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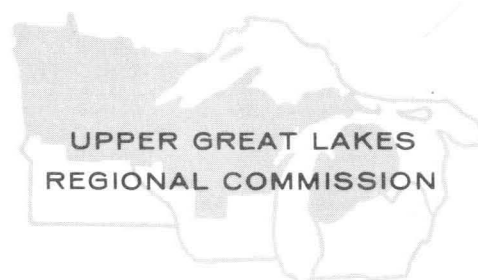


# MODEL MINERAL RESERVATION AND MINE ZONING ORDINANCE

by

John Preston, Eric Strauss, and Thomas O. Friz

A MINING INFORMATION PROJECT FUNDED BY THE



Cover photo: Horlick Dam quarry converted in 1969 to Quarry Lake Park located at the junction of State Highway 38 and County Highway MM in the city of Racine.

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UPPER GREAT LAKES REGIONAL COMMISSION

This investigation was accomplished with the financial assistance of the Upper Great Lakes Regional Commission, but the data, statements, findings, conclusions and recommendations do not necessarily reflect the views of the Commission.

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University of Wisconsin-Extension  
GEOLOGICAL AND NATURAL HISTORY SURVEY  
M. E. Ostrom, Director and State Geologist  
Madison, Wisconsin  
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## AUTHORS

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Dr. Thomas O. Friz received his B.S., M.S., and Ph.D. degrees in mining engineering from the University of Wisconsin-Madison and is a registered Professional Engineer in the state of Wisconsin. He has worked in the minerals industry in Wyoming and northern Michigan, was an instructor in the Minerals and Metals Engineering Department, University of Wisconsin, and spent four years with the U.S. Bureau of Mines in Minneapolis, Minnesota and Washington, D.C. before joining the Conservation Division, U.S. Geological Survey in Reston, Virginia.

John Preston is an attorney presently working for the University of Wisconsin-Madison as legal advisor to the campus police force. Previously, he was employed at the University by the Department of Urban and Regional Planning and the Geological and Natural History Survey. Mr. Preston has written a number of other articles in this series for the Geological Survey funded by the Upper Great Lakes Regional Commission.

Eric Strauss is an attorney doing research at the University of Wisconsin-Madison at the Institute of Environmental Studies. He is also a consultant to the U.S. Department of Housing and Urban Development in their flood insurance program. He was previously employed by University of Wisconsin-Extension.

## PREFACE

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Minerals, together with agricultural and forestry products, are the primary source of wealth produced in our state and nation. Although the production of minerals requires only a small fraction of the state's total land surface, as compared with either agriculture or forestry, mining activities generally are much more disruptive to the land surface, and rehabilitation is more costly.

The Upper Great Lakes Region has a long history of mining that predates discovery by European explorers. Although there have been periods of reduced activity, since about 1835 the intensity of mining in Wisconsin and throughout the Great Lakes Region has tended to increase. This increase is a reflection of increasing demand for mineral materials, of exploration that has yielded new deposits to supply these demands, and of advanced technology that has been applied to improve methods of prospecting, mining, and mineral processing.

Today, we are in the midst of what is described by some as a minerals crisis, namely, that our domestic and even world supply of minerals is not keeping pace with demands. Thus, one can expect that the search for minerals will continue to intensify and that mining activity will increase.

The sharp increase in mineral exploration and mining activity, especially over the past 10 to 15 years, has brought with it an increase in conflict over land use and an increase in land negotiations for purposes of mineral prospecting and mining. Although this condition is rather general throughout the Great Lakes Region, it is particularly true in Wisconsin, where one rich deposit of copper and zinc with minor amounts of

gold and silver has been located near Ladysmith, in Rusk County, and where the intensity of prospecting and land negotiations is at a very high level.

In addition, the general increase in production and consumption of nonmetallic minerals such as sand, gravel, and crushed stone, which are required by the construction industry, has created increased public concern over mining activities, especially where these activities occur in close proximity to urban areas. There is clear evidence to indicate that nearness of such mines to consumers has a major effect on holding materials prices down, and that it is possible to plan for and design mining activities in such a way that they are compatible with other activities and can thus be made a part of multisequential land-use plan. Yet, in spite of this evidence, there is a general lack of knowledge regarding the importance of mining as the provider of basic and essential raw materials to supply society's constantly expanding and increasing mineral needs. In addition, this lack of knowledge extends to such matters as land and mineral rights negotiations, the character of mineral deposits and minerals, mineral economics, and land-use planning.

