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October 29, 2007

Ms. LeAnne Karls
Town Clerk
N2445 S. Tower Road
Chilton, WI 53014-9000

Re: Zoning Amendments Regarding Non-metallic Mining

Dear LeAnne:

Enclosed is a one-page cover sheet that needs to be signed by you and Jeanold. After signing, the zoning amendments need to be forwarded to Calumet County for its approval. Finally, the zoning amendments need to be published in the Town's official newspaper within 30 days of October 15, 2007.

Please call should you have any questions. Thank you.

*1
Published on
11/15/07.
WJk*

Respectfully,

EDGARTON, ST. PETER, PETAK &
ROSENFELDT



John A. St. Peter

JASP:mjk

Enclosure

cc: Becky Whitmore
John Hau

TOWN OF BROTHERTOWN
CALUMET COUNTY, WISCONSIN

Zoning Amendments Regarding Non-Metallic Mining

The Town Board of the Town of Brothertown does ordain, as follows:

Section 1. Authority. This Ordinance is enacted pursuant to the authority granted to the Town Board under Wis. Stat. §§ 60.61, 61.35, and 62.23, together with the Town's village powers and the Town's police powers.

Section 2. Purpose. The purpose of this Ordinance is to replace the current provisions in the Town's Zoning Ordinance applicable to mineral extraction, excavations and quarries (hereinafter generally referred to as "non-metallic mining") with a new, comprehensive set of zoning regulations. Notwithstanding anything to the contrary, the Town Board explicitly reaffirms that non-metallic mining shall remain a conditional use, which requires a conditional use permit, wherever located within the Town.

Section 3. Amendment. Section 11.03 Mineral Extraction Sites is hereby replaced with a new section 11.03 as set forth in the attached, which is incorporated by reference into this Ordinance. The Town Clerk and the Town Attorney are authorized and directed to revise the Zoning Ordinance to reflect the new provisions of Section 11.03.

Section 4. Legal Provisions.

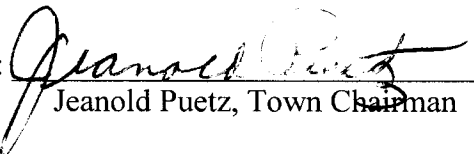
4.01 Severability. Should any section or provision of this Ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

4.02 Effective Date. This Ordinance shall be enforced from and after its passage, approval and publication according to law.

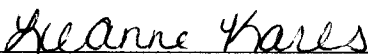
4.03 Publication. The Town Clerk is authorized and directed to publish this amendment as a partial Code of Ordinances pursuant to the authorization of Wis. Stat. § 66.0103.

Adopted this 15th day of October, 2007.

TOWN OF BROTHERTOWN

By: 
Jeanold Puetz, Town Chairman

Attest:


LeAnne Karls, Town Clerk

TOWN OF BROTHERTOWN
CALUMET COUNTY, WISCONSIN

Non-Metallic Mining Zoning Regulations

Section 11.03 Non-Metallic Mining: The purpose of this section is to regulate non-metallic mining operations in the Town in order to promote the public health, safety and general welfare; protect the demand for and economical extraction of non-metallic minerals; permit the development and utilization of non-metallic mineral resources in a manner compatible with neighboring land uses; and, to preserve environmentally sensitive areas and to minimize potential adverse environmental impacts of non-metallic mining operations through the utilization of best management practices. Nothing in this Ordinance is intended to supersede or interfere with Calumet County's reclamation ordinance. The Town's zoning ordinance and the County's reclamation ordinance are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Town's zoning ordinance irreconcilably conflicts with a provision of the County's reclamation ordinance, the provision imposing the greater duty or obligation on the non-metallic owner or operator shall govern.

In addition to the other provisions contained in this Ordinance, the Town shall take into consideration the following issues in determining whether a conditional use permit should be approved:

- (A) The appropriateness of the proposed operation in relation to the existing nearby land uses.
- (B) Any applicable recommendations of the Natural Resources Conservation Service technical guide.
- (C) The effect of the proposed operation upon existing private and public water supplies.
- (D) The economic effect(s) of the proposed operation on private enterprises and local government.
- (E) The effect of the proposed operation on public health and safety.
- (F) The location of the site with respect to floodplains and floodways of rivers or streams.

