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Subject: Second submission for October 5th City Council Appeal
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Friends of Pig's Eye Lake Park – Tom Dimond

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The stated purpose for the zoning code includes: To promote and to protect the public health, safety, water resources, improve water quality, and protect all areas of the city from harmful encroachment by incompatible uses.

Environmental Justice for the Eastside means an end to using our Glacial Lake Park as a place to dump 80 million gallons of PFAS laden waste.

On Feb. 20, 2018, the state of Minnesota settled its lawsuit against the 3M Company in return for a settlement of \$850 million. Minnesota's attorney general sued 3M in 2010 alleging that the company's production of chemicals known as PFAS had damaged drinking water and natural resources.

PFAS and other toxins have been dumped into our Glacial Lake and wetlands.

Tests of bird eggs in the Heron Rookery Scientific and Natural Area (SNA) have found some of the highest pollutant levels found in the world. The birds feed in the lake and wetland. Carp PFOS levels of 10.2.

2022 Actions

The City Council and Mayor unanimously supported cleanup and natural resource restoration of Pig's Eye.

The Governor, MN Senate, and House of Representatives approved \$800,000 to plan the cleanup of PFAS and other waste and restoration of natural habitat and safe water at Pig's Eye.

June 15, 2022, the Federal EPA Advisory on PFAS dramatically reduced what could be considered a safe level for PFAS to essentially zero. PFOA limited to 0.004 parts per trillion, PFOS limited to 0.02 parts per trillion. PFOS being discharged into the lake averages 9.1 to 28.4. The PFOS pollutant discharged into the lake is 455 to 1,420 times higher than the EPA Advisory calls for.

August 4, 2022, Highwood residents received a letter from the MPCA notifying us they would be installing whole house filtration systems to get PFAS out of our water. They will be installed and maintained for 30 years as part of the 3M cleanup settlement. Discharged PFAS easily gets into our drinking water.

We have made great progress towards pollutant cleanup and natural resource restoration. However, the Corps has contracted to use a pipeline to discharge 80 million gallons of PFAS pollutant into our lake and ground water.

MN sued 3M for \$850 million because they discharged PFAS into our water.

Now the Corps is discharging PFAS into our water

**Who is going to pay the price for this pollution with loss of their health?
What will be the public cost for cleanup of this PFAS discharge?**

MN's PFAS Blue Print calls for prevention of PFAS pollution whenever possible.

Why is PFAS being shipped upriver from the most polluted section of the river in MN. This section includes the outfall of the Chemolite Plant where PFAS was produced?

MPCA/DNR website – Minnesota's PFAS Blue Print

Called "forever chemicals," they do not break down and can bioaccumulate in both humans and other living organisms.

Scientists and environmental regulators have reached an overwhelming consensus that significant actions are needed to prevent adverse impacts from PFAS. While management and mitigation actions have significant positive effects, ultimately Minnesota cannot clean our way

out of the PFAS problem. Instead, the pollution must be prevented from the outset through restrictions or bans on PFAS

Minnesota's strategy for PFAS

Prevent PFAS pollution wherever possible

Manage PFAS pollution when prevention is not feasible, or pollution has already occurred

Clean up PFAS pollution at contaminated sites

Pig's Eye Lake PFAS testing averaged 1.1 (6 samples) and 2.9 (12 samples). The maximum levels were 1.7 (20 samples) and 4.5 (6 samples). The PFAS material being shipped upriver averaged 9.1 and 28.4 near the 3M discharge and maximum levels of 80.2.

PFAS being discharged into the lake have 3 to 25 times higher pollution levels than currently are in the lake.

Sec. 60.109. - Other city, local, regional, state and federal regulations.

Conflicting regulations. Whenever any provision of this code conflicts with any other provision of this code or any other law or ordinance, the more restrictive provision shall govern, except as otherwise specifically provided.

In addition to the requirements of this zoning code, all uses, and development shall comply with all other applicable city, local, regional, state and federal laws and regulations.

Sec. 60.205. - D. Development (river corridor district only). The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.

Sec. 61.402. - Site plan review by the planning commission.

Plan to be submitted. A site plan shall be submitted to and approved by the planning commission before a permit is issued for grading or the

erection or enlargement of any building except one- and two-family dwellings, and including the following: (9) Any development in the river corridor critical area or in the floodplain district except one- and two-family dwellings which do not affect slopes of twelve (12) percent or greater.

MN Stat. 103G.245 WORK IN PUBLIC WATERS.

Subd. 6. Conforming with water and related land resource management plans.

A public-waters-work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Saint Paul's Zoning Code requires a public review and determination by the Planning Commission. It also informs the State whether fill and discharge of pollutant, into the Glacial Lake conforms to State and local water and related land resources management plans? The Planning

Commission has never reviewed and answered if discharge of pollutant into the lake conforms to the Comprehensive Plan, Critical Area and floodplain zoning.

Subd. 8. Excavation in public waters.

Public-waters-work permits for projects that involve excavation in the beds of public waters **may be granted only if:**

(1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;

(2) the work under the permit is consistent with the shoreland zoning ordinance;

MN Stat. 103G.005 DEFINITIONS.

Subd. 14. Ordinary high-water level.

"Ordinary high-water level" means the boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(1) the ordinary high-water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high-water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages, the ordinary high-water level is the operating elevation of the normal summer pool.

DNR records do not show an OHWL for Pig's Eye Lake. DNR staff tell me there is no record because the OHWL of Pig's Eye Lake has never

been delineated. **The City of Saint Paul can resolve the OHWL question by requesting the DNR Commissioner to delineate the OHWL.** The City needs to know the extent of its authority.

686.8 feet is the OHWL used for years based on the reservoir normal summer pool. The DNR hydrologist recommended substituting the Mississippi River MOU OHWL. There is no basis in State Statute for using top of bank measurement of a river as the OHWL for a lake. The MOU states that it only applies to the navigable portions of the Minnesota, Mississippi, and Saint Croix Rivers.

MN Stat. 103G.401 APPLICATION TO ESTABLISH LAKE LEVELS.

(a) Applications for authority to establish and maintain levels of public waters and **applications to establish the natural ordinary high-water level of public waters may be made to the commissioner by a public body or authority or by a majority of the riparian owners on the public waters.**

(c) **When establishing an ordinary high-water level, the commissioner must provide written or electronic notice of the order to the local units of government where the public water is located.**

6115.0030 DEFINITIONS.

I. "Shoreline" means:

- (1) for water bodies other than watercourses, the lateral measurement along the contour of the ordinary high water mark; and
- (2) for watercourses, the top of the bank of the channel (coincides with ordinary high water mark as defined in Minnesota Statutes, section 103G.005, subdivision 14).

State Statute and Rules clearly show that water bodies (Pig's Eye Lake) OHWL measurements are different than watercourses (Mississippi River).

6115.0190 FILLING INTO PUBLIC WATERS.

Subpart 1. **Goals.** It is the goal of the department to limit the placement of any fill material into public waters in order to:

- A. minimize encroachment, change, or damage to the environment;
- B. regulate the quantity and quality of fill and the purposes for which filling may be allowed based upon the capabilities of the waters to assimilate the material; and
- C. maintain consistency with floodplain, shoreland, and wild and scenic rivers management standards and ordinances.

Subp. 5. **Permits required.**

Permits are required for the placement of fill in public waters, except as provided under subparts 3 and 4, and a project must meet all of the following requirements.

- A. the project does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;
- B. the fill consists of clean inorganic material that is free of pollutants and nutrients;**

I. the proposed filling is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.