In response to these needs the Wisconsin Geological and Natural History Survey, University of Wisconsin-Extension, in 1973 submitted to the Upper Great Lakes Regional Commission a program proposal to develop informational materials on (1) zoning to provide for control of mining activities and to protect known mineral deposits, (2) metallic and nonmetallic prospecting agreements, mining leases, and alternative transactions, and (3) mineral rights. In addition, a list of consultants was to be prepared and a mining information hot line was to be made available to provide rapid response to questions relating to prospecting and mining.

This report, "Model Mineral Reservation and Mine Zoning Ordinance," is one product of the mining information program. It was developed in response to an expressed public need for a method to regulate mineral resources and mining and is intended to provide a model that can be added to existing county zoning law. The purpose of the model is to provide for the reservation of mineral deposits, for their orderly development, and for ultimate rehabilitation of the land consistent with social, economic, and environmental considerations.

M. E. Ostrom  
Project Director

## ACKNOWLEDGMENTS

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Many persons contributed to the preparation and review of the Model Mineral Reservation and Mine Zoning Ordinance.

Acknowledgement is due Professor Richard Lehmann, Institute of Governmental Affairs, and Professor Douglas Yanggen, Department of Agricultural Economics, for recommendations and guidance in the preparation of the revised final draft; Dr. M. E. Ostrom, State Geologist, for direction and guidance throughout the project and for final critical review; and Professor Richard Barrows, Department of Agricultural Economics, UW-Extension for critical review and comment.

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More than 80 copies of early versions of the model were sent out for review and comment. In addition to those mentioned above, the following persons who reviewed the model and returned their comments are gratefully acknowledged: William O. Bennett, Kurt Bauer, Edward H. Bull, Professor E. N. Cameron, R. N. Cheetham, Jack Everett, Wesley Grosh, Kirby Hendee, Joseph J. Jopeak, Sue Kappes, John Kofron, Calvin E. Kraemer, Donald G. Last, Harold LeJuene, Erwin Leverenz, William Lontz, John Love, Ward Repp, H. L. Riechmann, Jr., Professor John Roberts, Professor John Ross, Eugene Savage, and Joe Tuss.

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The contents of the model ordinance are believed to represent a reasonable compromise of the views and opinions of authors and reviewers. However, because of the diversity of backgrounds, viewpoints, and interests, there were naturally some points of disagreement. In addition, the report does not necessarily have the endorsement of various state agencies. Therefore, it should not be construed as representative of either Survey or state policy.

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## ABSTRACT

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The model mineral reservation and mine zoning ordinance is intended to provide a basis for the reservation of mineral deposits and for their orderly development, and for the ultimate rehabilitation of the land, consistent with environmental, economic, and social factors. The ordinance contains permitting, reporting and bonding provisions for regular and temporary mining and reclamation in both mineral reservation districts and those districts where mining may be a permitted use. In addition, the ordinance provides for both regular and temporary mining special exception permits, for change, renewal, and transfer of these permits, for inspections, and for penalties. The final section of the ordinance provides a standard for judging the suitability of land in a mineral reservation district for subdivision development.

## INTRODUCTION

### Purpose and Scope of Zoning

This document is a model zoning ordinance intended for Wisconsin counties wishing to use land-use regulations to control mineral extraction and to provide for reservation of minerals. The model may be adopted for other jurisdictions with modifications based on statutory law and court interpretation.

The scope of coverage for this ordinance is broad. Mining is meant to include both metallic and nonmetallic mineral extraction. The definition may be adjusted as conditions warrant.

The provisions of this ordinance are not meant to be an all-inclusive zoning plan. The model assumes that an existing county ordinance contains provisions for ordinance administration, amendment of district regulations, creation and operation of a board of adjustment, appeals, and so forth. A county wishing to use this model would integrate its existing provisions on such topics with the language of this ordinance.

Minerals are rare and nonrenewable in nature, and they are restricted in the sense that they are fixed in location. Thus the danger exists that noncompatible land uses could unnecessarily deny the benefit to these materials to society in the future. Therefore a method must be sought to protect mineral reserves while at the same time eliminating the problems of potentially conflicting uses near a mineral deposit. In addition, the method must provide for control of mineral extraction and rehabilitation of mined areas. The method chosen for these purposes is a zoning ordinance.