11.031 Applicability. This section is applicable to all operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel and non-metallic minerals such as asbestos, beryl, clay, feldspar, peat and talc. It includes, without limitation, operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and non-

metallic minerals. Finally, it includes processes such as crushing, screening, scalping, dewatering and blending. The regulations contained herein apply to all surface areas from which materials are removed together with related storage and processing areas, areas where non-metallic mining refuse is deposited and areas disturbed by the non-metallic mining operation through activities such as the construction or improvement of roads and berms. This section does not apply to the following activities:

- (A) Activities on less than 5 acres, for the exclusive use of the property owner, if no material is removed from the property.
- (B) Pre-mining activities such as site surveying, coring, test pits for exploratory purposes only, mapping and other functions necessary solely for proper preparation of the permit application.
- (C) Excavation in conjunction with utility installation, which is to be backfilled.
- (D) Excavation in conjunction with road construction, within the limits of the right-of-way, when construction plans have been approved by the Department of Transportation and all other relevant governmental bodies.
- (E) Excavation which by its nature is of limited duration such as graves, septic tanks and swimming pools.
- (F) Agricultural drainage work incidental to agricultural operations and irrigation/stock watering ponds, provided no material is removed from the property.
- (G) Excavation for structures, parking areas and stripping of up to 1-1/2 feet of topsoil for the development of subdivisions, provided all topsoil is retained on the property.
- (H) Regrading of property for aesthetic purposes that does not affect existing drainage, provided no material is removed from the property.
- (I) Dredging operations under the jurisdiction of the U.S. Army Corps of Engineers and other governmental bodies.
- (J) Ponds developed for wildlife purposes in conjunction with the Soil Conservation Service or Land and Water Conservation Department.
- (K) Excavation activities related to sod farming.
- (L) Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility or a hazardous waste disposal facility, as the same are defined and regulated under the Wisconsin Statutes; provided, however, this section does apply to activities related to solid or

hazardous waste disposal that are conducted at a non-metallic mining site separate from the solid or hazardous waste disposal facility, such as activities to obtain non-metallic minerals to be used for lining, capping, covering or construction berms, dikes or roads.

(M) Any other uses determined to be exempt by the Town.

11.032 Permit Application. Any application for a conditional use permit to conduct non-metallic mining operations in the Town shall include the following information. The Plan Commission or the Town Board reserves the right to require additional information, as circumstances warrant.

(A) **General Background Information.** All applications for a conditional use permit for non-metallic mining shall include the following general background information:

- (1) The name, address and phone number of the property owner and the proposed operator if different from the owner.
- (2) If the applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the exact name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and home phone numbers of the registered agent, if applicable; the names and addresses of all officers and directors, operating or managing partners or general partners; managing members or managers, whichever is applicable for the particular form of business.
- (3) The name, address and phone number of an individual who is responsible for the day-to-day operation of the site and who will be the contact person for the Town.
- (4) A statement that the applicant is familiar and in compliance with the provisions of this section, including the responsibility to reimburse the Town its reasonable costs and professional fees associated with the processing, review, issuance, administration and enforcement of this section of the Town's zoning ordinance.
- (5) A signed copy of the lease or a letter signed by the owner of record authorizing the proposed operator to enter upon the owner's land for the purpose of non-metallic mining.
- (6) A legal description and general location map of the tracts of land involved. (Note: The Town reserves the right to require a survey either with the application or prior to the issuance of a conditional use permit.)

- (7) A plan of the site showing proposed and existing roads and drives, including all points of ingress and egress.
 - (8) A plan of the site showing the sources, quantity and disposition of both surface water and groundwater, which plan shall be prepared by a competent and qualified Wisconsin professional engineer, geologist or hydrologist.
- (B) Plan of Operation. An operation plan that includes the following information:
- (1) A map drawn to scale of 1 inch equals 200 feet
 - (2) A written description explaining the mapped information, including, but not limited to, the existing site and future expansion of the site; boundaries of previous excavations; storage of reclamation topsoil and methods of disposing of material not to be sold or reclaimed; areas for excavation, processing, manufacturing, stock-piling and phasing of these activities across the site over time; location and height of berms, fencing and vegetation to screen the operation from adjacent property owners.
 - (3) Unless already included in the general information described above, roads used and to be used for transportation of excavated material, including all points of ingress and egress and an estimate of the maximum and average number of trucks entering and leaving the site on a daily basis; an estimate of the quantity and type of materials removed and to be removed from the site as well as the timetable to complete the excavation; a list of the type and quantity of equipment used or to be used; hours and days of operation; noise and dust control measures; and, a cross-section map showing in detail the estimated final depth of the excavation.
 - (4) Measured or estimated depth to groundwater and general groundwater flow direction at the site. Information from the Calumet County, Wisconsin Watertable and Aquifer Susceptibility Maps shall be used as a part of the reference documentation.
- (C) A drainage and erosion control plan that includes the following information:
- (1) A map drawn to scale of 1 inch equals 200 feet.
 - (2) A written description detailing the mapped information; contours shown at no greater than 10 foot intervals, existing drainage ways, subsurface tile drains, pipes and culverts; existing floodplains, wetlands and water bodies; arrows showing the direction of surface water drainage; the impact of the non-metallic mining activity on adjacent property both upstream and downstream from the mining site in order to demonstrate that runoff rates

