

DEERFIELD TOWNSHIP ORDINANCE NO. 99

NON-CONFORMING USE
MINING AND/OR EXCAVATION ORDINANCE

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TABLE OF CONTENTS

		Definitions	1
99	-1	Applications	3
	-2	Application Procedures	4
	-3	Permit Time Limits	5
	-4	Review and Approval	5
	-5	Compliance Report	6
	-6	Violations	7
	-7	Surety Provisions	7
	-8	Permit Content	8
	-9	Permit Records	8
	-10	Operating Regulations	8
	-11	Restoration Requirements	10
	-12	Violations	12
	-13	Validity	13
	-14	Repeal of Conflicts	13
	-15	Effective Date	13
	-16	Adoption	13
	-17		

NON-CONFORMING USE
MINING AND/OR EXCAVATION ORDINANCE

DEERFIELD TOWNSHIP
ORDINANCE NO. 99-1

REGULATIONS, PROCEDURES AND STANDARDS FOR
NON-CONFORMING USE MINING, AND/OR EXCAVATION
OPERATIONS

99-1.

Statement Of Purpose; Definitions; Necessity
for Permit

a. Statement of Purpose.

This Ordinance 99 is intended to regulate the use of land for already existing, and non-conforming gravel, sand and other earthen material mining, and/or excavation operations.* These regulations are needed because mining and/or excavation may pose significant land use problems, including environmentally damaging changes in topography, impairment of the load-bearing capacity of adjacent land, safety hazards due to heavy truck traffic on roads, levels of noise from mining and related operation(s), threats to air quality from dust and other emissions, threats to water quality from erosion and chemical emissions, threats to water level, aesthetic problems, land use compatibility problems, loss of natural resources, threat to desirable land use patterns and potential, residential blight, and/or attractive nuisance hazards, many, if not all, of which problems are substantially worsened without operating regulations and a reasonable restoration program, that is undertaken on a progressive basis as excavation/mining activities are ongoing.

* As defined in Deerfield Township Ordinance 98 2a

unless the Township shall first have issued a non-conforming use permit in accordance with the provisions of this Ordinance, or unless the Township shall first have issued a special use permit in accordance with the provisions of ~~Deerfield~~ Township Ordinance 98 Non-conforming use permits shall be issued only in accordance with the procedures and standards set forth herein. It is the intent of these procedures and standards to ensure that mining and excavation shall occur in ways that are consistent with the public health, safety and welfare, and to ensure that lands subject to non-conforming use mining/excavation operations shall continuously be reclaimed and rendered suitable for some reasonable subsequent use.

Non-Conforming Use Permit Application.

99-2

- a. An application for a non-conforming use permit for continued mining and/or excavation shall be submitted within 60 days of the adoption of this Ordinance, in the basic form provided for in Ordinance 98-3. The application shall include, but not be limited to, a detailed Operations and Restoration Plan as described in Ordinance 98 3.b(17).
- b. As part of the detailed Operations and Restoration Plan, the application shall also contain a detailed time log, wherein the applicant explains in detail how the site will be brought into full compliance with the following Operating Procedures, within the following stated time frames:
 - (1) Fencing as required in Ordinance 98 -12.c.(7) within 6 months of the adoption of this Ordinance.
 - (2) Stockpiling of topsoil as required in Ordinance 98-12.c(8) within 12 months of the adoption of this Ordinance.

b. Definitions

As used in this Ordinance, the following terms shall have the following meanings:

(1) "Township" means Deerfield Township, Livingston County, Michigan;

(2) "Township Board" means the duly elected, qualified and serving members of the Township Board of Deerfield Township, Livingston County, Michigan;

(3) "Township Clerk" means the duly elected, qualified and serving Clerk of Deerfield Township, Livingston County, Michigan;

(4) "Township Engineer" means the duly appointed, qualified and serving Engineer for Deerfield Township, Livingston County, Michigan;

(5) "Township Planning Commission" means the duly appointed, qualified and serving members of the Planning Commission of Deerfield Township, Livingston County, Michigan;

(6) "Township Supervisor" means the duly elected, qualified and serving Supervisor of Deerfield Township, Livingston County, Michigan;

(7) "Zoning Inspector" means the duly appointed, qualified and serving Zoning Inspector or Zoning Administrator of Deerfield Township, Livingston County, Michigan.

c. Necessity for Permit.