A recent study by the Wisconsin Taxpayers Alliance shows that 61 counties have adopted a comprehensive zoning ordinance. This is to be differentiated from floodplain and shoreland zoning ordinances, which every county enacts. Roughly 50 percent of Wisconsin towns have adopted the county zoning ordinances, where they exist. These figures suggest that a zoning ordinance would find reception as a potentially useful tool to control mineral extractions, to provide for mineral reservation, and to assure reclamation of a mining site.

This model ordinance tries to accomplish three general purposes, using the umbrella of a zoning ordinance. The first objective is to protect mineral deposits so that they can later be mined to provide for the future economic development of a county. The recent Wisconsin statute on metallic mining, Chapter 318 of the Laws of 1973, must be followed in this ordinance. In the case of sand and gravel deposits, protection of sites near urban development could help keep down the cost of new construction requiring new materials. Too often in the past, unwise patterns of rural and urban development have prevented access to and use of mineral resources. The enabling statute for zoning, Section 59.97 of the Wisconsin Statutes, does not specifically mention mineral extraction as a purpose of zoning.

Nonetheless, the enabling law does allow zones for industrial uses. Mining is certainly an industry. Thus it appears that zoning is a legally permissible tool to protect mineral deposits.

Next, this document regulates mining and mining activity to prevent nuisance situations and to protect the public health, safety, and general welfare of the citizens of the county. Mining is often incompatible with residential development, both on or near a commercially valuable mineral deposit. For many reasons, including dust, noise, traffic, and potential danger to children, mineral extraction operations should be screened from houses. Section 12 of this ordinance deals specifically with the question of the suitability of mineral-bearing land for subdivisions. Prevention of nuisances and protection of the community are clearly valid purposes for zoning.

The final purpose of this ordinance is to govern the sequential or postmining use of land for the purpose of compatibility with general land-use plans. Mineral extraction is a temporary use of the land. Reclamation must play an important part in the grant of initial permission for mineral extraction in order to assure a beneficial sequential use of the land. Clearly, the land-use planning aspects of the zoning process allow provisions for sequential use of the mining site.

The model ordinance has two methods to accomplish the three objectives of protection of mineral deposits, protection of the general welfare, and governance of sequential use. This document places mineral deposits in zones in which structural uses or other uses that are incompatible with future mining are either prohibited or controlled as special exceptions so that the potential conflict between the structural use and possible future mining can be evaluated. Protection of mineral deposits may be accomplished in two ways: the deposits may be placed in existing zones (agriculture, forestry, conservancy, etc.) that handle structural uses to prevent incompatibility with mining; or special zones, such as the Mineral Reservation District contained in this document, may be created to handle the nonmining structural uses.

To provide for the protection of the general welfare and to assure proper reclamation of the mining site, mineral extraction is listed as a use that requires special exception permission, allowing control of mining and the sequential use of the land through the special exception permit.

The county should tailor this model to its specific needs. If the mineral deposits to be protected are prevalent throughout the county, extensive use of the special exception should be made. If mining is to occur only in a few places, and there is sufficient data available to identify these sites, the use of the mineral reservation district technique should be considered. Of course, in the case of preemption of county authority by state or federal statutes, the local ordinance would have to reflect this fact.

This ordinance must allow the owner of the land some reasonable use of the property, whether the use sought to be regulated is the mining itself or is a noncompatible adjacent land use. The county must provide for an

appeal of a denial of a mining permit or of permission to subdivide. The county must not reserve future mineral sites for too long a period of time. In short, the regulations embodied in this ordinance must reflect the fact that the owner of property has the right to put the property to its most beneficial use, consistent with reasonable regulations designed to protect the welfare of the community.

### An Overview of the Zoning Process

The enactment of zoning ordinances is authorized by a state enabling statute and is implemented by a local ordinance. The regulations are meant to be selfexecuting in nature. No compensation is to be paid for zoning; the control is accomplished by means of the police power. Zoning ordinances usually fall into conventional patterns. Some of these patterns will be explained below. However, many ordinances are much more complex than the examples cited.