from mining activity will not exceed pre-mining runoff rates of a 10-year 24-hour storm; location and design details of runoff detention facilities planned or constructed; and, temporary and permanent erosion control measures.

- (3) A copy of the general Wisconsin Department of Natural Resources WPDES permit, if issued, or a copy of the application for the general permit.
- (D) The application shall also include documentation confirming the receipt of all necessary local, county, state and federal approvals, if relevant, including Wisconsin Department of Natural Resource permits.
- (E) A copy of the Wisconsin Department of Natural Resources NR135 Reclamation Plan filed with Calumet County or East Central Wisconsin Regional Planning Commission. (The applicant shall file a copy of the proposed NR135 Reclamation Plan with the Town at the same time the applicant files the document with Calumet County or East Central Wisconsin Regional Planning Commission in order that the Town may have a meaningful opportunity to provide comments on the proposed document.)

11.033 Berms and Related Landscaping. Applicant will construct and landscape the exterior berms as stripped overburden and topsoil become available from the quarry site or from suitable outside sources. Prior to the commencement of construction of such berms, the applicant will submit and obtain approval from the Town for a detailed berm, landscaping and related drainage and erosion control plan. Notwithstanding anything to the contrary, all berms shall be at least 8 feet above the surface of the center of the adjacent public road. Furthermore, berms half the height of the largest wheel of equipment used in the mining operation will be installed around active mining areas that are not adjacent to public roads, but in no event of a lesser height than that required by the Mine Safety and Health Administration (“MSHA”). Only clean overburden from the mining site or suitable outside sources will be used in constructing the berms. The berms will have an aesthetically pleasing natural appearance and may be maintained in a natural rather than a manicured condition. The exterior of such berms will be kept free of noxious weeds, trash and other debris. The outward-facing slopes of such berms will not be steeper than three horizontal units to one vertical unit. The inner-facing slopes may be steeper, but must remain stable. The berms will be constructed so as not to result in flooding, concentrated runoff, inadequate drainage or excessive erosion or sedimentation.

11.034 Setbacks. The following setback standards shall apply:

- (A) The setback requirements of this ordinance apply to all non-metallic mining activity including, without limitation, the storage of waste materials, inventory and equipment. The Town reserves the right to require greater setbacks for sand and gravel operations in order to protect the integrity of the sloped perimeters from erosion. The setback requirements below are inapplicable to berms or other forms of landscaping.

- (B) All property operations, site and phase boundaries must be staked or otherwise prominently marked and the applicant shall notify the Town of the staking prior to the commencement of operations.
- (C) The applicant shall comply with the following specific setback requirements:
- (1) Setback for Town roads shall be not less than 83 feet from centerline of the right-of-way and for all other roads 100 feet from the centerline of the right-of-way.
 - (2) A minimum setback of 500 feet shall be maintained from all existing residences at the time of initial approval, unless a lesser setback is mutually agreed between the operator and the affected property owner, which lesser setback is reflected in a written easement or comparable document registered with the Calumet County Register of Deeds. A lesser setback may also be agreed upon between adjacent quarry operators.
 - (3) A setback of at least 50 feet along adjacent property lines, but in no event less than 500 feet from any residence unless the affected property owner consents as noted above.
 - (4) A setback of 1,200 feet from the property line of a landfill, unless a hydrogeologic study demonstrates that groundwater contamination will not occur and that groundwater flow patterns will not be disrupted. The hydrogeologic study will be conducted by a registered engineer demonstrating the impact on existing groundwater flow patterns. Unless otherwise determined by the Town, the determination of a landfill location will be based on Wisconsin Department of Natural Resource records of active, inactive and abandoned landfills located in the Town, as updated by the Department from time to time.

