

**ORDINANCE NO. 31**

**AN ORDINANCE ESTABLISHING REGULATIONS AND  
STANDARDS FOR MINERAL EXTRACTION  
FACILITIES AS AN INTERIM USE**

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**EUREKA TOWNSHIP  
DAKOTA COUNTY, MINNESOTA**

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STANDARDS FOR MINERAL EXTRACTION  
FACILITIES AS AN INTERIM USE**

The Board of Supervisors of the Town of Eureka, Dakota County, Minnesota, does hereby ordain:

**SECTION 1. TITLE**

**1.01 Title.** This ordinance shall be known and cited as the Eureka Township Mineral Extraction Ordinance, except as referred to herein as “this Ordinance.”

**SECTION 2. PURPOSE**

**2.01 Purpose.** The purpose of this Ordinance is to protect the public health, safety and welfare through the following:

- A. Identify areas in the community where mineral extraction is most appropriate and minimizes conflicts with other land uses.
- B. Establish permitting requirements, environmental review procedures and performance standards to regulate mineral extraction.
- C. Establish standards that distinguish between longer term and shorter term mineral extraction activities.
- D. Establish standards that prevent or minimize environmental and aesthetic impacts on extracted properties, adjacent properties and the community as a whole.
- E. Establish standards and financial guaranties that restore extracted land to a condition compatible with adjacent properties and suitable for future uses that are compatible with the Eureka Township Comprehensive Plan and zoning ordinance.

**SECTION 3. DEFINITIONS**

**3.01 Definitions.** When used in this Ordinance, the following terms shall have the meaning associated with them:

Accessory Uses. Uses of a mineral extraction facility that are incidental to mining and are not included as an authorized principal use. Accessory uses might include the manufacture, storage

and sale of products made from minerals on the premises, and storage and sale of minerals and topsoil not extracted on the premises.

Agricultural. As defined by the Eureka Township Zoning Ordinance.

Commission. The Planning Commission of Eureka Township.

Comprehensive Plan. The Eureka Township Comprehensive Plan.

Development Agreement. A written contract between the Operator, the property owner and Eureka Township, which outlines all the terms of the permit for a mining extraction facility, including any additional terms outside this Ordinance that are imposed by the Town Board.

Dewatering. The pumping, extraction or removal of subsurface water.

Dust. Airborne mineral particulate matter.

Excavation. The movement of soil and minerals or the removal of minerals.

Floodplain. The beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood.

Haul Routes. Roads used for transport to and from a mineral extraction facility.

Interim Use Permit. A use approved by the Township for a specified period of time.

Mineral. Sand, gravel, rock, clay and similar higher density non-metallic natural materials.

Mineral Extraction. The removal of sand, gravel, rock, clay and similar higher density non-metallic natural minerals from the ground.

Mineral Extraction Facility. Any area that is being used for removal, stockpiling, storage, and processing of minerals.

Mineral Extraction Permit. The interim use permit required for mineral extraction activities that will specify a time period for operation.

Operator. Any person or persons, partnerships or corporations or assignees, including public or governmental agencies, engaging in mineral extraction.

Principal Use. The principal use of a mineral extraction facility is the extraction, crushing, screening, mixing, processing, washing, storage and sale of minerals from the facility. The principal use does not include a concrete block plant or a ready-mix concrete plant or an asphalt production plant or a concrete recycling plant or an asphalt recycling plant, except as stated in Section 7.01 B and in Section 7.01 K and in Section 13.02 H and in Section 13.02 I.

Processing. Any activity which may include the on-site crushing, washing, stockpiling, compounding, mixing, or treatment of sand, gravels, rocks, or similar mineral products from the site into consumable products such as construction grade sand, gravel, and other similar products.

Reclamation. To renew land to self-sustaining long-term use that is compatible with contiguous land uses, present and future, in accordance with the standards set forth in the Eureka Township zoning Ordinance and in the Comprehensive Plan.

Recycling. The process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

Recyclable Materials. Materials that are separated from mixed municipal solid waste for the purpose of recycling, including concrete rubble, concrete and asphalt taken from road demolition or road repair projects, and other recyclable asphalt and recyclable concrete.

Setback. The area of property surrounding a mineral extraction facility intended as a buffer zone.

Shoreland. Land located within the following distances from public waters: one thousand (1000) feet from the ordinary high water level of any lake, pond or reservoir, and three hundred (300) feet from rivers and streams, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater.

Soil. A natural three-dimensional body of the earth's surface.

Staging. Preparation for daily hauling activities, including weigh-in, warm up, and lining up of trucks.

Subject Property. The land on which mineral extraction is permitted.

Topsoil. The upper portion of the soils present that is the most favorable material for plant growth.

Town Board. The Board of Supervisors of Eureka Township.

Township. The Township of Eureka, Dakota County, Minnesota.

Wetlands. A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971) or its equivalent or otherwise classified as a wetland under the Township's Zoning Ordinance.

Zoning Ordinance. The Eureka Township Zoning Ordinance.

## **SECTION 4. PERMIT REQUIRED**

**4.01 Permit Required.** It is unlawful for any person, firm, company or corporation to extract or process minerals in the Township without first obtaining an interim use permit required in this Ordinance. Penalties for operating without a permit will be strictly applied according to Section 8, Termination, Violations and Penalties, of this Ordinance.

**4.02 Criteria for Granting Permits.** In granting a permit, the Eureka Town Board shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety and general welfare of occupants and owners of surrounding lands. Among other things, the following standards shall be considered:

- A. The use must not create an excessive burden on existing parks, schools, streets and other public facilities and utilities that serve or are proposed to serve the area.
- B. The use must be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
- C. The structure and site must have an appearance that will not unreasonably create an adverse effect upon adjacent residential properties.
- D. The use must be reasonably related to existing land use.
- E. The use must be consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- F. The use must be in conformance with the Eureka Township Comprehensive Plan.
- G. The use must not cause traffic hazard or congestion.
- H. Existing land uses nearby must not be adversely affected unreasonably by intrusion of noise, glare or general unsightliness.
- I. The use must not cause significant adverse impact to surface or ground water resources.
- J. Dewatering to obtain materials intersecting the groundwater shall not be allowed. The use of equipment such as draglines, trackhoes and backhoes to obtain materials intersecting groundwater shall be allowed.

**4.03 Levels of Permits.** Interim Use Permits for mineral extraction will be issued according to the following levels of permits:

- A. Level 1 Permit. This is an expedited permit to meet the needs of short-term construction projects. It applies to operations that will not exceed five (5) acres of excavated area to a maximum depth of twenty (20) feet but not to exceed 1 foot above the water table and will be active for only one operating season. Compliance with reclamation standards is required. The Town Board may waive the Environmental Assessment Worksheet (EAW) requirement in the event there are clearly no environmental concerns. Should an Operator desire to expand or extend, the Operator will have to apply for a Level 2 or Level 3 permit; in such case the area of the mineral extraction covered by the Level 1 permit will be included in the overall mining area for the required Level 2 or Level 3 permit.
- B. Level 2 Permit. This permit applies to operations which will be active for more than one operating season and that will not exceed ten (10) acres of excavated area to a maximum depth to be determined by the approved site plan but not to exceed 1 foot above the water table. Compliance with reclamation standards is required. An EAW is required for this level of permit.
- C. Level 3 Permit. This permit applies to operations that will exceed ten (10) acres of excavated area to a maximum depth to be determined by the approved site plan but not to exceed 1 foot above the water table unless the end use is to be a lake or a wetland. In addition, the proposed mining plan must undergo a technical review by the Department of Natural Resources, Division of Lands and Minerals. Compliance with reclamation standards is required. An EAW is required for this level of permit.

