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time. Preventing entry to the buildings will require replacement and repair of loose and missing siding on the lower parts of the buildings as well as securing all doors and windows. If the buildings are not removed in the reasonably near future, compliance with other orders to repair the buildings may be required. This decision will be made by the Building Inspection Division.

On November 12, 2008, Mr. Couture and two local contractors met with Building Inspection staff on the Royster-Clark site to review required improvements to secure the fence and buildings. At the time of this writing, Planning Division staff understands from the Inspection Division that a contractor hired by Agrium intends to begin work on the site during the mid-week of November 24, 2008. The applicant has indicated that all repairs to the fence should be complete by December 1, and that that building repairs and graffiti removal will be underway. At this time it is unclear whether the Director of the Building Inspection Division will be able to conclude that satisfactory progress is being made to address the outstanding building orders.

Neither the revised proposal for addressing potential groundwater contamination from exposing the building interiors to rain and snow, or the need to properly secure the site and buildings and remove graffiti, significantly affect the Planning Division's conclusions regarding the proposed partial demolition. The additional information generated in response to DATCP, DNR and City conditions reinforces the need to take the greatest possible care before, during and after the demolition, but the question of whether or not the benefits of a partial demolition are sufficient to offset the potential negatives remains a judgment call.

### **RECOMMENDATION**

The Planning Division recommendation is unchanged from the October 28, 2008 staff report prepared for the November 3, 2008 Plan Commission meeting, but several of the conditions of approval have been revised to reflect newer information. As with all conditions of approval, it is the agencies cited that must determine that the conditions have been met. It is important to note that City as well as State agencies must all find that a condition has been met when several agencies are cited. As part of meeting the conditions of approval, the applicant and appropriate review staff may agree on the details of how the condition is met, and may consider modifications to the specifics of the stated condition that substantially meet the intent of the condition.

If, after considering the comments of reviewing agencies and other materials in the Plan Commission packet, and hearing the testimony at the public hearing, the Plan Commission concludes that the concerns expressed regarding the proposed partial demolition on the Royster-Clark site can be satisfactorily addressed, the Planning Division recommends that the Plan Commission find that the demolition standards can be met and **approve** requested partial demolition of the buildings and other above-grade structures located at 902 Dempsey Road and 510 Cottage Grove Road, subject to input at the public hearing and the following conditions:

1. Comments from reviewing agencies
2. Final demolition site plans that clearly indicate existing and post-demolition conditions shall be submitted for Planning Division staff approval prior to the issuance of a demolition permit. These plans must reflect the intent to remove all elevated non-concrete structures not specified in the permit application that would create a potential safety hazard if they

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remain on the site. These structures include, but may not be limited to:

- The large propane tank located near the main granulation building
- The overhead conveyor apparatus located between the granulation building and the storage domes

**Agrium Reply: Agrium has confirmed that the above structures will be removed as part of the demolition.**

3. Prior to the issuance of a demolition permit, the applicant shall prepare a detailed plan for review by Wisconsin Department of Natural Resources staff ensuring that the demolition process will meet all applicable air quality regulations and standards related to asbestos, lead paint, and fertilizer residues that may be present in the buildings. At least ten days prior to any demolition activity, the applicant shall submit to the Wisconsin DNR staff a Notification of Demolition and/or Renovation form (Form 4500-113). This form can be found at the following link: <http://dnr.wi.gov/air/compenf/asbestos/ashes8a.htm>
4. Prior to issuance of a demolition permit, the applicant shall provide access to the site and buildings to Wisconsin Department of Natural Resources Air Management Program staff so that they may assess the presence and location of asbestos, fertilizer dusts, and buildup of pollutants in the smoke stack and ensure that all applicable regulations related to air and solid waste can be met during demolition.
5. The applicant shall submit a specific work plan to address the concerns identified by the Wisconsin Department of Agriculture, Trade and Consumer Protection and the Wisconsin Department of Natural Resources regarding the potential percolation of water through potentially contaminated soils beneath the existing structures. The work plan shall include, but may not be limited to, one or more of the following approaches:
  - A. The applicant shall complete the soil borings and testing of soil beneath all building floors that will be exposed to the weather by the demolition as required to determine the exact location and extent of any contamination beneath the buildings. This is the preferred option, as it would make the future full remediation of the site more efficient, and would also address Wisconsin Department of Natural Resources requirements to investigate the potential for contamination beneath existing structures before the State would assume liability for the site.
    - i. Prior to beginning the soil borings, the applicant must first submit a soil boring work plan and timeline for approval by Wisconsin Department of Natural Resources and Wisconsin Department of Agriculture, Trade and Consumer Protection staff.
    - ii. Where it is determined that no contamination (or an acceptable level of contamination) exists beneath the building, those floors may be left unprotected from the weather following the demolition of the building.
    - iii. For buildings beneath which unacceptable levels of contamination are found in the soils, the applicant shall, with the approval of the Wisconsin Department of Agriculture, Trade and Consumer Protection and Wisconsin Department of