11.035 Reclamation Plan. The Town acknowledges that the County has an ordinance regulating the reclamation of non-metallic mining operations. Nothing contained herein is intended to interfere with or supersede the County's ordinance. However, the Town is vested with the legislative discretion over land uses, including post-mining activity land uses. Therefore, the application shall designate and contain appropriate detailed provisions for one or a combination of the following four major land re-use alternatives based on site specific conditions and location:

- (A) A natural site where special attention is given to the preservation and restoration of natural features.
- (B) A recreational site that is well-suited for sports and other forms of recreation.

- (C) A building site that is well-suited for building facilities to support community growth and development.
- (D) An agricultural site that has soils that are comparable to pre-mining soils and/or neighboring fields and adequate drainage to support plant life.

In addition, the applicant shall comply with all material requirements of the Wisconsin Department of Natural Resources NR135 Reclamation Plan, the requirements of which are hereby incorporated as performance standards in the conditional use permit issued to the applicant.

11.036 Hours of Operation. Non-metallic mining operations of whatever nature are limited to the hours of 6 a.m. to 6 p.m., Monday through Friday, and 6 a.m. to 2 p.m. Saturday. No non-metallic mining activity may be conducted on Sundays or legal holidays. Maintenance is allowed outside the approved hours of operation. Except as set forth below, hours of operation in existing conditional use permits will not be altered under this ordinance. The above restrictions may be adjusted to address special circumstances or demonstrated problems, but only if the Town provides its written consent to the modification after notice and a hearing.

11.037 Blasting. The applicant must comply with all applicable state and federal limits on blasting, including vibration and air blast regulations. The Town may seek independent verification of compliance with the ground vibration and air blast limitations. The applicant will maintain a blasting log for each blast for not less than 5 years. Upon the written request of the Town, the applicant will promptly submit to the Town information regarding any particular blast. A resident call list will be established by the applicant for the purpose of notifying neighbors at home in the vicinity of the site of imminent blasting activity. Residents within 1,000 feet of the boundary of the licensed non-metallic mining operation shall receive advance notice of the blasting, provided the relevant neighbors have requested that the applicant provide prior notice. A pre-blast contact diary will be maintained by the applicant at the on-site office, including the date of blast, neighbors contacted or attempted to be contacted, and any pertinent remarks. The applicant will promptly submit a copy of such diary entries to the Town upon written request. Notwithstanding anything to the contrary, flyrock traveling in the air or in the ground will remain in the controlled blasting site area. Additionally, such flyrock will not be cast from the blasting site. All blasting will be performed by or under the direct supervision of a State-licensed blaster. Blasting may occur only on Monday through Friday, exclusive of holidays, and only between the hours of 9 a.m. and 4 p.m.

11.038 Complaints. The applicant will maintain a log of all complaints received, whether received directly from residents or from the Town. The log will include at least the time and date of the complaint, the name and address of the complainant, a summary of the complaint, and a summary of what, if any, action was taken regarding the complaint. Any written complaints received within 10 days of the activity addressed in the complaint shall be forwarded on to the Town or operator within 10 business days of the complaint. (Oral complainants should be told that their complaints must be reduced to writing.)

11.039 Dust Controls. Applicant will comply with all applicable state and federal air quality regulations. In addition, applicant will utilize industry best management practices in its efforts to control and minimize fugitive dust, including one or more of the following: landscaped earthen berms, paved entrance roadways, standard methods of water spray (weather permitting), dust covers on transfer points, and contract sweeping, as needed.

11.040 Noise Controls. Applicant will comply with all applicable noise regulations. In the event of any noise problems, the applicant will utilize the latest cost-effective technology proven and demonstrated in the applicant's industry, which will not impose an unreasonable financial burden on the applicant's non-metallic mining operation, in its efforts to control and minimize noise impacts. In addition, the applicant is prohibited from "dumping" stone into tubs between the hours of 8 p.m. and 6 a.m. Finally, the applicant shall take affirmative steps to reduce noise from the operation between the hours of 8 p.m. and 6 a.m.