**4.04 Zoning.** Mineral extraction shall be allowed in all agriculture-zoned districts, as identified in the Eureka Comprehensive Plan and in the zoning ordinance.

**4.05 Exceptions.** A mineral extraction permit shall not be required for any of the following:

- A. Excavation for a foundation, cellar or basement of a structure or for residential landscaping if a building permit has been issued.
- B. Excavation conducted directly by state, county, city, or township authorities in connection with construction or maintenance of roads, highways, or utilities, conducted solely within permanent easement areas or rights-of-way.
- C. Curb cuts, utility hook-ups or street openings for which another permit has been issued by the Township.
- D. Excavation or removal of less than four hundred (400) cubic yards of material per year for use on the owner's property.
- E. Excavation or grading for agricultural purposes.

## **SECTION 5. MINERAL EXTRACTION PERMIT APPLICATION REQUIREMENTS**

**5.01** Application. An application for a mineral extraction permit shall include but not be limited to the following information:

- A. Name, address, phone number, contact person for the Operator and signature of an authorized representative.
- B. Name, address, phone number and signature of the landowner.
- C. Level of permit for which the application is being made.
- D. Acreage and complete legal description of the property on which the mineral extraction will be located, including all contiguous property owned by the landowners.
- E. Acreage and complete legal description of the property on which the mineral extraction permit will apply.
- F. Type and estimated quantity of material to be extracted.
- G. The estimated time required to complete the proposed operation and reclamation, including starting and completion dates.
- H. A description of all vehicles and equipment proposed to be used by the Operator in the operation of the facility.
- I. A description of the estimated average daily and peak daily number of haul trucks accessing the facility, including a breakdown of Operator owned and non-Operator owned vehicles.
- J. The total estimated amount of all other daily vehicle traffic from workers, customers, and service vehicles.
- K. A description of the haul routes within the Township to be used in the operation of the facility.
- L. All information necessary to complete an Environmental Assessment Worksheet (EAW).

**5.02** Supporting Documentation. Every application for a mineral extraction permit shall include submission of supporting documentation provided by a registered engineer licensed within the State of Minnesota which shall include, but may not be limited to, the following:

- A. A description of existing land uses on the subject property and all properties within one-half (1/2) mile of the boundaries of the tax parcel on which the subject property exists.
- B. A description of land use designations in the Comprehensive Plan and zoning classifications of the subject property and all properties within one-half (1/2) mile of the boundaries of the tax parcel on which the subject property exists.
- C. A description of the soil, vegetation, and mineral content of the subject property. A minimum of three (3) soil boring logs representative of the site and an analysis of the subsurface materials on the subject property must be submitted.
- D. A general description of surface waters, existing drainage patterns, groundwater conditions and depth of water tables on and within one-half (1/2) mile of the boundaries of the tax parcel on which the subject property exists.
- E. A general description of any wells or private sewer systems of record, pipelines, power lines and other utilities or appurtenances on the subject property and adjacent properties.
- F. A general description of the depth, quantity, quality and intended uses of the mineral deposits on the subject property.
- G. A map of current topography of the subject property, illustrated by contours not exceeding ten-foot intervals.
- H. A plan showing proposed topography of the subject property after mineral extraction has been completed, illustrated by contours not exceeding two (2)-foot intervals.
- I. A phasing plan which illustrates the sequencing of mineral extraction, the locations of processing equipment, mineral stockpiles, staging areas, accessory uses and access routes.
- J. Copies of Minnesota Pollution Control Agency (MPCA) application documents, EAW documents, EIS documents if required, and operating permits.
- K. A description of the site hydrology and drainage characteristics during extraction for each phase. Identification of any locations where drainage of any disturbed areas will not be controlled within the boundaries of the subject property and plans to control erosion, sedimentation and water quality of the runoff. This includes holding ponds, with standards to be determined by the Town Board.

- L. A description of the potential impacts to adjacent properties resulting from mineral extraction and off-site transportation, including but not limited to noise, dust, surface water runoff, groundwater contamination, traffic and aesthetics.
- M. A description of the plan to mitigate potential impacts resulting from mineral extraction.
- N. A description of site screening, landscaping and security fencing.
- O. An End Use Plan.
- P. A description of site reclamation in each phase of operation and upon completion of mineral extraction on the subject property.
- Q. Recommendations from Dakota County Soil and Water Conservation Service and the appropriate watershed management organization as required in Section 7.01.U12.
- R. A description of the method by which complaints about any aspect of the facility operation or off-site transportation are to be received and the method which complaints are to be resolved.
- S. A general description of any lakes, wetlands, shoreland or flood plain areas located within one thousand (1000) feet of the proposed mining site. For project sites that include any of these water features within the proposed mining area, a delineated boundary describing size and location will be required.

## **SECTION 6. PERMITTING PROCEDURE**

### **6.01 Interim Use Permit.**

- A. Mineral extraction permits shall be considered and processed by the Town Board as interim use permits. The procedures are defined in the Eureka Township Zoning Ordinance. If the Board grants the interim use permit, the Board shall specify the particular date or the occurrence of the particular event when the permit is to expire. The Board may attach conditions to the interim use permit in addition to those set forth in the Ordinance.
- B. Before making a formal application, applicants shall appear before the Board at a regularly scheduled meeting to make a preliminary presentation on the conceptual nature of the proposed extraction activity. The Board will provide the applicant with a copy of this Ordinance, outlining the application process and permit requirements.

- C. The application and required supporting information shall be filed with the Planning Commission at its regularly scheduled meeting. If the application is incomplete, the Commission, in writing within ten (10) days, will identify and notify the applicant of additional information to be submitted.
- D. A registered engineer licensed by the State of Minnesota and qualified in this field shall review the application. The Eureka Town Board shall select the engineering firm.
- E. The independent engineering firm will submit the results of its findings, along with any recommendations for actions, to the Planning Commission.
- F. Within thirty (30) days of receipt of a complete mineral extraction permit application, the Planning Commission, together with the registered engineer, will prepare an Environmental Assessment Worksheet (EAW), according to Minnesota Rules, Chapter 4410. After this process is completed, the Town Board will determine whether an Environmental Impact Statement (EIS) is required.
- G. Upon completion of the environmental review process, the Commission will process the mineral extraction permit. The Commission may require that the applicant submit additional information to address or clarify any issues raised in the environmental review. The formal review process will commence after completion of the environmental review or upon receipt of additional information required.
- H. Within thirty (30) days of receipt of all required information and upon completion of the environmental review process, the Planning Commission shall hold a public hearing for the mineral extraction permit. The hearing will satisfy the hearing requirements of the interim use permit.
- I. After the public hearing, the Planning Commission shall make findings on the permit application and submit recommendations to the Town Board.
- J. If the Town Board cannot act upon the permit application within the permitting timeframes, the Town Board shall notify the applicant in writing to request an extension of time and stating the reasons for the extension.
- K. Any application that is inconsistent with the Comprehensive Plan will be denied. The applicant has the right to submit an application to the Town Board to amend the Comprehensive Plan, according to procedures established by the Town Board.
- L. The Town Board shall approve the permit application, deny the permit application or approve the permit application with modification. Modifications may include additional restrictions.

