

ORDINANCE # 198  
BENTON COUNTY, MINNESOTA

WHEREAS, the Benton County Planning Commission, on its own motion, instituted proceedings to amend Ordinance #185 (Benton County Development Code) to clarify the code concerning mining, mining operations, and gravel excavation; and

WHEREAS, on February 6, 1990, notice of public hearings and intent to amend Benton County Development Code was published in the official newspaper (Benton County News) and mailed to the governing bodies of all towns and municipalities located within Benton County; and

WHEREAS, on February 22, 1990, the planning commission held a public hearing on the topic, and on June 25, 1990, the planning commission recommended to the Benton County Board of Commissioners that said proposed amendments be approved; and

WHEREAS, on March 6, 1990, the Board of Commissioners for Benton County called a public hearing thereon, and on July 17, 1990, approved the proposed zoning amendments.

NOW, therefore, the BENTON COUNTY BOARD OF COMMISSIONERS ordains:

SECTION I

IT IS HEREBY ADOPTED for the purpose of regulating the excavation and processing of rock, sand, gravel, clay, silt, soil, or other like minerals in the unincorporated areas of Benton County, the following provisions shall replace the existing Section 9.7, 9.7.1, 9.7.2, 9.7.3, 9.7.4, 9.7.5, and 9.7.6 of Ordinance #185, the Benton County Development Code:

9.7            Mining Operations

9.7.1        Definitions - Unless the context clearly indicates otherwise, the following words as used in Section 9.7, et seq. shall have the meaning set forth herein:

- (a) Commercial - involving the total amount of 500 cubic yards, or more, of rock, sand, gravel, clay, silt, soil, or any other like mineral(s) or combination thereof. (Note that this does not say 500 cubic yards or more, per year.)
- (b) et seq. - the cited section in addition to its subparts.
- (c) Excavation - the digging, removal, filling with,

or storage of any naturally occurring rock, sand, gravel, clay, silt, soil, or other like mineral(s) being conducted within the unincorporated areas of Benton County. See Section 9.7.3 below for exceptions.

- (d) Minerals - the non-metallic materials found naturally in the earth including, but not limited to, rock, sand, gravel, clay, silt, and soil which may be covered by overburden.
- (e) Mining operation(s) - the excavation and/or processing of rock, sand, gravel, clay, silt, soil or other like mineral(s) being conducted by a non-government entity on a commercial basis.
- (f) Overburden - those materials which lie between the surface of the earth and the mineral(s) to be excavated.
- (g) Permittee - The recipient of the Benton County Planning Commission's consent to conduct a mining operation at a specified site.
- (h) Processing - The crushing, screening, washing, compounding, or treatment of rock, sand, gravel, clay, silt, soil, or other like mineral(s) being conducted within the unincorporated areas of Benton County, including the production of asphalt compositions for pavement and the recycling of previously-used concrete and asphalt.
- (i) Rehabilitation - to renew the land with the goal being to return it to a self-sustaining, long-term use which is compatible with contiguous land uses in accordance with the standards set forth in this section 9.7, et seq.
- (j) Topsoil - that portion of the overburden which lies closest to the surface of the earth and which supports the growth of vegetation.

#### 9.7.2

##### Permit Required

A permit shall be required for all mining operation(s). The permit, which shall be considered to be a conditional use permit, shall be valid for a three (3) year period, unless it is revoked, expires, or is otherwise terminated earlier. Said permit is not transferrable or assignable without the prior written consent of the Planning Commission.

Persons, firms, partnerships, associations, corporations, or other non-government entities

conducting mining operation(s) as of the effective date of this section of the Benton County Development Code and for which this ordinance requires a permit, may temporarily continue such operations but within sixty (60) days of the effective date hereof shall make the required application for a mining operation(s) permit. Additionally, within said sixty (60) day time period, the owner(s) of the underlying land shall apply for a separate conditional use permit from the Planning Commission authorizing the mining operation(s) on the owner(s)' land. This requirement that the owner(s) apply for a conditional use permit also applies to the non-government owner(s) of land on which a government entity desires to conduct excavation and/or processing. Failure to comply with this section shall be a violation of the Benton County Development Code, as amended; however, on request and for cause the Planning Commission may extend the time for initial application for the mining operation(s) permit and for an underlying conditional use permit to ninety (90) days of the effective date hereof.

Persons requesting a permit shall submit the prescribed fee to the Benton County Zoning Administrator, together with all information required in Section 9.7.5 below. The applicant shall provide three (3) copies of the required information.

The Planning Commission, in determining whether to grant the applicant(s) a mining operation(s) permit and/or the owner(s) a conditional use permit, shall apply the criteria for granting conditional use permits set forth in Section 11.6, et seq. of the Benton County Development Code, as amended.