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Natural Resources, either:

- a. Remove all, or necessary portions of, the concrete building floors and all contaminated soil from the building site, fill the area with clean soil, and seed the area. This is the preferred option. Or
  - b. The applicant shall identify and effectively seal all cracks and fissures in concrete building floors through which rain water or melting snow could enter the soil beneath the building to ensure that infiltration cannot occur.
- B. If the location and extent of soil contamination under existing buildings remains unknown, the applicant shall identify and effectively seal all cracks and fissures in the concrete building floors of all buildings to be demolished beneath which any extent of soil contamination is either known to exist or reasonably-suspected based on available information.
- C. The applicant may propose an acceptable alternative strategy to eliminate the potential that water may percolate through building floors and carry contaminants present in the soil beneath deeper toward the groundwater.

The work plan shall include a specific schedule to ensure that there will be a minimum time lag during which building floors will be exposed to the weather, but effective steps as described above to prevent water infiltration have not been implemented. If partial demolition is required in order to provide access to building interiors for soil boring equipment, it is recommended that this demolition not include portions of the roof to the extent feasible.

The work plan shall be approved by staff of the City Planning Division and Building Inspection Division, the Wisconsin Department of Agriculture, Trade and Consumer Protection, and the Wisconsin Department of Natural Resources prior to the issuance of a demolition permit.

6. Regardless of the approaches selected to meet Condition No. 5 as applied to the other building floors, soil conditions beneath the large below-grade pit in the main building shall be thoroughly tested to determine the extent of possible contamination. If there is soil contamination beneath or in near proximity to the pit, the proposed solution of cracking the concrete floor of the pit to allow water to drain out shall not be implemented; and in no case shall water be allowed to accumulate in the pit. The pit is an attractive nuisance that will become more accessible when the building is removed regardless of the intended additional fencing, and staff consider the removal of the pit structure entirely, removal of any contaminated soils, and filling the hole to be the best approach.

Alternatively, the applicant shall provide another solution that prevents unauthorized access to the pit, prevents water from accumulating in the pit, and prevents water from percolating through the floor of the pit into any soils that have not be determined to be free of unacceptable contamination. The plan for dealing with the pit shall also be approved by staff of the City Planning Division and Building Inspection Division, the Wisconsin Department of Agriculture, Trade and Consumer Protection, and the Wisconsin Department of Natural Resources prior to issuance of a demolition permit.

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*The most recently submitted general plan to fill and "cap" the pit with a clay cover may be a technically sound solution, but in order to be approved, more detail must be provided for staff from the above agencies to consider.*

7. A Reuse and Recycling Plan shall be reviewed by Planning Division staff and approved by the City of Madison Recycling Coordinator prior to the issuance of a demolition permit.

**Agrium reply: Reuse & recycling plan will be provided.**

8. If the plans as required in Condition Nos. 2, 5, 6, and 7 are not submitted within 90 days of Plan Commission approval of the demolition permit, or the demolition permit is not obtained within **180** days, or the requested partial demolition is not completed within **360** days of Plan Commission approval of the permit, this approval shall be null and void.