- M. When a permit is approved, the Town Board or its designee shall complete a Development Agreement, signed by representatives of the Town Board, the landowner and the Operator (if different from landowner).
- N. A mineral extraction permit application denied by the Town Board may not be reapplied for, whether the same or modified application, for a period of twelve (12) months from the date of denial.

**6.02 Review of Permit.** In February of each year, the Town Board will review the mineral extraction permit. By January 31<sup>st</sup> of each year, the Operator will provide the following information to the Board and the Operator must pay the review fees referenced in Section 10:

- A. Amount of material removed; amount of material imported from off-site;
- B. Amount of material remaining to be removed;
- C. Evidence that bonding and insurance are still in force and effect;
- D. Status of permit holder's responses to complaints or violations during the previous year;
- E. History of permit holder's compliance with this mineral extraction ordinance and other governmental regulations relating to mining.
- F. Status of phasing plan;
- G. Status of reclamation;
- H. Up to date list of all vehicles and equipment on site; estimated number of vehicles accessing the facility;
- I. Report on condition of haul roads that serve or abut the facility;
- J. Status of erosion control measures;
- K. Any change in ownership and/or operator; and
- L. Other items of information requested by the Town Board.

In its review, the Town Board shall examine the information provided by the Operator and the Town Board shall determine whether the mineral extraction facility is in compliance with this Ordinance, the conditions imposed by the permit and the Development Agreement.

## **SECTION 7. MINERAL EXTRACTION PERFORMANCE STANDARDS**

**7.01 Performance Standards.** The following performance standards apply to all mineral extraction facilities in the Township:

- A. Hours of Operation. Mineral extraction facilities shall operate only between the hours of 7:00 a.m. and 5:30 p.m., Monday through Friday. A mineral extraction facility may be opened one hour before hours of operation to allow for staging. No Sunday or holiday operations will be allowed. The holidays are New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving and, Christmas. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.
- 1) Operators are allowed extensions to the hours of operation for emergencies only. Operators must notify the Township Clerk or a Town Board member in advance of the proposed exception.
  - 2) The Town Board must approve other exceptions to the hours of operation, such as Saturday operation, government agency contracts and other evening work.
- B. Source of Materials. Only minerals from the site shall be processed at the mineral extraction facility subject, however, to the following exceptions:
- i.) Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed 15 working days per calendar year and if the recyclable concrete and recyclable asphalt originated from a road demolition or road repair project in Eureka Township.
  - ii.) The Operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis.
- C. Fencing. Regular fencing in good repair is required around the entire permitted area of operation. Fencing as a minimum must be three (3) wires with posts a maximum of twelve (12) feet apart and at least four feet high.
- D. Access. All mineral extraction facilities shall have direct access to a 9-ton or greater capacity road. The Town Board shall set minimum roadway improvements and maintenance obligations as a condition of the permit. The point of the mining site access shall be at least 300 feet from any intersection or residential driveway, or as determined by the Town Board under special circumstances. Circumstances will include, but not be limited to, topography, safety, traffic, and existing land use.

- E. Haul Routes. All trucks traveling to or from the mineral extraction facility shall utilize 9-ton or greater roads capacity within the Township. Operators may be granted a special permit to utilize roadways temporarily posted under 9-tons, provided adequate surety is provided to cover the costs of repairing any damage to roadways. The Town Board may allow a Level 1 permit holder to use roads that are not 9-ton. Level 2 and Level 3 permits will require any sub-standard roads utilized by the mineral extraction facility as haul routes to be brought up to a MnDOT standard for 9-ton paved roads. The Operator will bear the cost of such an upgrade. The Township reserves the right to require road maintenance paid by the Operator on any haul route within the Township or those bordering the Township.
- F. Roadway Dust Control. Operators will be responsible for dust control on all gravel roads utilized by trucks hauling to or from the permitted mineral extraction facility. Dust control will be required when conditions warrant it and the number of one-way truck trips from the mineral extraction facility exceed three (3) per hour. The Township reserves the right to require dust control on any haul route within the Township or those bordering the Township.
- G. Mineral Extraction Facility Dust Control. The Township shall require dust control in a facility when it is determined that airborne dust from extraction areas, processing activities, stockpiles or internal roadways creates a public nuisance or otherwise adversely impacts surrounding lands. Remedies to dust control may include watering, berming, landscaping and enclosures for processing equipment, and any other means deemed necessary by the Town Board.
- H. Noise. Maximum noise levels at the facility will be consistent with the most current standards established by the Minnesota Pollution Control Agency (MPCA) and as deemed necessary by the Town Board.
- I. Vibration. Operators shall use all available means deemed necessary by the Town Board to eliminate adverse impacts of vibration from equipment on adjacent properties.
- J. Air Quality / Water Quality. All activities on the subject property will be conducted in a manner consistent with operating permits issued by state and federal agencies. The Town Board may require other standards it deems reasonably necessary. Increased run-off must be retained on-site with retention or detention ponds.
- K. Accessory Uses. Accessory uses must be identified in the permit. Accessory uses not identified in the permit are not allowed. The accessory uses of a concrete block production plant or ready-mix concrete production plant or asphalt production plant, shall be strictly prohibited. A concrete recycling plant and an asphalt recycling plant are also prohibited, except as stated in Section 7.01 B.

The storage, stockpiling, sale, and mixing of materials that have been excavated off-site are strictly prohibited, except for the mixing of materials as provided in Section 7.01 B. Accessory uses will terminate when the principal use terminates.

- L. Unauthorized Storage. Any vehicles, equipment or materials not associated with the mineral extraction facility or not in operable condition may not be kept or stored at the facility.
  
- M. Setbacks. No extraction activity may occur within one thousand (1000) feet of any dwelling and within fifty (50) feet of any adjacent property line, road right-of-way or public utility. Screeners, crushers, other processing equipment and manufacturing equipment may not be located closer than one thousand (1000) feet from a dwelling nor closer than one hundred (100) feet from any adjacent property line, road right-of-way or public utility. Setbacks from an existing dwelling shall take precedence over setbacks for road right-of-way, adjacent property line and public utility. If the processing equipment is placed within an enclosed structure, the Town Board may consider shorter setback distances. Grading plans affecting pipelines or power line corridors will be evaluated on a case-by-case basis. The Town Board may waive setback requirements when the common boundary area of an adjoining property is a legal mining operation, the common boundary is not within one thousand (1000) feet of a residence, and both property owners of adjacent mining operations have agreed to a common reclamation plan and have a written agreement with the Township establishing responsibility for reclamation.