If the request for permit is denied, no reapplication shall be made for a period of six (6) months.

### 9.7.3 Exceptions

A permit described in Section 9.7.2 shall not be required for any of the following:

- (a) Excavation for the purpose of the foundation, cellar, or basement of some immediately-pending structure to be erected, built, or placed thereon contemporaneously with or immediately following such excavation, provided that a land use permit for that structure has first been issued.
- (b) Excavation less than one (1) foot in depth.
- (c) Excavation required for completion of a septic system and drain field(s), provided that a land

use permit for the septic system and/or drain field(s) has first been issued.

#### 9.7.4 Expiration/Revocation of Permit

Mining operation(s) permits expire automatically three years after issuance; however, if no excavation or processing is conducted at the site by the permittee within a 12-month period, the mining operation(s) permit shall terminate automatically at the end of said 12-month period.

The Planning Commission may revoke a mining operation(s) permit for violation of Section 9.7, et seq. of the Benton County Development Code, as amended; for violation of a condition of the permit; or for other cause.

To revoke a permit the Zoning Administrator shall give notice by U.S. Mail (first class mail addressed to the permittee at the address of the permittee on file in the office of the Planning and Zoning Administrator for Benton County) of the violation or other cause for revocation, along with the directive of the Planning Commission that the condition be remedied. If the condition has not been repaired, corrected, or otherwise remedied within thirty (30) days, the Planning Commission shall determine, at its next scheduled meeting, whether the mining operation(s) permit should be revoked.

Mining operation(s) shall be discontinued immediately if the permit is revoked or expires pursuant to this Section; however, such revocation or expiration shall not nullify the obligation of the permittee to undertake rehabilitation under this Section 9.7, et seq. of the Benton County Development Code, as amended.

#### 9.7.5 Information Required

The following information shall be provided by the applicant (If an owner is applying for a conditional use permit at the same time as an applicant wishing to conduct the mining operation(s) on the owner(s)' land, the owner(s) may refer the Planning Commission to the information supplied by the applicant for the mining operation(s) permit. If said applications are not being processed concurrently, e.g. where the excavating and/or processing will be conducted by a government entity, the applicant must provide all the information required under this Section 9.7.5.):

- (a) The name and address of applicant(s) requesting the mining operation(s) permit and/or the name and address of owner(s) of the land applying separately to receive a conditional use permit authorizing mining operation(s) on the owner(s)' land.
- (b) The legal description and acreage of the proposed mining operation(s) site, together with proof of applicant(s)' ownership or leasehold interest.
- (c) The purpose of the proposed mining operation(s).
- (d) The estimated duration of the mining operation(s).
- (e) Specifications, using appropriate maps, photographs and surveys, revealing:
  - i. The physical relationship of the proposed mining operation(s) site to the neighborhood and existing development in the area, including photographs depicting adjacent and on-site buildings and land uses.
  - ii. Site analysis information such as vegetation and depth of topsoil, including photographs depicting the existing condition, vegetation and screening, etc. of the site.
- (f) A detailed soil erosion and sediment control plan.
- (g) A full and adequate description of all phases of the proposed mining operation(s), to include and approximate the amount of excavating to take place as well as the plan of operation, including processing, if any, the nature of the processing and equipment, location of the processing plant, source of water, disposal of water, reuse of water, and the use of explosives.
- (h) A comprehensive rehabilitation plan showing suitable provisions for rehabilitation of the mining operation(s) site to a condition compatible with the adjacent land such that it will not become a health or safety hazard or nuisance. Where the Planning Commission deems practical and necessary, such plans shall also include adjoining related areas where excavations have previously been made which remain under the control of the applicant or the owner(s) of the land on which the excavation or processing is proposed.
- (i) Any other information requested by the Zoning

Administrator or Planning Commission.

9.7.6 Use Restrictions

Mining operation(s) shall be a conditional use in the agricultural district "A-1" and agricultural district "A-2" and light industrial district "I-1" and heavy industrial district "I-2".

9.7.7 Performance Standards

- (a) General Provisions. Weeds and any other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance, to prevent seeding on adjoining property, and to comply with the requirements of Minnesota Statutes Section 18.191, et seq.

All equipment used for mining operation(s) shall be kept operational and shall be maintained and operated in such a manner as to minimize as far as is practicable noises and vibrations which are annoying to persons living in the vicinity.

Abandoned machinery and rubbish shall be removed from the mining operation(s) site regularly and shall not be allowed to accumulate.

- (b) Water Resources. The mining operation(s) shall not be allowed to interfere with surface water drainage beyond the boundaries of the mining operation(s) site.

Surface water originating outside and passing through the mining site shall, at its point of departure from the mining site, be of equal quality to the water at the point where it enters the mining site. The permittee shall perform any water treatment necessary to comply with this provision and shall, at a minimum, meet the requirements specified in subparagraph (k) hereof.