There are a number of subject areas covered by a typical zoning ordinance. First, permitted uses are allowed as a matter of right. Depending upon the circumstances, these uses may cover residences, businesses, and industries.

This model ordinance has two types of permitted uses in the mineral reservation districts: agricultural uses, including some single-family residences, and forestry uses. Second, population density in any area may be controlled directly or by such indirect methods as minimum lot size. Third, the size, bulk, and shape of buildings may be controlled through zoning ordinances. Some techniques of bulk control include control of yard sizes around buildings, building height, and percentage of lot area that a building can occupy. Regulations may also cover off-street parking, signs, grading, design considerations, and many other subjects. Some of these matters are reflected in this model ordinance.

Compatible uses are collected into groups and assigned to specific geographic areas known as districts or zones. Each zone has a detailed set of regulations governing the uses within it. To show the precise location of these districts, a zoning map accompanies the zoning ordinance. The nature of the districts varies greatly. Business, industrial, and residential uses have been rigidly separated in the past. Business districts are formed with commercial activity in mind. Requirements for building size and off-street parking characterize these districts. Industrial districts differ as to permitted uses and sometimes incorporate performance standards that limit the amount of smoke, noise, and so forth. Special districts for agricultural and conservancy uses may be created. A special district for mineral reservation purposes is used in this document. Not all districts require a strict separation of business, commercial, and residential uses. In this ordinance, some single-family residences are allowed amid other uses in the mineral reservation district.

The administration of a zoning ordinance is meant to be simple. The envisioned procedure calls for the applicant to go to an official who administers the zoning ordinance. The zoning administrator then compares the application to the regulations of the district, and grants or denies the permit on the basis of the facts. Other forms of administrative action have come to be used in zoning regulations. There is a right of appeal from the decision of the administrative official. The appeal is taken to a unit known as the board of adjustment (or appeals).

Another administrative device in zoning is called a special exception or conditional use. Procedure is important in the functioning of this model document. By a special exception, certain uses are permitted in a district only after review by a local administrative agency, such as the board of adjustment. Conditions may be attached to the special exception.

The case law in Wisconsin on zoning ordinances that affect mining is sparse. There are only two cases reported, and some of the major issues of land-use regulation for mineral extractions are not addressed. The first case is Town of Caledonia v. Racine Limestone Co.<sup>1</sup> Prior to April 7, 1953 the town board had a zoning ordinance which it claimed prohibited establishment of new quarries within the town. This ordinance was repealed on April 7. On April 13, the plaintiff began quarrying operations. Racine County had a zoning ordinance that permitted quarrying only in industrial and agricultural districts. Thus, at the time the plaintiff began quarrying, no town ordinance existed. The town adopted the county ordinance on April 20 and passed its own ordinance on May 11. The town ordinance defined a quarry and required a quarry within any agricultural district, as mapped by the county ordinance, to have a permit from the town board. The board was to judge whether the quarry would be conducive to the health, safety, welfare, and convenience of the citizens of the town, and the board would grant or deny the permit in accordance with this standard. The plaintiff applied for a permit and was refused. The Wisconsin Supreme Court first stated that a property owner owns all rights to the property and may use it as he wishes to his best economic advantage, subject to reasonable restrictions to protect the community welfare. The court said that there was no valid basis for the regulation if the gain to the public was small but the individual hardship was great. The court also noted that there was a large commercial quarry in the town, in an area zoned industrial. Furthermore, the town ordinance did not apply to extraction of sand, gravel, clay, or any other mineral. The only subject covered by the town ordinance was quarrying itself. The record did not disclose any harm to adjacent property from blasting or noise at either quarry. The validity of the county zoning ordinance was not in question.

The court invalidated the town zoning ordinance on the basis that no reasonable classification was accomplished by the ordinance. The ordinance did not have any basis for distinguishing quarries in agricultural districts from either quarries in other districts or other types of mining in agricultural districts. The court also stated that since minerals are fixed in location, they must be extracted where they are located. A concurring opinion noted that there were no real standards by which the application could be judged. The court did not reach the issue of non-conforming use.