Notwithstanding the setback requirements set forth above, at the time of permit issuance, the Board may impose lesser setback requirements if the Board finds the following:

- a.) Practical difficulties exist in complying with the setback requirements set forth above; and
- b.) The protections afforded surrounding lands are not significantly lessened by the reduced setbacks when taking into account the following:
  - i) the scope and size of the mineral extraction facility;
  - ii) the time and duration that the mining will occur in proximity to surrounding lands;
  - iii) reduced operating hours or restricted seasons of operation or additional berming, screening or other measures can be imposed to ameliorate the impact of mining in closer proximity to the surrounding lands than would be allowed by the setbacks stated above; and
- c.) The lesser setbacks are reasonable in light of all circumstances; and

- d.) There is a substantial volume of minerals in the more restrictive setback areas and it is reasonable to mine the substantial volume of minerals in the more restrictive setback areas in light of the relatively small volume of minerals that can be mined on the remainder of the subject property.

If the Township receives a request for lessened setbacks, then prior to consideration of such request by the Town Board the request shall be referred to the Planning Commission for a recommendation. Prior to consideration of the request by the Planning Commission, the Clerk shall send notice by certified mail to all landowners that own property within 1000 feet of the proposed mining area. The notice shall be sent at least 10 days prior to the meeting at which the lessened setbacks are to be considered by the Planning Commission. The notice shall state the date, time and place of the Planning Commission meeting and the requested setbacks. For the purpose of giving mailed notice, the Clerk may use any appropriate records to determine the names and addresses of the owners having land within 1000 feet of the proposed mining area. The failure to give mailed notice or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made. The applicant shall reimburse the Township for all costs associated with giving the notice.

- N. Phasing. Phasing plans must be prepared for all mineral extraction facilities. The Operator and owner must follow the phasing plan approved by the Town Board. No more than ten (10) acres of land may be exposed to extraction at any one time. A maximum of twenty-five (25) acres may be utilized at any one time for extraction, processing, staging and stockpiling. Areas where extraction has been completed shall be reclaimed according to the provisions of this Ordinance, except for that area currently being used in the maximum twenty-five (25) acre operational area.
- O. Berming. Earthen berms shall be constructed along all road rights-of-way. In the instance where the setback from a residence applies under Section 7.01 M, then, in addition, earthen berms shall be constructed along the adjoining property line. Berms shall be a minimum of eight (8) feet in height. All berms shall have a minimum slope of 3:1 and have a silt fence at the base on the side closest to adjacent property. The silt fence shall be maintained until vegetation is established, at which time it shall be removed.
- P. Heights. The maximum height of any excavation, temporary crushing equipment, or temporary stock piles located less than one thousand (1000) feet from the property line shall be a minimum of eight (8) feet below the average height of the adjacent berms within the mandatory setback.
- Q. Weed Control. The operators shall be required to control noxious weeds and mow or harvest other vegetation to maintain reasonable appearance of the site.

- R. Explosives. If the Operator desires the use of explosives, a separate interim use permit shall be required for each incident to provide adequate public notice and input.
- S. General Compliance. The operator must comply with all other federal, state, regional, county and local laws and regulations applicable to the operation of the mineral extraction facility, including but not limited to floodplain management regulations, shoreland management regulations and zoning ordinance regulations.
- T. Additional Regulations. The Township may impose additional regulations and requirements to the mineral extraction permit to protect the public health, safety, and welfare.
- U. Reclamation Plan. A reclamation plan must include the grading plans, on-site topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications for each phase and the final site restoration. The Operator and owner must follow the reclamation plan approved by the Town Board. The following minimum standards and conditions apply:
- 1) The peaks and depressions of the area shall be reduced 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. No graded slope shall exceed a 4:1 ratio (twenty-five (25) percent). The final grade slope shall commence at the property boundary. Berms will be removed to the original elevation of the land, unless the Board has approved a different elevation as part of the End Use Plan.
  - 2) Excavations made to a water producing depth must meet the following requirements:
    - a. The depth of the excavation for lake end-use must not be less than ten (10) feet nor more than thirty (30) feet below the natural low water mark, as determined by the Town Board after consultation by its engineer with Dakota County Soil and Water and/or the Department of Natural Resources.
    - b. The depth of the excavation for a wetland end-use shall be from one (1) foot above the natural low water mark to a depth not to exceed one (1) foot below the natural low water mark, as determined by the Town Board after consultation by its engineer with Dakota County Soil and Water and/or the Department of Natural Resources.
    - c. A combination of the requirements of 7.01 U – 2 (a) and (b) as approved by the Board.

- d. All banks shall be sloped to the water line at a slope that shall not be steeper than ten (10) feet horizontal to one (1) foot vertical (10:1) for a lake end-use, and ten (10) feet horizontal to one (1) foot vertical (10:1) for a wetland end-use.
  - e. All banks shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least three (3) inches.
  - f. Such topsoil as required by the preceding subsection shall be planted with trees, shrubs, legumes or grasses.
  - g. All materials used for back-filling in any area of the reclamation shall be tested and be free of all contaminants, and shall be non-noxious, non-flammable and non-combustible.
  - h. Wetland or lake reclamation shall conform to the guidelines of the 1992 edition of "A Handbook for Reclaiming Sand and Gravel Pits in Minnesota," published by the Minnesota Department of Natural Resources.
- 3) Excavating not made to a water producing depth, but which must be graded or back-filled, shall meet the following requirements;
- a. All materials used for back-filling in any area of the reclamation shall be tested and be free of all contaminants, and shall be non-noxious, non-flammable and non-combustible.
  - b. The graded or back-filled area shall not collect or permit stagnant water to remain therein.
  - c. Such graded or back-filled area shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding, and to a depth of at least three (3) inches.
  - d. Such topsoil as required by the preceding subsection shall be planted with trees, shrubs, legumes or grasses.
- 4) Seeding and mulching shall be consistent with Minnesota Department of Transportation specifications for rights-of-way. Exceptions to seeding and mulching include areas returned to agricultural production.
- 5) Soil restoration, seeding and mulching must occur within each phase as soon as final grades, or interim grades identified in the phasing plans, have

been reached. Exceptions to seeding and mulching include the processing, storage and staging areas within each phase.