No mining or excavation operations* shall be permitted six months after the date of the adoption of this Ordinance,

*As defined in Deerfield Township Ordinance 98-2a.

- (3) Slopes in the active excavation/mining area, shall be maintained as of the close of each work day, with no area having a grade steeper than one foot vertical to two feet horizontal, within 15 months of the adoption of this Ordinance.

This time log shall set forth the activities and milestones to be completed each 90 days toward the accomplishment of the slope grades described above in Subsection (3). The application will also contain a site diagram dividing up the active excavation area into distinct segments, against which the compliance progress can be measured.

- c. As part of the detailed Operations and Restoration Plan, the application shall contain a second time log, wherein the application explains in detail how the site will be brought into compliance with the restoration requirements of subsection 12 below, within the time frames set forth therein. An application for a non-conforming use permit shall also contain a detailed time log setting forth the restoration schedule, which will bring all open, non-active, unvegetated areas into compliance with the restoration requirements of subsection 12 below, within two years of the adoption of this Ordinance.
- d. If this application is submitted, together with a soil disposal permit application under Ordinance No. 100, the application review procedures shall be coordinated to reasonably facilitate an effective review of both applications.

99-3

Non-Conforming Use Application Procedures.

- a. The application for approval of a non-conforming use permit shall follow the same basic procedures set forth above in Ordinance 98-4

- b. If a non-conforming use permit is not obtained by an applicant within six months of the date of the adoption of this Ordinance, any continued mining or other excavation at the applicant's site thereafter shall constitute a violation of this Ordinance.

99-4

Time Limit And Renewal Of Non-Conforming Use Permits.

- a. Non-conforming use permits shall be issued for a period which is not less than 12 months and which is not greater than 60 months.
- b. Non-conforming use permits may be renewable upon submission and approval of an application for renewal pursuant to the procedures and standards set forth in Ordinance No. 98-5

99-5

Township Board Review And Approval Of Non-Conforming Use Application.

- a. General Standards For Approval for Mined Areas.

The Township Board shall approve the non-conforming use permit for an area of land already being mined, only after it has examined the application for such permit and found it to conform with the requirements set forth herein, and in particular, that the Operations and Restoration Plan is provided in accordance with the standards set forth herein.

- b. Expansion To Adjoining Parcel(s) Of Land.

If the applicant is endeavoring to expand a non-conforming use operation to any adjoining parcel of land, the Township Board shall approve the enlargement of the excavation/mining activity only after it has determined, based upon the facts submitted by the applicant or otherwise available, that no areas directly or indirectly affected by the proposed expansion

activities will suffer any very serious consequences as a result of the proposed expansion. This review by the Township Board shall consider the off-site impacts, on-site impacts, mid and long term planning considerations, assurances with compliance, and the scarcity and need for material to be mined, and all of the other considerations specified in Ordinance No. 98-6

c. Expansion Within Same Parcel Of Land.

If the applicant is endeavoring to expand the non-conforming use mining/excavation operation to an area within the same parcel of land that was not previously mined, and the mining of which additional area is not absolutely necessary for a reasonable restoration of the existing, open excavation area, the Township Board shall approve the enlargement of the excavation activity only after it is determined, based upon the facts submitted by the applicant or otherwise available, that no areas directly or indirectly affected by the proposed expansion activities will suffer any very serious consequences as a result of the proposed expansion. This review by the Township Board shall consider the off-site impacts, on-site impacts, mid and long term planning considerations, assurances with compliance, and the scarcity and need for material to be mined, and all of the other considerations specified in Ordinance No. 98-6

99-6

Non-Conforming Use Compliance Report By Zoning Inspector.

- a. To assure timely compliance with the provisions of the Operations and Restoration Plan, and with this Ordinance, the Zoning Inspector shall conduct not less than one inspection of each non-conforming use operation every three months until all operating standards and restoration requirements have been achieved, and thereafter

inspections shall occur not less than once every six months.

- b. The inspections will be undertaken and paid for consistent with the procedures set forth in Ordinance 98-7

99-7

Notice Of Violations, Correction Of Violations, Revocation Of Non-Conforming Use Status And Lien Against The Property.