**Agrium reply: Change of timeframes as indicated above.**

**Acceptance of the Plan Commission approval will be upon written agreement of all conditions by both Agrium U.S. Inc. and the City of Madison, signed by authorized personnel. Start of the Plan Commission approval date (Start date) will be effective once signed originals of written agreement are confirmed received by both parties.**

**In the event that conditions No. 2, 5, 6, & 7 are submitted within 90 days and not accepted by the Plan Commission then the demolition permit can be obtained within 120 days of acceptance off all conditions agreed between Agrium & the City of Madison.**

9. Outstanding notices from the City of Madison Building Inspection Division to repair and secure the existing fence around the property and secure all buildings to prevent unauthorized access shall be completed and approved prior to issuance of a demolition permit, and before **December 1, 2008** in any case. The repairs are intended both to secure the site and to present an attractive appearance by replacing or repairing loose or damaged fence components (fence fabric, posts, rails, gates, etc.). This fence shall be maintained in a sound and attractive condition and building security shall be maintained until such time as the site is redeveloped and/or the demolition is completed and the site restored.

**Agrium reply: Agrium and City Inspector have already confirmed that all Building inspection repairs would not be complete by Dec 1, 2008. Agrium is working with the City Inspector to ensure all identified issues are in process of completion by Dec 1, 2008**

10. The applicant shall designate a local property manager for the site who will be responsible for maintaining the site and responding in a timely manner to complaints or citations regarding site conditions from City staff. This requirement is in response to difficulties with representatives of the current property owner ensuring timely response to day-to-day management issues when no one close to the site has authority to take the necessary actions.

*The applicant has proposed an alternate arrangement that necessitates Mr. Couture's prior approval of all articles and expenditures. This alternate may be acceptable if it can assure timely response to on-site conditions.*

11. A second demolition permit will be required at a future time for the removal of concrete

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building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs, and other infrastructure remaining on the site after the present partial demolition. The second permit application will be reviewed for consistency with all the requirements of Section 28.12(12).

~~12. If an application for rezoning and/or subdivision approval to implement a redevelopment plan for the former Royster-Clark site has not been approved by the City of Madison within 24 months of the issuance of the first partial demolition permit, the applicant (or future property owner) shall obtain the necessary permits and remove all remaining building floors, foundations and other above-grade structures, surface parking lots and other pavement, the rail spurs and other infrastructure remaining on the site, complete the remediation, and restore the site as required to adequately prevent erosion and maintain an attractive appearance until such time as redevelopment occurs. The second demolition permit application will be reviewed for consistency with all the requirements of Section 28.12(12).~~

**Agrium Reply: Agrium can not accept Item 12 as a condition as written by the City of Madison. Agrium is committed to sell the property as quickly as possible, however Agrium has no control over the acceptance of development plans between a Buyer and the City or the timeframe required to obtain such a plan. Given prospective buyers have already indicated that they consider "Permitting" the primary risk in any purchase of this property by making it a "condition of sale" with a time limit attached would likely guarantee we would not be able to sell this property.**

**Agrium provided on October 29, 2008 and does again this condition as more acceptable to support the objective to sell the property.**

**"The Owner (Agrium U.S. Inc.) shall make reasonable commercial efforts to market the property for sale to prospective buyers upon issuance of the first partial demolition permit by the City. If after 36 months from the date of issuance of the first partial demolition permit, the property has not been sold and there are no formal purchase offers under consideration by Agrium or purchase and sale transactions under negotiation, and at the end of such 36 month period Agrium is not been making reasonable efforts to attempt to sell the property, Agrium shall then, within a reasonable period of time, make application for the necessary permits to remove all remaining building floors, foundations and other above grade structures, surface parking lots and other pavement, the rail spurs and other infrastructure remaining on the site, and restore the site as required to adequately prevent erosion."**

**Please Note: The Environmental cap being proposed by BT2 is a "Landfill grade CAP" designed to be effective for many years. It would be effective well beyond 24 months as indicated by the DATCP and the City of Madison.**