- 6) Soil erosion and sedimentation control measures shall be consistent with MPCA's publication entitled "Protecting Water Quality in Urban Areas" and the applicable section of the Eureka Comprehensive Use Plan.
- 7) Unless otherwise amended or approved by the Township, all final grades and site restoration efforts shall be consistent with the reclamation plan.
- 8) When the end-use is some form of open space, the type of vegetative re-growth must provide appropriate habitat for wildlife consistent with the form of end-use.
- 9) The end-use plan shall consider the safe use of the property. The end-use plan shall be consistent with the Comprehensive Plan and zoning ordinance.
- 10) Within nine (9) months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials, stock piles of extracted mineral materials, and debris shall be removed from the subject property.
- 11) For each phase, within nine (9) months after completion of mineral extraction for that phase, reclamation must be completed. If the permit is terminated earlier, reclamation must be completed within nine (9) months after termination.
- 12) Soil And Water Conservation District And Watershed Review And Recommendations. As a part of the original application for an interim use permit, the applicant shall submit grading plans, phased reclamation plans and water control plans to the Dakota County Soil and Water Conservation District and to the governing bodies of the township watersheds for review and recommendations. Said recommendations on the phased reclamation, grading, soil and water retention plans shall be reviewed annually by the Town Board and may be included as conditions of the interim use permit.

- V. Depth of Excavation. Excavation and extraction shall not occur beyond the depth set by the Board in the permit. In setting the depth of excavation, the Town Board shall consider the standards stated in Section 4.02 as well as recommendations from the County, the Soil and Water Conservation District and the independent engineering firm selected by the Town Board under Section 6.01(D).

- W. Dewatering. Dewatering to obtain materials intersecting the groundwater shall not be allowed. The use of equipment such as draglines, trackhoes and backhoes to obtain materials intersecting groundwater shall be allowed.

## **SECTION 8. TERMINATION, VIOLATIONS AND PENALTIES**

**8.01** Termination. The mineral extraction permit shall be terminated on the happening of any of the following events:

- A. The date or event of termination specified in the interim use permit.
- B. Upon a violation of a condition under which the permit was issued, but only after the Town Board has first provided written notice to the Operator and land owner (if different from the Operator) describing the specific violation and steps necessary to be in compliance with the permit and after having been given a reasonable opportunity to remedy the violation, but in no case longer than five (5) working days. The first violation of any condition will result in written notice and appearance before the Town Board. Second violation of any condition will result in written notice and a misdemeanor. Third violation of any condition will result in written notice and termination of permit.
- C. Upon violation of hours of operation, dust control, noise, road maintenance, or truck safety issues, the Town Board will notify the Operator and land owner (if different from the Operator) in writing. They will be given twenty-four (24) hours to come into compliance. Enforcement will be as follows: First violation of any condition will result in written notice and appearance before the Town Board. Second violation of any condition will result in written notice and a misdemeanor. Third violation of any condition will result in written notice and termination of permit. To the extent Section 8.01 C is more demanding than Section 8.01 B, then Section 8.01 C shall apply.
- D. Each day that a violation continues beyond the allotted time to repair constitutes a new violation.

**8.02** Misdemeanor Penalty. Any person who violates or fails to comply with any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished to the maximum extent authorized in Minnesota Statutes, as amended from time to time. Each day the violation continues shall constitute a separate offense. If the violations are not remedied to the satisfaction of the Town Board, the permit will be terminated.

**8.03** Immediate Cessation of Mining Upon Contamination of Drinking Water. If at any time it is proven that the mining operation is contaminating drinking water as prescribed by the Minnesota Department of Health Safe Drinking Water Standards or any natural spring, the Town Board will notify the Operator and property owner (if different from the Operator) in writing and mining will cease immediately. If this can not be resolved to the satisfaction of the Town Board, the permit will be terminated.

**8.04** Data Practices Act. All complaints must be in writing and available for public viewing provided that the identity of complainant is confidential pursuant to the Minnesota Data Practices Act.

**8.05** Verification of Violations. All violations must be verified by the Town Board before action is taken.

**8.06** Determination of Critical Violations. Violations will be reviewed each year by the Board. If violations are deemed not critical by the Board, the following year of the permit will start with no pending violations. If violations are found to be critical by the Board, such violations will be added into the following year of the permit and continue to count as a violation.

## **SECTION 9. ENFORCEMENT**

**9.01** Inspection. The Operator grants the Township's officers and representatives access to the facility during normal operation hours to inspect the mineral extraction facility and enforce the provisions of this Ordinance.

**9.02** Responsibility For Repair and Maintenance. The Operator shall be responsible for the repair and maintenance of public and private property which is damaged by it, its agents or employees in conducting business or any other activity associated with the mineral extraction facility.

**9.03** Development Agreement. A development agreement will be required for all mineral extraction permits, including seasonal extraction permits.

## **SECTION 10. FEES**

**10.01** Application Fee. Before an application will be processed, the applicant will pay a non-refundable application fee in an amount established by the Board and reviewed annually.

**10.02** Escrow. The applicant must pay for all estimated expenses to be incurred by the Township before an application will be processed. The Town Board will determine estimated expenses within thirty (30) days of the filing of the application. The applicant will make such payments into an escrow account with the Town. The prepayment amounts shall be a credit toward the costs of the attorney, planners, engineers and other professional consultants that the Town uses to review the application to prepare documents, to inspect the facility, to make recommendations and to enforce this Ordinance; all such costs are the obligation of the applicant and the applicant must reimburse the Town for such costs. All such costs, if not already paid by the escrow, shall be paid by the applicant within thirty (30) days of final action on the matter by the Town Board. If such costs are less than the escrowed amount, such escrow will be returned to the applicant within thirty (30) days of final action on the matter by the Town Board.

**10.03 Reimbursement of Costs.** The applicant shall reimburse the Township for all out of pocket expenses as incurred by the Township in the review of the initial and review applications, public hearing, preparation of documents, inspections and enforcement of this Ordinance, whether a permit is issued or not.

**10.04 Fees.** The Board shall establish fees by ordinance for the issuance and review of mineral extraction permits. The review fee shall be based on the previous year's production in tons or yards times a dollar amount, with an established minimum amount, and set by ordinance. Fees and expenses must be paid at the time of issuance and thereafter on or before January 31st of each year for the permits that have not been terminated. Failure to pay review fees and expenses shall be a violation of this Ordinance.

**10.05 Future Impositions.** If in the future the state law enables the Town to impose a host community fee, tax, mineral extraction charge or other governmental imposition to compensate the Town for the effects of a mineral extraction facility, then the Township reserves the right to impose such fees, taxes, charges or other governmental impositions on all mineral extraction facilities, including, but not limited to, those that exist at the time the fees, taxes, charges or impositions are established.

## **SECTION 11. FINANCIAL GUARANTY**

**11.01 Financial Guaranty.** The Operator must provide and maintain a performance bond, cash escrow or a letter of credit, in a form acceptable to the Township, to guarantee compliance with this Ordinance and the terms and conditions of the development agreement. The Township shall have the right to use the financial guaranty to remove stockpiles and complete site reclamation and correct other deficiencies or problems caused by the Operator, in the event the Operator is in default of the permit obligations. The amount of financial guaranty shall be a minimum of Three Thousand Dollars (\$3,000) for every unreclaimed acre. This amount may be increased by the Board with reference to the increase in the Consumer Price Index (CPI) for the Minneapolis-St. Paul Area. The financial guaranty shall include acreage used for stockpiling and processing as well as extraction and shall remain in full force and effect for a minimum period of nine (9) months or after reclamation or cleanup of the site is complete, whichever is longer.