The second sand and gravel case, Smith v. City of Brookfield<sup>2</sup>, was decided two years later. The city ordinance required that quarries and sand and gravel pits had to be approved by the board of appeals after review by the planning commission and a public hearing. The plaintiff began his quarrying after the enactment of the ordinance and was in violation of the ordinance. The city sought to stop the quarrying. The trial court ruled that the standards and guidelines available to the board of appeals were inadequate. The Wisconsin Supreme Court disagreed. The ordinance required that the location and plan of operation be submitted to the board for approval. The court held that the facts in the application were to be judged by the standards contained in the preamble to the ordinance. These standards declared that the purpose was to protect public health, morals, and safety as well as the conservation of taxable land and prevention of congestion in the streets. The court announced a new rule of law in its decision on the case. A preamble to the ordinance may be consulted when the constitutionality of the ordinance is questioned. This is despite the fact that the provisions of the ordinance are inadequate to provide sufficient standards. Furthermore, there was no improper classification created even though no permit was required for the removal of topsoil and peat moss. There was no question of nonconforming use in this case. Although the Smith case did not overrule the Town of Caledonia decision, the opinion of the court in the Smith case did seem to extend the approval of the court to zoning ordinances which regulate mining operations. In Wisconsin there has been no further litigation on the subject of mining zoning ordinances, but taken together the two cases point out the desirability of well thought out zoning provisions for mining which describe the purposes to be achieved and set adequate standards for evaluating and controlling applications for mining.

#### An Overview of the Model Mining Zoning Ordinance

The model ordinance of this report consists of 12 sections, each of which is followed by explanatory comments. In order to understand the provisions of this model, extensive use should be made of these comments and the notes, which are given at the end of this circular.

The ordinance begins with a statement of purpose which declares that minerals are rare, nonrenewable, and fixed in location. The statement of purpose lists six reasons for the ordinance: prevention of noncompatible land uses, protection of mineral deposits near urban centers, prevention of unwise patterns of development, assurance of proper reclamation of mining sites, and provisions to secure maximum economic growth and minimum environmental disruption. The next section lists definitions of terms as used in this ordinance. Mining is meant to be inclusive, and covers sand and gravel pits.

Two methods for regulating mineral extraction are given. The first alternative involves the creation of a mineral reservation district. There are several objectives, among which are identifying the location of present and future mining areas and the availability of mineral-bearing lands, coordination with comprehensive plans, use of the land for development

and reclamation, and the maximization of the short- and long-term benefits of mining. These are explained in greater detail in the Comment on Section 3. There are two types of permitted uses in the district-- agricultural uses and forestry. Three types of special exceptions are created in the mineral reservation districts. The first type of special exception provided for in the mineral reservation district is for non-structural conservancy uses such as those permitted in shoreland zoning ordinances. The next is a nonmining special exception which consists of any permitted use or special exception in an adjacent district. The purpose of this special exception is to protect mineral deposits from incompatible uses. This special exception may be granted provided that it outweighs the need for mineral conservation, that the special exception may need to cease prematurely, and that the use is subject to special limitations designed to minimize conflict with mining. Finally, mining itself is a special exception. The language then outlines the decision-making process for nonmining special exceptions. A public hearing must be held and at least these conditions may be attached to the permit: one concerns structural improvements; the other deals with placement of notice by the applicant in the chain of title to that property that there may be valuable minerals on the site, which would have the effect of protecting other individuals.

The second alternative for regulating mineral extraction provides for creation of a special exception for mining in an agricultural, forestry, or conservancy zone. The basic purpose of such a special exception is to give the county the ability to protect adjoining land uses from mining and to give the county flexibility in dealing with deposits whose location is not precisely known.

Section 5 lists the requirements for applications for mining special exception permits on a regular or temporary basis. For a regular mining permit, the name and address of the operator, a legal description of the land, a map with site information, a description of the equipment, noise control, hours of operation, screening, travel routes, topsoil storage, evidence of the lease, proposed timetable of operations, listing of permits, and the methods and cost of reclamation are required. A temporary mining permit requires only the name and address of applicant, signature, and a legal description of the land. The board may impose any of the information requirements mentioned under the process for a regular permit. An application is not considered complete unless all the information required by this section is supplied, except where the board votes to waive or modify the requirements of the application.

