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Signed: BW
MARILYN J NOVAK G V J
BENTON COUNTY MINNESOTA
MARILYN J NOVAK
COUNTY RECORDER

BENTON COUNTY ORDINANCE NO. 428

WHEREAS, the Benton County Department of Development instituted proceedings to amend the Benton County Ordinance 185; and,

WHEREAS, on April 8, 2008 and April 9, 2008, Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on May 1, May 27 and June 5, 2008, the Benton County Planning Commission held a public hearing; and,

WHEREAS, on June 17, 2008, the Benton County Board of Commissioners held a public hearing and approved the proposed ordinance amendment; and,

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS: that Section 9.7 of the Benton County Ordinance 185 shall be replaced in its entirety with the following:

9.7 Mining Operations

9.7.1 Permit Required

A permit shall be required for all mining operation(s).

DOD

A. Conditional Use Permits

Owners and operators of any mining operations commencing on or after December 31, 1995 shall obtain a conditional use permit. Said permit shall be valid for a 5 year period, unless it is revoked, expires, or is otherwise terminated earlier. Said permit is not transferable or assignable without the prior written consent of the Planning Commission.

B. Land Use Permits

Person, firms, partnerships, associations, corporations, or other entities that commenced mining operation(s) prior to December 31, 1995 who applied for and received a land use permit to operate, will be allowed to continue such operation according to the conditions of the permit.

C. Small Scale Mining Operations

In lieu of a conditional use permit, persons, firms, partnerships, associations, corporations or other entities may secure a land use permit from the Planning and Zoning Department providing the following conditions are met:

1. A maximum of 10,000 cubic yards of material shall be removed from, and/or processed in, the mining operation;
2. The mining operation will be commenced, completed and rehabilitated within a twelve month period;
3. Only one land use mining permit may be issued for a deeded tract of land in perpetuity and a deed restriction shall be required to be submitted with the mining application acknowledging the limitation;
4. No conditional use permit for a mining operation shall be issued within one year of the completion of the rehabilitation of a small scale mining operation on the same site.
5. All other requirements of Section 9.7 of the Benton County Development Code, as amended, shall apply to the permittee.

D.

Failure to comply with this section shall be a violation of the Benton County Development Code, as amended.

Persons requesting a permit shall submit the prescribed fee to the Benton County Director of Development, together with all information required in Section 9.7.4 below. The applicant shall provide three copies of the required information.

The Planning Commission, in determining whether to grant a conditional use permit pursuant to § 9.7.1(A), shall apply the criteria for granting conditional use permits set forth in Section 11.6, 9.7 of the Benton County Development Code, as amended.

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

9.7.2 Exceptions

A permit described in Section 9.7.1 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) All normal and customary agricultural practices.
- (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.
- (d) Excavation for the creation of ponds, wetlands, livestock ponds or other structures for wildlife habitat improvement with appropriate permits.

9.7.3 Termination/and Revocation of Permit

Termination

1. Permitted mining operations as of June 24, 2008, may continue to operate in accordance with the conditions of approval and performance standards in place at the time of approval.
2. Conditional use permits approved prior to June 24, 2008, shall terminate and be subject to a new permit five years after the conditional use permit was issued. Applications for mining operations that previously had a CUP, but the CUP terminated in accordance with this ordinance shall provide all the information required under Section 9.7.4 of the Development Code when applying for a new permit with the exception of the survey of the property boundary per Section 9.7.4(e)(1) and are subject to additional conditions of approval from the Planning Commission.

3. Conditional use mining operation(s) permits approved after June 24, 2008, shall terminate automatically 5 years after date of issuance. After termination of any CUP for mining, any new CUPs granted for the same operation shall follow all the performance requirements of this ordinance at the time of the issuance of any new permit.

Revocation

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 Director of Development shall give notice by U.S. Mail (first class mail addressed to the permittee and property owner at the address of the permittee and property owner on file in the office of the Department of Development) 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 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 terminates pursuant to this Section; however, such revocation or termination 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.

9.7.4 Information Required

- (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 upon which the mining operation is proposed to be located.
- (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) A topographic survey of the proposed site providing at a minimum the following detail:
 1. Site property boundaries except for right-of-way, shall be certified by a survey if the boundaries will be within 100 feet of the proposed excavation.