## **SECTION 12. LIABILITY INSURANCE**

**12.01 Liability Insurance.** The Operator shall at all times procure and maintain at the Operator's expense general public liability insurance, automobile liability insurance and workers' compensation insurance. This insurance shall cover claims for bodily injuries, wrongful death, and property damage occurring as a result of the Operator's performance of its duties under the Development Agreement and under this Ordinance. Such insurance shall afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to injuries or death to a single person, to a limit of not less than Five Million Dollars (\$5,000,000.00) in respect to any one accident or occurrence, and to a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to property damage. The Township shall be a named additional insured on all such policies of insurance. The Operator shall file with the Township a certificate evidencing coverage before the commencement date of the term of the mineral extraction permit.

The certificate shall provide that the Township must be given thirty (30) days written notice of the cancellation of insurance.

**12.02 Indemnification.** The Operator shall hold the Township harmless against all claims by third parties for damage or costs arising out of, resulting from or related to mineral extraction, processing and reclamation on the subject property or incurred in the development of the subject property. The Operator shall indemnify the Township for all costs, damages, or expenses incurred by the Township arising from such claims, including attorneys' fees.

### **SECTION 13. PRE-EXISTING MINERAL EXTRACTION FACILITIES**

**13.01 Pre-Existing Mineral Extraction Facilities as Legal Non-Conforming Uses.** This entire Section 13 applies only to those pre-existing mineral extraction facilities described in this Section 13.01 relating to the property legally described in Section 13.09.

Notwithstanding Section 4.01, those mineral extraction facilities in the Township that:

- 1.) exist as of the effective date of this Ordinance; and
- 2.) prior to the effective date of this Ordinance obtained from the Town Board the annual mining permit for calendar year 2002, which was previously required under Township Ordinance No. 13 (now repealed);

shall have the right to continue as mineral extraction facilities and as legal non-conforming uses, without first obtaining an interim use permit for a mineral extracting facility and without complying with Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Ordinance, as long as there is compliance with the conditions and the performance standards in Section 13.02 and as long as Sections 13.03 through 13.09 are met. This right shall run with the applicable property and this right shall be subject to Minnesota Statute § 462.357, subd. 1e.

**13.02 Performance Standards.** The following performance standards shall apply to all existing mineral extraction facilities in the Township that are permitted to operate by Section 13.01 of this Ordinance:

- A. **Hours of Operation.** Previously permitted mineral extraction facilities shall operate only between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. Truck loading and hauling of material shall be allowed on Saturdays, only between the hours of 7:00 a.m. and 3:00 p.m. A mineral extraction facility may be open one hour before and one hour after the hours of operation to allow for staging and equipment repair. No Sunday or holiday operations will be allowed. The holidays are New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving and, Christmas. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.

- 1.) Operators are allowed extensions to the hours of operation for emergencies only. Operators must notify the Town Clerk or a Town Board member in advance of the proposed exception.
  - 2.) The Town Board must approve other extensions to the hours of operation, such as Saturday operation, government agency contracts and other evening work.
- B. Dewatering. Dewatering, to obtain materials intersecting the groundwater shall not be allowed. The use of equipment such as draglines, trackhoes and backhoes to obtain materials intersecting groundwater shall be allowed.
- C. Content of Reclamation Plans. Previously permitted mineral extraction facilities shall supply the Town Board with a plan showing the proposed topography of the subject property after mineral extraction has been completed, illustrated by contours not exceeding ten (10) foot intervals. The plan shall be prepared by a registered engineer licensed within the State of Minnesota and shall conform to the guidelines of the July 1992 edition of "A Handbook For Reclaiming Sand and Gravel Pits in Minnesota", published by the Minnesota Department of Natural Resources.

A reclamation plan must include the grading plans, on-site topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications for the final site restoration. The Operator and owner must follow the reclamation plan approved by the Town Board. The following minimum standards and conditions apply:

- 1.) Excavations made to a water producing depth must meet the following requirements:
  - a. The depth of the excavation for lake end-use must not be less than ten (10) feet nor more than thirty (30) feet below the natural low water mark, as determined by the Town Board after consultation by its engineer with Dakota County Soil and Water and/or the Department of Natural Resources.
  - b. The depth of the excavation for a wetland end-use shall be from one (1) foot above the natural low water mark to a depth not to exceed one (1) foot below the natural low water mark, as determined by the Town Board after consultation by its engineer with Dakota County Soil and water and/or the Department of Natural Resources.
  - c. A combination of 13.02 C 1 (a) and (b) above. may be allowed as approved by the Board.

2. Excavating not made to a water producing depth, but which must be graded or back-filled, shall meet the following requirements;
  - a. All materials used for back-filling in any area of the reclamation shall be tested and be free of all contaminants, and shall be non-toxic, non-flammable and non-combustible.
  - b. The graded or back-filled area shall not collect or permit stagnant water to remain therein.
  - c. Such graded or back-filled area shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding, and to a depth of at least three (3) inches.
  - d. Such topsoil as required by the preceding subsection shall be planted with trees, shrubs, legumes or grasses.
3. Seeding and mulching shall be consistent with Minnesota Department of Transportation specifications for rights-of-way. Exceptions to seeding and mulching include areas returned to agricultural production.
4. Soil erosion and sedimentation control measures shall be consistent with MPCA's publication entitled "Protecting Water Quality In Urban Areas" and the applicable section of the Eureka Comprehensive Use Plan.
5. Unless otherwise amended or approved by the Township, all final grades and site restoration efforts shall be consistent with the reclamation plan.
6. When the end-use is some form of open space, the type of vegetative re-growth must provide appropriate habitat for wildlife consistent with the form of end-use.
7. Within nine (9) months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials, stockpiles of extracted mineral materials, and debris shall be removed from the subject property.
8. Soil And Water Conservation District And Watershed Review And Recommendations. The Operator shall submit grading plans, phased reclamation plans and water control plans to the Dakota County Soil and Water Conservation District and to the governing bodies of the township watersheds for review and recommendations.