The requirements, procedures, provisions and remedies provided for in Ordinance No. 98-8 shall apply with respect to any probable violation of the provisions of this Ordinance 99-7

99-8

Surety Provisions.

The accomplishment of a full and complete restoration is of particular importance in the situation of a non-conforming use excavation, especially where substantial additional mining and/or excavation activities are contemplated by the applicant.

- a. As part of the application for a non-conforming use permit, the applicant shall submit a detailed calculation of the total cost to accomplish the applicant's proposed closure plan, which cost calculation shall be certified by a professional, independent engineer. This cost estimate shall address the following closure items:

- (1) Final grading.
- (2) The need, if any, to bring in off-site materials to accomplish the final grades set forth in closure plan;
- (3) The cost to spread topsoil and mulch final grades;
- (4) The cost to vegetate final grades;
- (5) The cost to maintain vegetation to ensure the successful long-term establishment of the vegetation, so as to prevent erosion;

- b. The requirements, procedures and provisions set forth in Ordinance No. 98 shall be fully complied with.

99-9

Permit Content.

The requirements, procedures and provisions set forth in Ordinance No. 98-10 regarding permit content are hereby adopted and shall be fully complied with by each applicant.

99-10

Maintenance Of Permit Records.

The Township Clerk's maintenance of the permit records shall be undertaken in the same fashion, and subject to the same requirements, as set forth in Township Ordinance No. 98-11

The Clerk shall record the permit in the Township records and in the office of the Register of Deeds for Livingston County, and the recorded permit shall constitute evidence of a first lien, prior in right to all other liens with respect to the land subject to this permit, in favor of Deerfield Township, for the purpose of securing the performance of the restoration and other obligations pursuant to this Ordinance.

99-11

Operating Regulations.

- a. Conformance To Approved Operations And Restoration Plan.

Operations shall be in accordance with the detailed Operations and Restoration Plan, as submitted and approved by the Township Board.

- b. Arrangement of Operations.

- (1) Contiguous Excavation.

Within six months of the adoption of this Ordinance, all future excavation and mining shall be operated in a consistent, contiguous fashion, so that the area under excavation is mined to near final grade and capable of

final closure, before the open, working area is moved.

If materials of a significantly different character exist elsewhere on the site location, and also have been mined as a non-conforming use, then other areas of open excavation may continue to be operated for mining. However, these other excavation areas shall also be operated in a consistent, contiguous fashion, and their operation shall be coordinated with the other site excavations to ensure progressive and coordinated restoration. Notwithstanding the fact that other excavation areas may be opened, the total size of all unvegetated excavation areas on the site shall not exceed ten (10) acres, or ten percent (10%) of the total site, whichever is smaller.

If materials of a significantly different character exist elsewhere on the site location, then a second area of open excavation may be simultaneously opened up for mining, but only after approval by the Township Board that the material at the other excavation locations is, in fact, of a significantly different character.

Provided, however, the above limitation on the open working area for the smaller of ten (10) acres or ten percent (10%) of the total site, shall be achieved by a non-conforming use applicant no later than 15 months after the date of the adoption of this Ordinance.

(2) Minimum Setbacks.

All active excavation/mining operation areas shall comply, as

of the date of this Ordinance, with the setbacks specified in Ordinance 98-12.b.(2).

(3) Processing Facilities.

No processing of any nature, including but not limited to washing, sorting, crushing, grinding or cutting, shall be conducted at any time on the site, without the prior written consent of the Township Board, as required under Ordinance 98-12.b.(4).

(4) Sight Barriers.

The applicant shall provide the sight barriers required in Ordinance 98-12.b (5) within six months of the adoption of this Ordinance.

- c. Any and all mining and/or excavation activities shall be conducted in conformance with the Operating Regulations set forth in Ordinance No 98-12.c., except that compliance with the Regulations c.(7)(a) and (10) may be delayed, but only for the time periods provided for above in subsection 2.b. from the date of the adoption of this Ordinance.

99-12

Restoration Requirements.

Restoration shall be completed so as to leave the area reasonably compatible with existing and proposed development, and so as to reasonably protect the natural environment and reasonably minimize negative impact on surrounding land and development. The restoration of existing cliff areas shall be promptly accomplished, as provided below, so as to eliminate attractive nuisances and inherently unsafe conditions. The restoration requirements set forth in this Section shall apply to all non-conforming use mining and/or excavation activities in the Township.

a. Conformance To Approved Operations And Restoration Plan.