2. Contours of the affected land at intervals no greater than ten feet.
 3. The location and names of all streams, lakes, wetlands, wells, structures and roads on or within five hundred feet of the site.
 4. Boundaries of previous excavations on the site, and the location and description of boundary stakes for the site.
 5. A permanent benchmark that shall be the reference point for all mining specifications, maps, surveys or drawings. The benchmark shall not be located within an area disturbed by the mining operation.
 6. The site specifications, maps, surveys or drawings shall be at a scale of one inch = two hundred feet. Specifications, maps, surveys or drawings detailing information off the mining site may be submitted at a scale of one inch = six hundred and sixty feet.
 7. General information such as vegetation, depth of topsoil, and screening, etc. of the site.
 8. Observed or estimated groundwater elevation referenced to the permanent benchmark.
 9. Location of any proposed asphalt or hot mix bituminous plants.
 10. Proposed location for the storage of topsoil.
- (f) A detailed soil erosion and sediment control plan. A National Pollutant Discharge Elimination System (NPDES) permit, if required, shall be obtained and submitted to the Department of Development prior to excavation.
- (g) A site plan and description of all phases of the proposed mining operation(s), to include and approximate the amount and depth 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, location of storage areas, haulways and the use of explosives. The site plan must conform to the specifications found in Section 9.7.4(e) of the Benton County Development Code, as amended. If necessary, the plan should illustrate temporary erosion control measures. A dewatering permit from the appropriate agency (DNR and/or MPCA) shall be submitted if dewatering is proposed to exceed 10,000 gallons per day or one million gallons per year.

- (h) Description of how the site will be secured when mining is not being conducted on-site (e.g. fence, gates, berm, sloping).
- (i) 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, which shall include the following:
 1. A site plan showing final slope angles, high wall reduction, benching, terracing, other stabilization measures and water impoundments. The plan must conform to the specifications found in Section 9.7.4(e) of the Benton County Development Code as amended.
 2. Cross-sectional drawings of any water impoundments, high wall reductions, benching, terracing or other conservation practices.
 3. A description of the proposed reclamation, including final slopes, terracing and other structural slope stabilization.
 4. A description of how the phased reclamation will be conducted.
 5. A description of the anticipated topography, water impoundment, artificial lakes and future use of the site.
 6. A description of the method of disposal of over and undersized materials.
 7. A seeding plan that includes the methods of seedbed preparation, seed mixtures, seeding rates, mulching and other techniques to accomplish site stabilization.
 8. A map of the proposed reclamation with the proposed topography.
 9. 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.
- (j) Indication of the major routes over which the mined material will be hauled or carried.
- (k) A description of the erosion control practices that will be used during mining.
- (l) A description of the measures taken to screen the operation from view of surrounding land.
- (m) Any other information requested by the Zoning Administrator or Planning Commission.

9.7.5

Use Restrictions

- (a) With the exception of those mining operations described in paragraph (b) of this section, mining operations may be conducted only in areas zoned agricultural district "A", Rural-Agricultural district "R-A", light industrial district "I-1", or heavy industrial district "I-2".
- (b) Any mining operation commenced prior to December 31, 1995, that is located in an area zoned "R-1", "R-2", "B" or "B-2" may continue to operate in compliance with the requirements of the permit issued for the site.

9.7.6

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.

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. The mining operation shall conform to all noise standards contained in Minnesota Rules, Chapter 7030.

Abandoned machinery and rubbish shall be removed from the mining operation(s) site 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 feet of four or more residential structures, shall adhere to the following standards:
 - i. Where collections of water occur that are one and one-half feet, or more, in depth, exist for any period of greater than seven consecutive days and occupy an area of seven hundred square feet or more, all access to such collections of water shall be barred by a fence or similarly effective barrier of at least four feet in height with support posts spaced no farther apart than ten feet.

- ii. In locations where slopes occur that are steeper than one foot vertical to three feet horizontal existing for a period of seven days or more, access to such slopes shall be barred by a fence or some similarly effective barrier at least four feet in height with support posts spaced no farther apart than ten feet.
 - iii. As an alternative to the fencing requirements of Section 9.7.6(c) i. and ii., the entire perimeter of the property on which a mining operation is located may be fenced or protected by some other similarly effective barrier at least four feet in height with support posts spaced no farther than ten feet.
- (d) Mining Access Roads. The intersection of mining access roads with any public roads shall be located in such a manner 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. The permittee shall specifically request the Road Authority access for a mining operation prior to excavation. A turn lane shall be provided at the entrance prior to excavation if determined necessary by the Road Authority prior to excavation.

All mining access roads shall be gated or cabled and closed when not in operation.

Trucks shall not queue on public roads while waiting to load or unload. Ingress and egress points from or onto any public road shall be clearly signed "Trucks Hauling" advising traffic in both directions of this activity with temporary signs during heavy hauling (average of fifteen or more trucks per hour).

Intersections of public roads with the access road shall be maintained by the mine operator and shall be kept free from excessive mud, debris or asphalt tract out of the mining site.

- (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 three hundred feet to any residential or commercial structures existing prior to the commencement of mining operation(s) without the approval of the Planning Commission and written consent of all owners and residents of said structures. Structures owned by the applicant or permittee shall be exempt from the setback requirement. A photocopy of said consent(s) shall be filed by the permittee with the Director of Development.

There shall be no mining activities or storage of materials within ten feet of a property line without the approval of the Planning Commission and written consent of all owners. The area within thirty feet of the property line may only be excavated if the permittee restores the area within ninety days of excavation to meet a 4:1 slope.