- D. Submission and Approval of Reclamation Plan. By December 31, 2002, the Operator of the mineral extraction facility must submit a reclamation plan to the Township. By December 31, 2003, the Operator must have obtained approval by the Town Board of the reclamation plan and Operator must thereafter comply with the approved reclamation plan.
- E. Compliance With Reclamation Plan. Once the reclamation plan is approved by the Town Board, the Operator must comply with the reclamation plan.
- F. No Expansion Without Obtaining Interim Use Permit. The mining area may not be expanded beyond the boundaries for the mining area that were approved in the annual mining permit for 2002 (previously issued by the Township under now repealed Township Ordinance No. 13). If the Operator seeks to expand the mining area, the Operator must obtain an interim use permit for the entire mineral extraction facility under Section 4.01, including those portions previously mined as well as the proposed expanded mining area.
- G. Air Quality / Water Quality. All activities on the subject property will be conducted in a manner consistent with operating permits issued by state and federal agencies. The Town Board may require other standards it deems necessary. Increased run-off must be retained on-site with retention or detention ponds.
- H. Source of Materials. Only minerals from the site shall be processed at the mineral extraction facility subject, however, to the following exceptions:
- i.) Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed 15 working days per calendar year and if the recyclable concrete and recyclable asphalt originated from a road demolition or road repair project in Eureka Township.
  - ii.) The Operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis.
- I. Accessory Uses. No accessory use will be allowed in conjunction with the mineral extraction facility unless the accessory use, by separate voting action of the Town Board, is approved by the Town Board. The accessory uses of a concrete block production plant or ready-mix concrete production plant or asphalt production plant, shall be strictly prohibited. A concrete recycling plant and an asphalt recycling plant are also prohibited, except as stated in Section 13.02 H. The storage, stockpiling, sale, and mixing of materials that have been excavated

off-site are strictly prohibited except for the mixing of materials as provided in Section 13.02 H.

- J. Unauthorized Storage. Any vehicles, equipment or materials not associated with the mineral extraction facility or not in operable condition may not be kept or stored at the facility.
- K. Phasing and Site Plan; Content, Submission and Approval. Previously permitted mineral extraction facilities shall supply the Town Board with a phasing and site plan which illustrates the sequencing of mineral extraction, the locations of processing equipment, mineral stockpiles, staging area, accessory uses and access routes. By December 31, 2002, the Operator of the mineral extraction facility must submit a phasing and site plan to the Township. By December 31, 2003, the Operator must have obtained approval by the Town Board of the phasing and site plan and Operator must thereafter comply with the approved phasing and site plan.
- L. Compliance With Phasing and Site Plan. Once the phasing and site plan is approved by the Town Board, the Operator must comply with the phasing and site plan.
- M. Explosives. If the Operator desires the use of explosives, a separate interim use permit shall be required for each incident to provide adequate public notice and input.
- N. General Compliance. The Operator must comply with all other federal, state, regional, county and local laws and regulations applicable to the operation of the mineral extraction facility, including but not limited to floodplain management regulations, shoreland management regulations and zoning ordinance regulations.
- O. Set-Back. Production or processing of minerals shall not be conducted closer than 30 feet to the boundary of any zone where such operations are not permitted, nor shall such production or processing be conducted closer than 20 feet to the boundary of any adjoining property line, nor closer than 200 feet from any adjoining structures, unless the written consent of the fee owner of such adjoining property is first secured. Mineral extraction shall not be made closer than 30 feet to the right-of-way line of any existing or platted street, roadway or highway, except that excavating may be conducted in such limits in order to reduce the elevation thereof in conformity to the existing or platted street, road or highway.
- P. Appearance. All buildings, structures and plants used for the production or processing of minerals shall be maintained in such a manner as to assure that such buildings, structures and plants will not become dangerously dilapidated. Weeds and any other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance and to prevent seeding on adjoining property.

- Q. Dust, Dirt and Haul Roads. All equipment used for the production of minerals shall be constructed, maintained and operated in such a manner as to minimize, as far as is practical, dust conditions which are annoying to persons living in the vicinity. All access roads from the mineral extraction facility to public highways, road or streets or to adjoining property shall be paved, treated or watered by the Operator so as to minimize dust conditions.

When the gravel or other mining operation terminates, the Operator shall restore all roads used for hauling to the same condition as the road was when the mineral extraction facility commenced.

- R. Noise. All equipment used for the production of minerals shall be constructed, maintained and operated in such a manner as to minimize any vibrations which are injurious or annoying to persons living in the vicinity.
- S. Surface Water. The mining operation shall in no way be allowed to interfere with surface water drainage nor shall the mining operation be allowed to affect the quality of surface or subsurface water.
- T. Black Dirt and Topsoil. The excavation or removal of black dirt or topsoil for sale or for use other than on the premises from which the soil shall be taken, except in connection with the construction or alteration of a building on the premises and the excavation or grading incidental thereto, is prohibited.
- U. Safety Fencing. Any sand and gravel operations within a 150 yard radius of which there are more than two (2) family residential units, and which operation results in or produces, for a period of at least one month, collections of water, or slopes steeper than one (1) foot vertical to three (3) feet horizontal, shall be subject to the following safety requirements:

1. Where such collections of water are one and one-half (1 ½) feet or more in depth for any period of at least one month, and occupying an area of 700 square feet or more, all access to such collections of water shall be barred by a fence or some similarly effective barrier of at least six (6) feet in height.
2. Where such slopes steeper than one (1) foot vertical to three (3) feet horizontal exist for a period of one month or more, access to such slopes shall be barred by a fence, berm or some similarly effective barrier of at least six (6) feet in height.

**13.03 Financial Guaranty.** The Operator must provide and maintain a performance bond, cash escrow or a letter of credit, in a form acceptable to the Township, to guarantee compliance with this Ordinance. The Township shall have the right to use the financial guaranty to remove stockpiles and complete site reclamation and correct other deficiencies or problems caused by

the Operator, in the event the Operator is in violation of this Ordinance. The amount of financial guaranty shall be a minimum of Three Thousand Dollars (\$3,000) for every unreclaimed acre. This amount may be increased by the Board with reference to the increase in the Consumer Price Index (CPI) for the Minneapolis-St. Paul Area. The financial guaranty shall include acreage used for stockpiling and processing as well as extraction and shall remain in full force and effect for a minimum period of nine (9) months or after reclamation or cleanup of the site is complete, whichever is longer.

**13.04 Liability Insurance.** The Operator shall at all times procure and maintain at the Operator's expense general public liability insurance, automobile liability insurance and workers' compensation insurance. This insurance shall cover claims for bodily injuries, wrongful death, and property damage occurring as a result of the Operator's performance of its duties under this Ordinance. Such insurance shall afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to injuries or death to a single person, to a limit of not less than Five Million Dollars (\$5,000,000.00) in respect to any one accident or occurrence, and to a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to property damage. The Township shall be a named additional insured on all such policies of insurance. The Operator shall file with the Township a certificate evidencing coverage before the commencement date of the term of the mineral extraction permit. The certificate shall provide that the Township must be given thirty (30) days written notice of the cancellation of insurance.

The Operator shall hold the Township harmless against all claims by third parties for damage or costs arising out of, resulting from or related to mineral extraction, processing and reclamation on the subject property or incurred in the development of the subject property. The Operator shall indemnify the Township for all costs, damages, or expenses incurred by the Township arising from such claims, including attorneys' fees.

**13.05 Review of Legal Non-Conforming Use.** In February of each year, the Town Board will review the legal non-conforming use. By January 31<sup>st</sup> of each year, the Operator will provide the following information to the Board and the Operator must pay the review fees referenced in Section 13.08:

- A. Amount of material removed; amount of material imported from off-site;
- B. Amount of material remaining to be removed;
- C. Evidence that bonding and insurance are still in force and effect;
- D. Status of Operator's responses to complaints or violations during the previous year;
- E. History of Operator's compliance with this mineral extraction ordinance and other governmental regulations relating to mining.
- F. Status of phasing plan;

- G. Status of reclamation;
- H. Up to date list of all vehicles and equipment on site; estimated number of vehicles accessing the facility;
- I. Report on condition of haul roads that serve or abut the facility;
- J. Status of erosion control measures;
- K. Any change in ownership and/or operator; and
- L. Other items of information requested by the Town Board.