11.041 Groundwater Monitoring.

- (A) Applicant shall send a certified letter, return receipt requested, to the owner of each residence located within 1,000 feet of the perimeter of the site notifying the owner of the owner's right to have baseline testing performed on the owner's well. The applicant is responsible for testing of all wells, unless the relevant owner has indicated in writing its intentions to be excluded from the baseline testing. Subject to the consent of eligible owners, the applicant shall arrange for and pay the cost of well testing of all wells within 1,000 feet of the boundary of the non-metallic mining site. Initial baseline testing shall be for bacteria, turbidity, and drawdown. Testing must be completed prior to the commencement of the operation, and at least annually for bacteria and turbidity thereafter. Drawdown test will be conducted every five years. Tests shall be performed by a qualified and certified independent professional. The result of the tests shall be provided to the Town within 10 business days of receipt by the applicant. If test results indicate any negative impact from the activities authorized by the conditional use permit, the applicant shall take all reasonable steps necessary to alleviate any problems including, but not limited to, immediately providing a temporary water source or well replacement. The applicant is also responsible, at the applicant's option, for either the total costs to re-drill or case any failed residential well existing and in use on the date of the issuance of the conditional use permit or of drilling and casing any required new well to replace an existing well, or for the incremental extra cost of such re-drilled or new replacement well attributable to the well being within the 1,000-foot boundary specified above, plus the costs of determining the amount of such incremental extra cost, subject, however, to all of the following conditions:

- (1) The failed well is an existing residential well in use as of the date of the granting of the conditional use permit.

- (2) The existing property owner or the owner's predecessor-in-title permitted a well inspection by the applicant and promptly resolved all problems noted in the inspection in accordance with the requirements of applicable statutes, ordinances, rules, regulations and other laws.
 - (3) The well re-drilling or replacement is made in compliance with the requirements of all applicable statutes, ordinances, rules, regulations and other laws, including any necessary licensure of those performing such work.
 - (4) The qualifications of the well driller are mutually satisfactory to the property owner and the applicant, but with neither unreasonably withholding its approval.
- (B) The determination as to whether any existing well has "failed" so as to require re-drilling or replacement will be made by a mutually-agreed well specialist in accordance with the requirements of all applicable statutes, ordinances, rules, regulations, orders and other laws. If the parties are unable to agree on a well specialist, each party shall appoint a well specialist and the two appointed well specialists shall thereafter select a well specialist who will then make the determination on whether the relevant existing well has "failed." The applicant shall advance the costs for the selected well specialist; provided, however, that the applicant shall be entitled to reimbursement of these costs if the well specialist finds that the applicant's activities did not cause the well failure.

11.042 Home Inspections. Applicant will send a certified letter, return receipt requested, to the owner of each residence within 1,000 feet of the non-metallic mining boundary notifying the owner of the owner's right to have a baseline inspection done of the owner's home to document any existing cracking or other conditions that might be alleged to have resulted from blasting. The applicant is responsible for inspections of all homes for which the owners have not provided written notice of their intentions to be excluded from the home inspection. The home inspections will be conducted by a qualified third-party consultant with substantial expertise and experience in conducting inspections relating to alleged blasting damage. The selection of the consultant will be by the applicant, subject to the Town's approval, which approval will not be unreasonably withheld. Within 30 days after the issuance of a conditional use permit, the applicant will notify each eligible homeowner in writing of the details of the home inspection program. Home inspections will be completed within 180 days after the applicant's acceptance of the conditional use permit. Applicant may, in its sole discretion, update any previously conducted home inspection at intervals of not less than 5 years. Within 60 days after the completion of each home inspection, a copy of the inspection report will be mailed or delivered to the Town and to the relevant homeowner.

11.043 Spill Prevention Control and Countermeasure Plan. The applicant will, prior to or simultaneously with acceptance of the conditional use permit file with the Town a spill prevention control and countermeasure plan to be placed into effect if an emergency occurs due to spillage of contaminants. The plan will include provisions for any equipment needed and

actions required to contain and remove the spilled materials, and for the appropriate employee training. This plan will be placed on file at the on-site office and a copy shall be submitted to the Town.

11.044 Wetland Preservation. The staked wetlands on the non-metallic mining site will not be disturbed by the applicant's mineral extraction and related operations and activities; provided, however, that applicant reserves the right, with appropriate required permits or approvals from the Wisconsin DNR and the U.S. Army Corps of Engineers and Calumet County to modify and mitigate the wetland areas.