Restoration shall be in accordance with a detailed Operations and Restoration Plan, as submitted and approved by the Township Board pursuant to this Ordinance.

b. Restoration Schedule.

(1) All excavation areas with a grade steeper than one foot vertical to four feet horizontal shall be restored to a grade not to exceed one foot vertical to four feet horizontal within two years from the date of the adoption of this Ordinance, except for the active operating area, which shall not exceed 10% of the total site area, or 10 acres, whichever is less, and shall further not exceed an operating cliff face of 200 feet, as measured along the top of the operating, open cliff face area; this open cliff face area may maintain a slope as of the end of each work day of no steeper than one foot vertical for every two feet horizontal.

(2) The excavation area existing at the time of the adoption of this Ordinance shall be partitioned into segments, so as to measure the progress of the restoration. Regular and consistent progress should be made on the restoration grading over the above two year period of time, such that one-fourth of the restoration grading is accomplished within the first six months from the adoption of this Ordinance; an additional one-fourth of the restoration grading is accomplished within the next six months; an additional one-fourth of the restoration grading is accomplished within the following six months; and the remaining restoration grading,

except only for the active operating area, is accomplished within the final six months. The restoration vegetation shall be accomplished in each segment within the following six months of the completion of the final grading restoration.

(3) The last active operating area, and any other locations on site, shall be restored according to the final restoration provisions of the approved Operations and Restoration Plan, including but not limited to the completion of successful vegetation, within 12 months of the cessation of operations in the entire parcel.

(4) Deviations from the timetable of the Restoration Plan shall be permitted, but only upon approval in writing by the Township Board of an amended non-conforming use permit.

c. Restoration Standards.

(1) As the active, operating area moves with the completion of mining operations in a given area, the restoration of the mined area shall be accomplished on a regular and progressive basis, so as to limit the size of the active operating area as required above.

(2) Restoration shall be accomplished pursuant to and in full compliance with all of the Regulations and Standards set forth in Ordinance 98-13.c.

99-13.

Violations and Penalties; Nuisance Per Se; Abatement.

A violation of any provision of this Ordinance is hereby declared to be a nuisance per se. The Court shall order such nuisance abated, and the owner and/or agent in charge of such operation shall be

adjudged guilty of maintaining a nuisance per se. Anyone violating any provision of this Ordinance shall, upon conviction thereof, be subject to a fine of not more than \$100.00 and the cost of prosecution thereof, by imprisonment in the county jail for a period not to exceed 30 days, or both. Each day that a violation is permitted to exist shall constitute a separate nuisance. Imposition of any sentence shall not exempt the offender from compliance with the requirements of this Ordinance. The rights and remedies provided herein are cumulative, in addition to all other remedies provided by law.

99-14. Validity.

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected. The Township Board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause thereof irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

99.15 Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed.

99.16. Effective Date.

This Ordinance shall be in effect on and after March 22 , 1997.

99.17. Adoption.

This Ordinance is hereby declared adopted by the Township of Deerfield, County of Livingston, State of Michigan, at a regular meeting of the Deerfield Township Board, held on the 13th day of February, 1997.

of February, 1997, and is ordered to be given publication in the manner prescribed by law.

CLERK'S CERTIFICATE

I, Nancy Laier, Clerk of the Township of Deerfield, Livingston County, Michigan, hereby certify that the foregoing Deerfield Township Ordinance No. 99, Non-Conforming Use Mining and/or Excavating Ordinance (Regulations, Procedures and Standards for Non-Conforming Use Mining, and/or Excavation Operations) was duly approved and adopted by the Township Board of Deerfield Township duly assembled in a regular meeting of said Board held February 13, 1997.

I further certify that A. Houghton moved the adoption of the ordinance, supported by E. Grimshaw, and that the vote upon said proposed ordinance was as follows:

	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>	<u>ABSTAINED</u>
Thomas Green, Supervisor	yes			
Nancy Laier, Clerk			absent	
Earl Grimshaw, Trustee	yes			
Art Houghton, Trustee	yes			
James McCarthy, Treasurer	yes			

Nancy Laier
Deerfield Township Clerk
February 13, 1997



Harry Scheib
Deputy Clerk, Deerfield Township
February 13, 1997