- (c) Safety Fencing. Any mining operation(s) adjacent to a residential zone, or within three hundred (300) feet of two (2) or more residential structures, shall be bound by the following standards:

- i. Where collections of water occur that are one and one-half (1-1/2) feet, or more, in depth existing for any period of at least one (1) week and occupy an area of seven hundred

(700) square feet or more, all access to such collections of water shall be barred by a fence or similarly effective barrier such as a snow fence of at least four (4) feet in height with support posts spaced no farther apart than ten (10) feet.

ii. In locations where slopes occur that are steeper than one (1) foot vertical to three(3) feet horizontal existing for a period of one (1) week, or more, access to such slopes shall be barred by a fence or some similarly effective barrier such as a snow fence at least four(4) feet in height with support posts spaced no farther apart than ten (10) feet.

(d) Mining Access Roads. The location of the intersection of mining access roads with any public roads shall be selected such that traffic on the access roads will have a sufficient length of the public road in view so that any turns onto the public road can be completed safely.

(e) Screening Barrier. The permittee shall not cause trees and ground cover existing at the time of issuance of the initial permit and present within the depth of the roadside setback to be harmed or destroyed, except where traffic safety requires that said trees and/or ground cover be cut and/or trimmed or except where alteration or destruction of the trees and/or ground cover is necessary for a rehabilitation plan approved by the Planning Commission.

(f) Setback. All mining operations shall be conducted within the confines of the site described in the permit.

Processing shall not be conducted closer than one hundred (100) feet to the property line nor closer than five hundred (500) feet to any residential or commercial structures existing prior to the commencement of mining operation(s) without the written consent of all owners and residents of said structures. A photocopy of said consent(s) shall be filed by the permittee with the Zoning Administrator.

Excavation shall not be conducted closer than thirty (30) feet to the boundary line of any zone where mining operation(s) are not allowed, nor shall such excavation be conducted closer than thirty(30) feet to the boundary of an adjoining

property line, unless the written consent of each of the owners in fee simple of such adjoining property is first secured in writing and filed by the permittee with the Zoning Administrator.

Mining operations shall not be conducted closer than thirty (30) feet to the right-of-way line of any existing or platted street, road or highway, or any other right-of-way except that excavation, if not otherwise prohibited, may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or platted street, road or highway or other right-of-way

Mining operations shall not be conducted on shoreland, as defined in the Benton County Development Code, as amended.

(g) Appearance. All buildings, structures, and plants used for mining operation(s) shall be maintained in such a manner as is practicable, and according to acceptable and industrial practice, so as to assure that such buildings, structures, and plants will not become dangerously dilapidated.

(h) Dust and Dirt. Permittees shall use all practical means to reduce the amount of fugitive dust generated by mining operation(s). In any event, the amount of dust or other particulate matter generated by the mining operation(s) shall not exceed air pollution control standards established by the Minnesota Pollution Control Agency, including those set forth in Minnesota Rules, Chapter 7005.

All access roads from mining operation(s) to public highways, roads, or streets, or to adjoining property shall be maintained to minimize dust conditions.

(i) Noise. Maximum noise level at the site shall comply with the limits or standards established by the Minnesota Pollution Control Agency, including those set forth in Minnesota Rules, Chapter 7010.

(j) Hours. No mining operation(s) shall be conducted during restricted hours specified in the applicable mining operation(s) permit.

(k) Water Pollution. Permittees shall comply with all applicable Minnesota Pollution Control Agency regulations, including those set forth in Minnesota Rules, Chapters 7001, 7050, and 7060;

Department of Natural Resources regulations, including those set forth in Minnesota Statutes Sections 105.41 and 105.42, et seq., as well as Minnesota Rules 6115.0600, et seq.; and all applicable United States Environmental Protection Agency Regulations for the protection of water quality. In addition, no waste products or processed residue shall be deposited in any public (i.e. protected) waters or wetlands in Benton County (as designated by the Minnesota Department of Natural Resources pursuant to Minn. Stat. Section 105.391, Subd. 1).