Section 6 outlines the decision-making process for the mining permits. A public hearing must be held in the case of a regular mining permit, with special notice sent to any nearby governmental jurisdictions and landowners. The regular mining special exception permit must be judged by several standards, including effect on existing and future use of adjacent property, adequate site improvements, air and water quality standards, a proper undeveloped buffer zone, and possibly an earth bank and barbed wire fence. The board may approve the regular mining permit for up to five years. Significant development of the mining site must occur within two years. Conditions may be attached to the regular permit. They could include subjects such as control of operations, access, bonding, and period of operation. The conditions continue to apply to successors

in interest to the operator. A disapproval of the application means that no new application may be submitted for six months. The temporary mining permit may be issued for a period of six months with a renewal for a like term possible. The language of the decision process on the regular mining permit is applied to the temporary permit.

A bond is required to assure reclamation. The board determines the time span and amount of the bond, minus the amount of bond required by other governmental agencies for the same site. A single bond may be posted in lieu of separate bonds for each permit the applicant holds in the county. The operator of the mine requests a release of bond. A final reclamation report is required before final release of the bond. The reclamation report describes the property and shows the contours, slope, drainage, and any remaining structures on a map or aerial photograph. There must be a description of all reclamation activities including topsoil and revegetation practice, disposition of waste dumps and tailing ponds, and sediment control. Operators of underground mines must show complete plans for the sealing of underground workings and provisions for land stability. The board inspects the site, publishes notice that a release of bond is being requested, and holds a public hearing on the matter. The operator is notified whether his actions are satisfactory, if so, the bond is released 30 days after the hearing and all valid complaints are satisfied. The mining operator must maintain an insurance policy in the amount of \$50,000 to protect the public and adjacent property. The operator shall notify the board of cessation of mining 60 days before it occurs. The bond transfers to successors in interest to the operator.

Section 8 states that mines existing on the date of the ordinance's enactment need no permit. However, an expansion of an existing mine or of an operation subject to a permit needs a new permit. The board must define the criteria for expansion. An expansion is also defined in the ordinance to be a substantial increase in the amount of mineral or waste materials produced, a change in the type of equipment used, in hours of operation, and in the amount of noise and dust created, or an increase in area of the mine. The board, when considering the permit under this section, looks at the total mining operation to the extent feasible.

Section 9 provides a method for changes in the permit or reclamation plan. This section does not cover expansion of operations, release of bond, or extension of a temporary permit. The operator identifies the tract of land affected. If the land has not been mined, after inspection the board may amend the permit and release the applicable portion of the bond. There are provisions for extension of regular mining permits for five-year terms and transfer of rights to successor operators. Conditions must be attached to the document approving the change.

Section 10 provides for inspection of mining operations and records at reasonable times with notice to assure compliance with the terms of the ordinance.



Section 11 provides for penalties for violation of the ordinance. The operator is notified by registered mail of the violation and ordered to take corrective action. If the order is not complied with within 30 days after the corrective order and the operator does not request a hearing, within 10 days after the order is served, the permit may be cancelled. Forfeiture and injunctive remedies are also provided.

Section 12 provides a method of controlling subdivision in areas of known mineral reserves. The local agency approving plats inquires on plats submitted in the mineral reservation district as to the location of mineral deposits. The agency may find, after a public hearing, that the land is not suitable for subdivision because of the mineral deposits.

## MODEL ZONING ORDINANCE

### Section 1

#### Statement of Purpose

In order to protect the health, safety, and general welfare of the citizens of \_\_\_\_\_ County, the \_\_\_\_\_ County Board of Supervisors do hereby enact this ordinance to reserve and protect the mineral deposits of \_\_\_\_\_ County and to provide methods for the regulation of mineral extraction.

This ordinance recognizes that minerals are fixed in location, are rare, and are nonrenewable in nature. In order to prevent noncompatible land uses from denying the benefits of these materials to the citizens of \_\_\_\_\_ County, to protect mineral deposits near urban centers, to prevent unwise patterns of development, to assure proper reclamation of mining sites, and to provide the best economic growth opportunities and environmental management techniques available, this ordinance provides for the creation of \_\_\_\_\_ as an amendment to the \_\_\_\_\_ County Zoning Ordinance.

## Comment on Section 1

### Statement of Purpose

This section gives a general statement of purpose for the entire ordinance. The sections on mineral reservation districts and special exceptions relating to mineral deposits contain separate purpose statements. This section is meant to be a brief recitation of some of the reasons behind this ordinance.

