

DEERFIELD TOWNSHIP ORDINANCE 98-1
AN ORDINANCE AMENDING ORDINANCE NO. 98, TO AMEND
SECTION 98-1a, 98-3b7, 98-5a, 98.6b, 98-7d, 98-10(a), 98-10(b), 98-10(e), 98-10(g),
98-911, 98-12b(1), 98-12b(2), 98-12c(2), 98-12c(3), 98-12c(10), 98-13 b.(1), 98-17,
98-18, 98-19 AND TO ADD SECTION 98-6a(22) and 98-11

RECITALS

Ordinance 98 was passed by the Deerfield Township Board of Trustees on February 13, 1997; and certain sections of the Ordinance as referenced above required amendment and/or additions in order to provide for the appropriate objects of the Ordinance,

This Ordinance is adopted in the interest of public health, safety and welfare and is designed to promote the general peace, health, safety and welfare of the residents of the Township of Deerfield, Livingston County, Michigan,

NOW THEREFORE the Board of Trustees of the Township of Deerfield ordains as follows:

SECTION 1 - AMENDMENTS

Ordinance No. 98 is hereby amended to amend Ordinance 98 as follows:

98-1. Statement of Purpose: Definitions: Necessity for Permit

a. **Statement of Purpose.**

This Ordinance is enacted pursuant to the Township's police powers to protect the public health, safety and welfare of the people of Deerfield Township and in addition this Ordinance is intended to regulate the use of land for all types of open, pit, strip, tunnel and/or shaft mining, including the mining of sand, gravel, peat, soil, metals, the mining of bituminous coal and lignite, and the mining and quarrying of other minerals. The extraction of oil and gas is not regulated by this section. This section provides procedures for the evaluation of applications for the issuance of special use permits to establish such mining and quarrying uses. Special use regulations and special use application evaluation procedures are needed because mining and quarrying may pose significant 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 not designed for such traffic, levels of noise from mining and related operations, threats to air quality from dust and other omissions, threats to water

quality from erosion and chemical omissions, threats to water levels, aesthetic problems, zoning and license enforcement problems, land use compatibility problems, loss of natural resources, threat to desirable land use patterns and potentials, residential blight, and/or attractive nuisance hazards.

98-3b7. Mining and Quarrying Special Use Applications

98-3b(7). A statement in writing from each holder of a lien or other security interest in any part of the land on which the use is to be located (all such persons and entities being hereinafter collectively referred to as "Lienholders"), acknowledging each Lienholder's willingness to subordinate interest in the land to interest of the Township in exercise of its rights under ordinance and special use permit with respect to the restoration of the land accordance with any Operations Restoration Plan that may be entered into with respect to said land. The requirement that the Township have first lien on the subject property may be waived if the surety bond and insurance requirements described in 98-9a and elsewhere in this Ordinance are, in the opinion of the Township Board (and/or its experts) sufficient to cover any and all expenses associated with the land reclamation.

If landholder provides sufficient bonding and insurance then the Lienholder's statements as referenced above in 98-3a may be waived.

98.5. Time Limit and Renewal of Mining and Quarrying Special Land Use Permits

- a. Mining and quarrying special land use permits shall be issued for a period which is not less than one year and which is not longer than 15 years.

98-6a.(22) Operations Mitigations Area Committee

To monitor the performance of all parties affected by this Permit the Township Board of Trustees shall appoint a committee of seven (7) persons to be named the "Operations Mitigation Area Committee". The Operations Mitigation Area Committee shall be charged with oversight of all activities in connection with this Permit, including, without limitation, mining reclamation, and development of these activities upon lands with the Township, and the development of proposals for elimination, reduction, or mitigation of these impacts.

The Operations Mitigation Area Committee shall include the following members:

1. Township Supervisor or his deputy.
2. Township Attorney
3. Township expert/mining consultant
4. Representative of the owner
5. Representative of the permit holder
6. Two residents of the Township appointed by the Board

The Operations Mitigation Area Committee shall meet at the request of any member of the committee, the Township, or the Permit Holder and shall report its recommendations to the Board of Trustees of the Township. The Township Board shall consider the recommendations of the Operations Mitigation Area Committee and may implement such recommendations provided they are reasonable, necessary and non-confiscatory.

98-6. Township Board Review and Approval of Mining Special Land Uses

b. Size, Duration and Locational Relationships

In determining whether or not the general standards set forth above are met, the Township Board shall consider the following factors in relation to each other:

- (1) The size of the proposed operation, (2) the location of the proposed operation (including haul routes) in relation to residential land and state trunk line highways, and (3) the anticipated duration of the proposed operation.