- (l) Topsoil Preservation. Sufficient topsoil shall be retained at the excavation site to ensure completion of rehabilitation in accordance with the rehabilitation plan.
- (m) Slopes During Mining Operation(s). During the entire period of operation(s), all excavation other than the working face shall be sloped on all sides to a maximum ratio of one(1) foot horizontal to one(1) foot vertical, unless a steeper slope is approved by the county; or, in the alternative, the permittee shall install an effective barrier enclosing the site, the barrier to be no less than a snow fence four (4) feet in height with support posts spaced no farther apart than ten (10) feet. In any event, where excavations are adjacent to a public roadway or other right-of-way, the terrain shall have a maximum slope of four(4) feet horizontal to one(1) foot vertical. Slopes adjacent to waterways shall not exceed six (6) feet horizontal to one (1) foot vertical.
- (n) Reports. The permittee shall comply with the reporting requirements, if applicable, mandated in Minnesota Statutes Section 298.75, Subd.3, as the statute shall prescribe at the time of reporting.
- (o) Investigations. In order to ensure compliance with the performance standards set forth above, the Planning Commission, after being presented with information alleging the permittee's violation of this section of the ordinance, may require the permittee to have completed such investigations and tests as may be required to show adherence to the performance standards. Such investigation and tests as are required to be made shall be carried out by an independent testing organization as may be selected by the Zoning Administrator.
- (p) Surety Bond. The permittee shall post a surety bond executed by a corporate surety company

acceptable to the county and authorized to do business in the state of Minnesota, or cash escrow, in the sum of \$3,000, or such greater sum as the Planning Commission in its discretion deems necessary to protect the public health, safety, or welfare. Said bond shall run in favor of the county, and said bond shall remain in full force and effect for a minimum period of one (1) year after expiration or revocation of the permit, which bond shall guarantee the required rehabilitation as well as all other requirements of this section 9.7, et seq. and pay, up to its face value, all expense the county may incur by reason of having to do anything required of the permittee which the permittee has failed to do.

(q) Non-assignment. Permittee shall not allow any other person, firm, partnership, association, or corporation to conduct mining operation(s) at the site, other than hauling to or from the pit, without (1) obtaining the prior written consent of the Planning Commission and (2) receiving written acknowledgment of said other person, firm, partnership, association, or corporation that he/she/they/it agree(s) to be bound by the requirements of the mining operation(s) permit in effect, and has obtained a surety bond guaranteeing the other entity's performance as a permittee.

(r) Additional Requirements. The governing body may impose additional performance standards as part of the owner(s)' Conditional Use Permit.

#### 9.7.8 Land Rehabilitation

The permittee shall reslope the mining operation(s) site annually at the end of the mining operation(s) season or, in the alternative, install an effective barrier enclosing the site, the barrier to be no less than a snow fence 4 feet in height with support posts spaced no farther apart than ten (10) feet. In addition, all sites shall be rehabilitated by the permittee immediately after mining operations cease pursuant to Section 9.7.4. Unless otherwise allowed in this Subsection 9.7.8, no resloped surface or rehabilitation slope shall be steeper than four (4) feet horizontal to one(1) foot vertical. If the mining operation(s) is/are not conducted for a twelve-month period, the operation(s) shall be deemed by the Planning Commission to have ceased and rehabilitation shall be undertaken by the permittee immediately.

Within a period of three (3) months after the

termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of twelve (12) months, or within three (3) months after expiration or revocation of a permit, all buildings, structures, and plants incidental to such mining operation(s) shall be dismantled and removed by and at the expense of the permittee last utilizing such buildings, structures and plants.

The peaks and depressions of the site shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall. Overall, the finished grade shall be such that it will not adversely affect the adjacent land.

Reclaimed areas shall be surfaced with soil of quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least three (3) inches; provided, however, that the permittee need not import topsoil to supplement the topsoil existing at the site prior to the commencement of the mining operation(s). The finished reclaimed areas shall be planted with legumes and grassed upon all parts where revegetation is possible. Trees and shrubs may also be planted but not as a substitute for legumes and grasses. Such ground cover shall be sufficient to hold the topsoil in place and shall be tended by the permittee as necessary until ground cover is self-sustaining.

Excavations completed to a water producing depth need not be backfilled; however, banks shall be sloped to a grade no steeper than four (4) feet horizontal to one (1) foot vertical.

## SECTION II

Sections 3.101, 9.7, 9.7.1, 9.7.2, 9.7.3, 9.7.4, 9.7.5 and 9.7.6 of Ordinance #185 (Benton County Development Code) are hereby repealed.

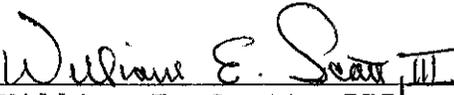
This ordinance shall be, and hereby is, declared to be in full force and effect from and after its passage and publication according to law.

APPROVED AND ADOPTED by the Benton County Board of  
Commissioners this 18th day of September, 1990.

BENTON COUNTY BOARD OF  
COMMISSIONERS

  
Spencer Buerkle  
Chairman

ATTEST:

  
William E. Scott, III  
Clerk

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OFFICE OF  
BENTON COUNTY RECORDER  
BENTON COUNTY, MN  
CERTIFIED TO BE FILED  
AND/OR RECORDED ON

SEP 19 8 10 AM '90

ALICE O. ENGELMEYER  
COUNTY RECORDER

BY  DEPUTY