11.045 Well Restriction. An applicant may install a residential well for use in its non-metallic mining operation. High capacity wells and high capacity well systems, both as defined in Wisconsin Administrative Code NR 812.07, as amended, are prohibited without the Town's written approval.

11.046 Surface Water and Wastewater Collection and Sedimentation Control. Applicant will take all reasonable steps required to collect in the quarry site all surface water or wastewater runoff containing significant amounts of suspended solids from stripping and other non-metallic mining-related land disturbing activities and to settle and filter out such solids before discharge in compliance with applicable Wisconsin DNR WPDES permit requirements. Applicant will apply to the Town for appropriate erosion control permits for any earth-disturbing activities that do not drain into the quarry site.

11.047 Site Access and Improvements. Access to the non-metallic mining site shall be identified and agreed upon prior to the start-up of operations. Any road or intersection improvements deemed necessary to service the proposed operation (including acceleration and deceleration lanes) will be improved and maintained at the applicant's sole expense in accordance with the standards determined by the Town Board (in consultation with the County Highway Department) to allow for safe truck movements in and out of the site. The improvements will be made prior to the commencement of any hauling from the site, except for the hauling of material necessary to improve the intersection. The entrance road to the site must be paved. Haul roads will be maintained in a dust-free manner in accordance local, state and federal regulations. Restrictions on use of Town roads may be placed on the operation, subject to exceptions authorized by the Town Board for unusual circumstances. A detailed traffic study may be required by the Town. The study shall include, without limitation, the effect of trucking on traffic volume, patterns, safety and road capacity on all affected routes within one-half mile of the non-metallic mining operation. This does not apply to existing operations as of the date of the Ordinance.

11.048 Site Inspection and Compliance Committee. The Plan Commission Chairperson shall appoint a four-member inspection committee, consisting of three members of the Plan Commission together with a representative from a non-metallic mining regulatory agency such as East Central Wisconsin Regional Planning Commission or the Wisconsin Department of Natural Resources. The committee's responsibilities shall include, without limitation, the following:

- (A) The inspection of each existing non-metallic mining operation on an annual basis in order to determine compliance with this Ordinance;
- (B) The submission of a report of the committee's findings of its inspections with a statement describing the degree of compliance or non-compliance of the operations inspected by the committee. The report shall be submitted to the Chairperson of the Plan Commission with a copy to the Town Clerk for distribution to the Town Board. The report shall also be sent to the operators within 10 days of the inspection. The committee shall provide the applicant with reasonable advance notice of an inspection and, further, shall comply with all reasonable safety policies applicable to non-applicant employees present at the site. However, the applicant shall take all reasonable steps to facilitate the committee's inspection of the site consistent with the purposes of this Ordinance; and
- (C) The Town agrees to indemnify and hold harmless applicant, its directors, officers, employees, successors and assigns from and against any and all damages, claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees) (together "Claims") arising out of or relating to or resulting in any way from any actual or alleged death of or injury to a member of the inspection committee that results, or is claimed to result, from the site inspection. The preceding indemnity does not apply to Claims arising out of the applicant's active negligence or willful misconduct.

11.049 Other Pertinent Information. Any conditional use permit issued to an applicant for a non-metallic mining operation shall contain provisions regarding the following additional requirements; provided, however, the following requirements must be met regardless whether the conditional use permit specifically mentions the following requirements:

- (A) With respect to all new buildings, structures, signs, site improvements or other non-metallic mining extraction-related facilities to be constructed or installed on the site, the applicant will first obtain all necessary building, occupancy, land disturbing, operational and similar permits required by the Town, County, State and Federal government.
- (B) A pre-operation inspection funded by the applicant of all relevant Town roads shall be conducted to establish a benchmark. Thereafter, annual inspections shall be conducted to determine the extent of damage, if any. The applicant is financially responsible for all proven road damage to Town roads as a result of the permit holder's operation.
- (C) The conditional use permit will be granted for a period of three years, which term shall begin on the commencement of grading and earth movement activities on the site. In light of the fact that the anticipated life of the non-metallic mining operation is likely to substantially exceed 3 years, and because the applicant will be making a substantial investment in the development of the non-metallic mining

site during the initial 3-year term, the conditional use permit will be renewed unless the applicant substantially fails to comply with the requirements of the conditional use permit. In the event of a zoning change that eliminates non-metallic mining and related operations and activities as a conditional use on the site, the zoning status of the applicant's operation will be that of a valid non-conforming use, the nature and extent of which will be defined by the conditional use permit.