98-7 Special Land Use Permit Compliance Reports by Zoning Inspector

- (d) The cost of all compliance inspections shall be paid by the Applicants and such other persons, firms or corporations who have been made subject to liability pursuant to licensing and/or other Township regulations. Each such person, firm or corporation shall be jointly and severally responsible for the full cost of compliance inspections.

A Compliance Impact, Benefit, and Inspection Fund which is controlled by the Township shall be established for each special land use which is approved pursuant to this section. To insure compliance with the provisions of this Permit, defray any impact on the Township as well as provide a benefit to the Township, the Permit Holder shall remit funds to the Township which shall be held in a Township Compliance, Impact and Benefit Fund (the "Fund") controlled by the Township. The Township shall be entitled to draw upon the funds to reimburse costs, fees and other expenses associated with assuring compliance with this Permit, as well as to fund other projects or costs that may benefit the Township to be decided in the Township's discretion. The Fund shall be financed in quarterly payments from the Permit Holder to the Township in the amount of \$0.075 (7 ½ cents) per ton on sand, gravel, stone and other mineral products sold by Permit Holder. Payment is not owing on product sales until and unless the Permit Holder receives payment for the sales. The Permit Holder shall make payment to the Township by check on or before the 45th day following the end of the quarter for all fully paid sales collected the prior quarter, in accordance with this paragraph,

commencing with the quarter following the approval of this Permit by the Township Board. Permit Holder shall provide the Township with an accounting of all sales collected, by customer and tonnage, along with the corresponding quarterly payment. The customer information, along with any other proprietary information, shall remain confidential and shall not be disclosed to third parties without a court order. Wilful failure to comply with these provisions shall be grounds for revocation of the Permit.

The Fund shall be the sole source of reimbursing all costs, fees, and other expenses associated with insuring compliance with this Permit, with the exception that: 1) the Permit Holder shall reimburse the Township for the reasonable costs and expenses incurred by the Township's Mining and Reclamation Expert, not to exceed \$2,000 annually; and 2) the Township shall be entitled to reimbursement of reasonable attorney fees and costs for any necessary proceedings brought by the Township to enforce the terms and conditions of this Permit where the Township is the prevailing party.

In addition Permit Holder shall make contribution to the Haul Route Infrastructure Escrow Fund, with Permit Holder, the Township and the Road Commission as parties to the Escrow Fund, to complete road improvements according to the reasonable specifications of the Livingston County Road Commission that will enhance safety in light of the anticipated increases in Gravel Tractor Trailer Truck traffic.

The Escrow Fund shall be financed in quarterly payments from the Permit Holder to the Township in the amount of \$0.075 (7 ½ cents) per ton on sand, gravel, stone and other mineral products sold by Permit Holder. Payment is not owing on product sales until and unless the Permit Holder receives payment for the sales. The Permit Holder shall make payment to the Township by check on or before the 45th day following the end of the quarter for all fully paid sales collected the prior quarter, in accordance with this paragraph commencing with the quarter following the approval of the permit by the Township Board. Permit Holder shall provide the Township and the Road Commission with an accounting of all sales collected by tonnage, along with the corresponding quarterly payment. The Escrow Fund shall be used for road infrastructure improvements as determined by the Livingston County Road Commission.

The above referenced per ton contributions shall be in effect for years 1, 2, and 3 of the permit. Beginning with the first quarter of the fourth year the contribution shall increase annually at a rate equal to the increase in the Annual Consumer Price Index for the Metropolitan Detroit area.

Should the Compliance, Impact Benefit and Inspection Fund contributions be at any time insufficient to cover the full cost of inspections, the persons, firms and

corporations responsible for paying the costs of compliance inspections shall be billed directly for the difference. Failure to pay such charges within thirty (30) days of billing shall be a violation of this Ordinance.

In individual circumstances, the Township Board may specifically lower or raise quarterly contributions upon a finding that such lower or higher contributions will be adequate or necessary to cover the costs of the compliance inspections in the particular circumstance.

98-10 Permit Content.

Each special land use permit issued pursuant to this Ordinance shall contain the following:

- (a) The name and address of each of the applicants for the Special Land Use Permit and each Lienholder, if applicable, with respect to the land subject to the lien.
- (b) The name, address and phone number of the person designated by each of the Applicants and each of the Lienholders, if applicable, as agent for all notice, correspondence and communication.
- (e) A statement essentially corresponding to the following: "This Permit is subject in general to special land use procedures and standards for mining and quarrying and other applicable provisions of Deerfield Township Ordinance 98 under which this Special Land Use Permit was approved, that Ordinance being the one in effect on March 22, 1997, as amended, and in particular to the Operations and Restoration Plan approved pursuant to this permit and dated _____."
- (g) A statement to be endorsed by all applicants and all Lienholders substantially in accordance with the following: "Each of the undersigned has read this Permit and understands and agrees that all of the statements and contents of the Operations and Restoration Plan for the permit as approved by the Township Board together with any conditions attached thereto by the Township Board, are incorporated herein by reference as a part of the terms and conditions hereof, together with the terms and conditions of any other applicable law, the ordinances of the Township, in any other applicable regulations. Each of the undersigned further acknowledges that employees and agents of the Township are permitted to come upon the lands at any reasonable time for the purpose of inspecting, monitoring and/or administering the ordinances and other lawful regulations of the Township, including those regulating mining, excavation and quarrying upon the land which is the subject of this permit. Each of the undersigned further acknowledges that this permit shall be recorded with the Livingston County Register of Deeds and 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 the Township for the purpose of securing the performance of the restoration obligations set forth in the Operations and Restoration Plan, it being understood, that in the event the surety deposits and other resources of the applicants available to the Township, in the opinion of the representatives of the Township, insufficient to insure restoration of the land in accordance with the Operations and Restoration Plan, the Township shall be entitled to recover said deficiency out of the land, and to effectuate said right, the Township shall be entitled under such circumstances to exercise all of the rights of the first lienholder whose lien is in default, and shall be entitled to exercise all remedies available to such a first lienholder under the laws of the State of Michigan, including, but not limited to, the right to foreclose said lien and the right to obtain appointment of a Receiver for any purpose, and the Township shall be authorized to engage persons on behalf of the applicants to enter onto said land and to perform such restoration and other actions as are appropriate effectuate the provisions of the Operations and Restoration Plan. Each of the undersigned also acknowledges that the first lien evidenced by this permit shall also be for the purpose of securing the performance such remedial which the Township Board may deem appropriate pursuant to subsection 8.d through g of this Township Ordinance to correct environmental or other damage which may have resulted from operation of the subject use in violation of the requirements of this permit.”

In the event the applicant provides sufficient surety to protect the Township then the Lienholder subordination requirement initially referenced in 98-3b(7) and granting of first lien to the Township may be waived.

98-11. Maintenance of Permit Records. (formerly referenced as 9-11)

The Township Clerk shall maintain a copy of each Special Land Use Permit issued pursuant to the provisions of this ordinance. Along with each permit approved there shall also be maintained: (1) a complete copy of the approved Operations and Restoration Plan and any conditions imposed by the Township Board pursuant to approval of the permit; and (2) a complete copy of the entire Township Ordinance under which the approval was approved. The Clerk shall certify the Operations and Restoration Plan along with any conditions attached thereto, and a copy of the Ordinance as well as well as the documents applicable to the particular land use permit with which they are maintained. The Clerk shall record in the records of the Township and in the office of the Register of Deeds for Livingston County the permit signed by the Township Supervisor and Clerk and by all applicants as required by subsections 10.g, h, and i. of this Ordinance. This recorded permit shall constitute evidence of a first lien, prior in right to all other liens with respect to the lands 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.

In the event the applicant provides sufficient surety to protect the Township then the Lienholder subordination requirement initially referenced in 98-3b(7) and granting of first lien to the Township may be waived.

98-12. Operation Requirements for Mining, Excavation and Quarrying Special Land Uses.

98-12b. Arrangement of Operation

(1) Contiguous excavation.

All excavation, mining and quarrying activities will be operated in a consistent, contiguous fashion, so that the active operating area is mined to near final grade and capable of final closure, before the operating area is moved. As the active operating area does move, the already mined area shall be restored on a time schedule roughly simultaneous with the movement of the active operating area, so that the size of the un-vegetated excavated area, including the active operating area, shall at no time exceed 20 acres of the total site. In exceptional circumstances and upon a proper showing to the Township Board and based upon the Board's sole discretion in taking into account the unique circumstances presented on the site, this 20 acre minimum may be expanded for a short period of time in order to allow for the operation presented by the unique facts above referenced.

If materials of a significantly character exists elsewhere on the site then a second area of open excavation may be simultaneously opened up for mining, but only after approval by the Township Board and confirmation by the Township engineer/mining expert that material of a significantly different character does exist at the second location and cannot be mined contiguously with one active excavation area site. If a second open excavation area is so opened, it shall be operated on a consistent, contiguous fashion, and its operation shall be coordinated with the other site excavation to ensure progressive and coordinated closure and restoration. Notwithstanding the fact a second excavation area is opened, the total size of all open excavation areas on any site shall not exceed 20 acres of the total site. In exceptional circumstances and upon a proper showing to the Township Board and based upon the Board's sole discretion in taking into account the unique circumstances presented on the site, this 20 acre minimum may be expanded for a short period of time in order to allow for the operation presented by the unique facts above referenced.

b(2). Minimum Setbacks for all Excavation and/or Operations Area.