In its review, the Town Board shall examine the information provided by the Operator and the Town Board shall determine whether the mineral extraction facility is in compliance with this Ordinance.

**13.06 Termination, Violations and Penalties.** The legal non-conforming use shall be terminated on the happening of any of the following events:

- A. Upon a violation of this Ordinance, but only after the Town Board has first provided written notice to the Operator and land owner (if different from the Operator) describing the specific violation and steps necessary to be in compliance and after having been given a reasonable opportunity to remedy the violation, but in no case longer than five (5) working days. The first violation of any condition will result in written notice and appearance before the Town Board. Second violation of any condition will result in written notice and a misdemeanor. Third violation of any condition will result in written notice and termination of the legal non-conforming use.
- B. Upon violation of hours of operation, dust control, noise, road maintenance, or truck safety issues, the Town Board will notify the Operator and land owner (if different from the Operator) in writing. They will be given twenty-four (24) hours to come into compliance. Enforcement will be as follows: First violation of any condition will result in written notice and appearance before the Town Board. Second violation of any condition will result in written notice and a misdemeanor. Third violation of any condition will result in written notice and termination of the legal non-conforming use. To the extent Section 13.06 B is more demanding than Section 13.06 A, then Section 13.06 B shall apply.
- C. Each day that a violation continues beyond the allotted time to repair constitutes a new violation.

Any person who violates or fails to comply with any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished to the maximum extent authorized in Minnesota Statutes, as amended from time to time. Each day the violation

continues shall constitute a separate offense. If the violations are not remedied to the satisfaction of the Town Board, the legal non-conforming use will be terminated.

If at any time it is proven that the mining operation is contaminating drinking water as prescribed by the Minnesota Department of Health Safe Drinking Water Standards or any natural spring, the Town Board will notify the Operator and property owner (if different from the Operator) in writing and mining will cease immediately. If this can not be resolved to the satisfaction of the Town Board, the legal non-conforming use will be terminated.

All complaints must be in writing and available for public viewing provided that the identity of complainant is confidential pursuant to the Minnesota Data Practices Act.

All violations must be verified by the Town Board before action is taken.

Violations will be reviewed each year by the Board. If violations are deemed not critical by the Board, the following year will start with no pending violations. If violations are found to be critical by the Board, such violations will be added into the following year and continue to count as a violation.

**13.07 Enforcement.** The Operator grants the Township's officers and representatives access to the facility during normal operation hours to inspect the mineral extraction facility and enforce the provisions of this Ordinance.

The Operator shall be responsible for the repair and maintenance of public and private property which is damaged by it, its agents or employees in conducting business or any other activity associated with the mineral extraction facility.

**13.08 Fees and Expenses.** The Operator shall reimburse the Township for all out of pocket expenses as incurred by the Township in the review of the legal non-conforming use, public hearing, preparation of documents, inspections and enforcement of this Ordinance, including the costs of the attorney, planners, engineers and professional consultants used by the Town to review and inspect the mineral extraction facility.

The Board shall establish by ordinance an annual fee for review of the legal non-conforming use. The annual review fee shall be based on the previous year's production in tons or yards times a dollar amount, with an established minimum amount, and set by ordinance. Fees and expenses must be paid at the time of issuance and thereafter on or before January 31st. Failure to pay review fees and expenses shall be a violation of this Ordinance.

If in the future the state law enables the Town to impose a host community fee, tax, mineral extraction charge or other governmental imposition to compensate the Town for the effects of a mineral extraction facility, then the Township reserves the right to impose such fees, taxes, charges or other governmental impositions on all mineral extraction facilities, including, but not limited to, those that exist at the time the fees, taxes, charges or impositions are established.

**13.09 Legal Descriptions of Pre-Existing Mineral Extraction Facilities.** The pre-existing mineral extraction facilities that meet the requirements of Section 13.01 are only the following four (4) properties in Eureka Township, Dakota County, Minnesota, legally described as:

Facility No. 1 Legal Description.

The South One-Half of the Northeast Quarter of Section 7, Township 113 North, Range 20 West, containing eighty acres, more or less.

Facility No. 2 Legal Description.

That part of the Northeast Quarter of the Northwest Quarter of Section 7, Township 113 North, Range 20 West, containing 40 acres more or less. The actual area to be mined will be approximately 24 acres.

Facility No. 3 Legal Description.

That part of the South Half of the Northwest Quarter, of Section 7, Township 113 North, Range 20 West, Dakota County, Minnesota, described as follows:

Beginning at the Southeast corner of the West 1716 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the said Section 7; thence North along the East line of the West 1716 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ , a distance of 600 feet, more or less, to the North line of the South 600 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence West along the said North line of the South 600 feet, a distance of 726 feet, more or less, to the East line of the West 990 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence north along the said East line of the West 990 feet, a distance of 720 feet, more or less, to the North line of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence East along the said North line to the West line of the East 630 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence South along the said West line of the East 630 feet, a distance of 930 feet, more or less, to the South line of the North 930 feet of the said S  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ ; thence East along the said South line of the North 930 feet, a distance of 580 feet, more or less, to the west line of the East 50 feet of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence South along the said West line of the East 50 feet, a distance of 390 feet, more or less, to the South line of the said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; thence West, along said South line to the point of beginning.

Facility No. 4 Legal Description.

The existing ten (10) acre site where mining has occurred surrounding and including the following parcels: Beginning at the SW corner of Section 6, Township 113 North, Range 20 West, thence East along the South line 600 feet, thence north 200 feet, thence East 355 feet, thence south 200 feet to the South line of Section 6, Township 113, Range 20, then back to the point of beginning.

and

Beginning at the NW corner of Section 7, Township 113, Range 20, thence East along the North line 600 feet, thence South 400 feet, thence East 355 feet, thence North 400 feet to the North line of Section 7, Township 113, Range 20, thence West to the point of beginning.

**SECTION 14. VALIDITY**

**14.01** Validity; Severability. Should any provision of this Ordinance be declared by the courts to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any other part thereof, unless so specified in the judgment. If the courts declare the application of any of the provisions of this Ordinance to any individual, use, property or structure to be invalid, such judgment shall not affect the validity of said application of any provision to any other individual, use, property or structure, unless so specified in the judgment.

**SECTION 15. EFFECTIVE DATE**

**15.01** Effective Date. The effective date of this Ordinance shall be upon its passage and publication according to law.

Adopted this 13<sup>th</sup> day of May, 2002.

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Chair of Town Board

ATTEST:

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Clerk

Date Published in Official Newspaper: Thisweek News May 18, 2002  
Farmington Independent May 16, 2002