bond or increase it if necessary to guarantee the State has sufficient resources for future remediation
- Continue and expand existing environmental monitoring of both ground and surface waters, comprehensive soil sampling, vegetative success rates and other parameters according to the new reclamation plan especially with regard to stream C.
- When all the above conditions have been fully met, require the mining company to submit a new Notice of Completion and begin this monitoring and approval process anew.