Mining operations shall not be conducted closer than thirty 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 and approved by the Road Authority.

Mining operations shall not be conducted closer than 150 feet from the ordinary high water mark of any stream, river, lake or pond, 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, Chapters 7005, 7009, 7011, 7017 and 7023.

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 7030.

- (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, 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).
- (l) Topsoil Preservation. Sufficient topsoil shall be retained at the excavation site to ensure completion of rehabilitation in accordance with the rehabilitation plan. Mining operators/owners are prohibited from removing topsoil from the mining site unless sufficient topsoil is retained to cover the entire site to a minimum depth of three inches.
- (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 foot horizontal to one foot vertical, unless a steeper slope is approved by the Planning Commission; or, in the alternative, the permittee shall install an effective barrier enclosing the site, the barrier to be no less than a four strand wire fence four feet in height with support posts spaced no farther apart than ten 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 feet horizontal to one foot vertical. Slopes adjacent to waterways shall not exceed four feet horizontal to one foot vertical.
- (n) Reports. The permittee shall comply with the reporting requirements, if applicable, mandated in Minnesota Statutes Section 298.75, Subd. 3, Aggregate Material Removal Tax as the statute shall prescribe at the time of reporting.
- Failure to submit the reports to the County shall be considered grounds to revoke the conditional use permit.
- (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 complete such investigations, surveys 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 Planning Commission.

- (p) Surety Bond. Prior to excavation 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 \$1,000 per acre for 40% of the total excavated area.

The Planning Commission, at its discretion, may increase or decrease the bond amount if deemed 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 termination 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 for non-compliance.

All bonds shall be renewed to the minimum required amount in the case of partial or total default.

- (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 acknowledgement 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. Subcontractors to the permittee shall be allowed to perform mining operations under the direct supervision of the permittee. The subcontractor must follow all applicable rules, standards, laws, regulations or permit conditions pertaining to mining operations. The permittee shall be responsible for any violations of this ordinance caused or committed by any subcontractor.
- (r) Signage: A 5'x10' information sign shall be erected at the access to the site identifying the operator, telephone number and name of the contact person.
- (s) Phasing: As each phase of an operation is completed that phase shall be rehabilitated in accordance to Section 9.7.7. At no time shall more than 40% of the total proposed excavation area be open to excavation unless the Planning Commission specifically approves a higher or lower percentage of the area.
- (t) Insurance: The operator shall provide proof of bodily injury, property damage, and public liability insurance in the amount of \$1,000,000 for any occurrence. If blasting is proposed the operator shall provide proof of blasting insurance.

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

9.7.7 Land Rehabilitation

Within a period of three months after the termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of twelve-months, or within three months after termination 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.

Within a period of three months after the termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of twelve months, or within three months after termination or revocation of a permit, 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 and shall have slopes that do not exceed four feet horizontal to one foot vertical.

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 inches; provided, however, that the permittee need not import topsoil to supplement the topsoil existing at the site prior to the commencement of the excavation. 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 feet horizontal to one foot vertical.

Replace "Land reclamation and mining as regulated by this and other ordinances" with "Mining Operations subject to Section 9.7" in Sections 7.1.23 and 7.2.22.

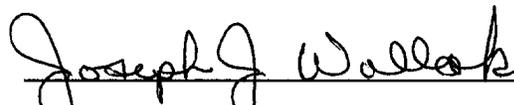
Add the following definitions to Section 3:

- 3.110A 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.

- 3.112B2 Mining, 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.
- 3.112B3 Mining, Rehabilitation: to renew the land with the goal being to return it to a self-sustaining state where there is self-sustaining vegetation and its long-term use is compatible with contiguous land uses in accordance with the standards set forth in this section 9.7.
- 3.128B Overburden: those materials which lie between the surface of the earth and the mineral(s) to be excavated.
- 3.132A Permittee, Mining: the recipient of Benton County's consent to conduct a mining operation at a specified site. Permittee shall include the approved operator and owner of the parcel.
- 3.136B Pond: Type 3, 4 or 5 wetland one (1) acre or larger in size as defined in United States Fish and Wildlife Circular 39 (1971 edition).
- 3.191A Topsoil: that portion of the overburden which lies closest to the surface of the earth and which supports the growth of vegetation.

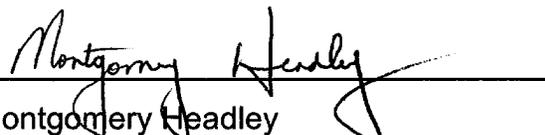
Approved and adopted by the Benton County Board of Commissioners this 17th day of June in the year of 2008.

Upon enactment, this ordinance shall be effective upon the date of its publication as provided by law.



 Joseph J. Wollak, Chair
 Benton County Board of Commissioners

ATTEST:



 Montgomery Headley
 Benton County Administrator