- (D) The applicant will provide to the Town an agreement to defend and hold the Town harmless against any third-party claims whatsoever resulting from or arising out of any negligent or intentional and wrongful act or omission of the applicant, its employees, officers or agents in conducting the operations of the non-metallic mining site that are regulated by the conditional use permit through the date of completion of final reclamation. The hold harmless agreement shall be subject to approval as to form by the Town Attorney.
- (E) Applicant shall submit a certificate of insurance identifying the Town and its elected officials, employees and agents as additional insureds with the following minimum coverage limits:
 - (1) Comprehensive General Liability Insurance, including blanket contractual liability insurance, insuring the applicant's obligation to indemnify the Town as provided in this ordinance insuring the Town, its officials, officers, agents and employees against liability for personal injury, including death of persons resulting from injuries occurring on or in any way related to the use or occupancy of the permitted premises in a minimum amount of \$1 million per occurrence and against liability for damage to property occurring on or in or relating in any way due to the permitted premises with the combined aggregate of \$2 million.
 - (2) Comprehensive General Public Liability Insurance against claims for bodily injury, death or property damage, occurring on, in or about the permitted premises or arising out of the operation of the permitted premises. Such insurance shall afford protection of not less than \$1 million with respect to bodily injury or death to any one person with the combined aggregate of \$2 million with respect to any one accident, and not less than \$100,000 with respect to property damage, without deductibles.
- (F) The applicant will be responsible to the Town for all reasonable actual costs incurred by the Town in the monitoring of the applicant's operations and in the administration of the conditional use permit and the review of any plans submitted for approval pursuant to or in connection with the conditional use permit. Such costs will be the actual salary and benefit costs incurred for the actual reasonable time spent by Town employees or officials on such monitoring, review or administration activities, and the actual reasonable costs to the Town of any

independent contractors or consultants hired by the Town for such monitoring, review or administrative services. However, no unusual monitoring or review projects will be undertaken by the Town, at the applicant's cost, without good cause and without giving the applicant reasonable notice and opportunity to be heard regarding the need for any reasonableness of any such proposals. In addition to the above, the applicant is responsible to reimburse the Town for the Town's reasonable attorneys' fees and costs incurred in the review, administration or enforcement of the conditional use permit or the provisions of the Zoning Ordinance applicable to the non-metallic mining operation.

- (G) Any conditional use permit issued to an applicant will be assignable only upon the written approval of the Town, which approval will not be unreasonably withheld or conditioned, subject to acceptance of such permit in writing by the proposed assignee or successor and satisfaction by the proposed assignee or successor of any reasonable financial security requirements imposed by the Town.
- (H) No material provision of a conditional use permit may be modified except upon the written application by the applicant and after public notice and hearing. The Town makes no representations regarding the applicant's right to obtain whatever additional authorizations or permits may be necessary for the operation of non-metallic mining.
- (I) The Town reserves the right to require such additional general and special conditions in the conditional use permit that the Town reasonably believes is necessary to protect the public health and welfare and to implement the legislative purposes of the Town's zoning ordinance. No waiver or inaction by the Town or its officials shall be deemed to be made unless the same shall be in writing and be signed by a duly authorized Town official. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Town in any other respect at any other time.
- (J) The issuance of a conditional use permit shall not be considered as in any manner affecting the title of the premises upon which the permitted activity will occur nor does it release the applicant from any liability for damage to person or property caused by or resulting from the non-metallic mining activity. In no manner does the Town assume any liability, directly or indirectly, for any loss due to damage, installation, maintenance or operation of the non-metallic mining activity authorized by the conditional use permit.
- (K) All references in this ordinance referring to the "applicant" include, without limitation, the operator or owner (if other than the operator) of the relevant non-metallic mining operation.

- (L) The provisions of this Ordinance shall apply to existing non-metallic mining operations, unless said operations are operating pursuant to the terms of a conditional use permit issued by the Town. Conditional use permits that are renewed by the Town subsequent to the adoption of this Ordinance shall comply with the provisions of this Ordinance, to the extent practicable.

- (M) The Town reserves the right to require appropriate security to assure the timely performance of a specifically-required action expressly identified in the final permit.