All excavation and operation areas shall comply at all times with the following setbacks:

- (a) Three hundred feet from the near edge of any roadway right of way;
- (b) Four hundred feet from dwelling of any adjoining residence and from the building structure of any commercial adjoining establishments; and
- (c) One hundred feet from any other boundary of the subject property.

Provided, however, notwithstanding the above-stated setbacks, a larger setback may be required by the Township Board in circumstances where a greater setback is deemed necessary to adequately protect adjacent land areas. Final grading and excavation activities may take place within 150 feet of a roadway, 300 feet of a residence or commercial building, and 100 feet of any other property line, but only for a maximum period of three months, and only when absolutely necessary to implement the approved final Restoration Plan.

98-12 c (2) Hours of Operation

The Permit Holder shall be permitted to conduct mining and processing of sand, gravel and aggregate on the land in accordance with the terms and conditions of the Permit. Loading and hauling may be conducted between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday only. Processing of sand and gravel and general maintenance may be conducted from 7:00 a.m. to 7:00 p.m. Monday through Friday, and 7:00 a.m. to 12:00 p.m. Saturday provided that Permit Holder shall not crush stone, process gravel or aggregate on any Saturday without prior express written approval from the Township. (No hauling of any kind permitted after 6:00 p.m. Monday through Friday. No hauling on Saturday). Equipment maintenance may be done at any time. Days of operation are Monday through Saturday. However no processing or hauling permitted except as referenced above. And, further that no such activities shall occur on any of the following holidays: New Years Eve Day, New Years Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas Eve and Christmas Day. These hours of operation shall not limit or impair a farmer's right to remove sand at any time pursuant to MCLA 286.471 et seq, the Right to Farm Act.

98-12 c (3) Truck Routes

Truck traffic associated with the use shall be prohibited on all roads except those for which it is specifically approved by the Township Board pursuant to the special land use approval or Township Ordinance. Roads shall be approved for truck traffic so as to minimize the impact of such traffic on residential and related uses and activities.

98-12 c (10) Active Working Area

The active operating area, which shall consist of any area that has been stripped of its previously existing vegetation or otherwise excavated, shall not exceed 20 acres of the total site except as provided for in 98-12 b. As the hole is opened and operating cliff face developed, the size of the operating cliff face shall not exceed 200 feet, as measured along the top, and the slope of the operating cliff face shall be maintained as of the end of each work day at a grade no steeper than one foot vertical for every two feet horizontal. All other slopes in the active operating area shall be maintained at a grade no steeper than one foot vertical for every four feet horizontal.

98-13 Restoration Requirements

b. Restoration Schedule

- (1) Restoration shall commence as necessary to ensure that any un-vegetated excavation area at no time exceeds the size of 20 acres except as otherwise provided in 98-12 b. (1). Provided however restoration shall begin in any event within 24 months of the start of excavation operations. Once commenced, restoration shall continue on a regular and consistent basis so that the open area limitation of 20 acres or that area provided by the Board pursuant to their discretion as set forth in section 98-12 b (1) is always maintained throughout the term of the permit.

98-17. Repeal of Conflicting Ordinances

All other portions of Ordinance No. 98, whether they be full sections or subsections, which have not been amended by this amendment shall remain in full force and effect. Those portions of Ordinance 98 which have been specifically amended by the sections or subsections contained in this amendment are herewith repealed.

98-18 Effective Date

This Ordinance shall be in effect on and after December 7, 2001.

98-19. Adoption

This Ordinance is hereby declared adopted by the Township of Deerfield, County of Livingston, State of Michigan, at a special meeting of the Deerfield Township Board held on the 1st day of November, 2001 and is ordered to be given publication in the manner prescribed by law.

CLERKS CERTIFICATE

I, Margorie Scheffler, Deputy Clerk of the Township of Deerfield, Livingston County, Michigan, hereby certify that the foregoing amendment to Deerfield Township Ordinance No. 98,

hereinabove referenced as Ordinance No. 98-1 was duly approved and adopted by the Township Board of Deerfield Township, Livingston County, Michigan, duly assembled in a special meeting of said Board held November 1, 2001.

I further certify that Douglas Taylor moved the adoption of the amendment to the Ordinance supported by Diane Louninger, and the vote on the said proposed amendment to the Ordinance was as follows:

	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>	<u>ABSTAINED</u>
Thomas A. Green, Supervisor	<u>yes</u>			
Nancy Laier, Clerk				<u>abstain</u>
Diane Louninger, Treasurer	<u>yes</u>			
Douglas Taylor, Trustee	<u>yes</u>			
Cynthia Ambrose, Trustee	<u>yes</u>			
<u>Marjorie Scheffler</u> Marjorie Scheffler, Deputy Clerk				