The language refers to the reservation and protection of mineral deposits and regulation of mineral extraction as goals of this ordinance to be accomplished in order to protect the health, safety, and general welfare of the citizens of the county. Thus this ordinance is a police power regulation, and may be enacted as a method of land-use control.

The ordinance states that minerals are rare, nonrenewable, and fixed in location. In order to prevent noncompatible land uses, protect deposits near urban areas, prevent unwise development, assure proper reclamation, and provide the best economic growth and environmental management opportunities, the ordinance is enacted as an amendment to the county zoning ordinance. As mentioned in the introduction, this document is not meant as a comprehensive ordinance and thus more detailed language on the purposes of mining provisions should be added where appropriate to existing ordinances. In Wisconsin a county zoning ordinance is enacted or amended with the approval of the town board of supervisors. This fact must be taken into account when reading this material.

## Section 2

### Definitions

- (1) Mineral shall mean a naturally occurring element or combination of elements that occur in the earth in a solid state, but shall not include soil.
- (2) Mining shall mean all or part of the processes involved in the extraction and processing of mineral materials.
- (3) Operator shall mean any person or an agency either public or private, engaged or who has applied for a permit to engage in mining, whether individually, jointly, or through subsidiaries, agents, employees, or any person engaged in managing or controlling a mining operation.

- (4) Structure shall mean any building, whether for human habitation or not.
- (5) Board<sup>3</sup> shall mean the \_\_\_\_\_ County Board of Adjustment.
- (6) Waste shall mean all accumulation of waste mined material and overburden placed on the land surface, whether above or below water.
- (7) Person shall mean an individual, partnership, cooperative, corporation, or agency, either public or private, or any persons, whether incorporated or not.
- (8) Reclamation Plan shall mean the operator's proposal for the reclamation of the project site which must be approved by the board under this ordinance prior to the issuance of the mining permit.
- (9) Mining Permit shall mean the mining special exception permit<sup>4</sup>, whether on a regular or temporary basis, which is required by Section \_\_\_\_\_ of Ordinance \_\_\_\_\_. It does not replace or otherwise eliminate the need to apply for state mining permits such as are required under Chapter 144.85 of the Wisconsin Statutes.

#### Comment on Section 2

##### Definitions

This section, like the entire document, borrows heavily from the definitions in Chapter 318 of the Wisconsin Laws of 1973. This is done for at least two reasons. First, to the extent that this ordinance seeks to regulate metallic mining, it must conform with the requirements of this law. It might be noted that Chapter 318 requires all applications for mining permits to be in conformance with all applicable zoning ordinances. This is further explained in the comment following the section on existing mines. Secondly, this law represents the most recent expression of legislative intent on the subject of mining in general. Thus this ordinance should follow the provisions of that law.

The first definition defines materials to include both metallic and nonmetallic extraction, but does not control soil or earth removal. The question might arise as to whether an excavation in order to get the earth in condition for a use allowed under other language in the general zoning

ordinance would constitute mining as defined in this document. This ordinance does not cover excavations such as grading and leveling, so recontouring the land is not covered by this model. However, if the county desires and the law of the jurisdiction allows, this type of activity could be included in the scope of this ordinance.

The definition of mining includes all processes involved in the extraction and processing of mineral materials. An operator may include a public agency that would operate a mine. The other definitions in this Section are selfexplanatory. It is anticipated that these definitions would be placed in the definitions section of the general zoning ordinance in alphabetical order.

### Section 3

#### Mineral Reservation Districts

- (1) NAME: The name of this district shall be the Mineral Reservation District of \_\_\_\_\_ County.
- (2) PURPOSE: The purpose of this district is to protect the lands in \_\_\_\_\_ County which contain known mineral resources which are potentially valuable for commercial extraction. The location of the district shall be based upon geological surveys and consideration of the following factors:
  - (a) Location of past and present mining and land areas held for future extraction by operators;
  - (b) The presence, location, extent, and quality of potentially valuable mineral deposits both known and inferred.
  - (c) Availability of potential mineral-bearing land and feasibility of extraction of the mineral.
  - (d) Any regional, county, and municipal comprehensive plans.
  - (e) Potential for effective multisequential use which would result in the optimum benefit to the operator, residents of adjacent districts, and the residents of \_\_\_\_\_ County.

- (f) Development and reclamation potential of the land to enhance the possibility of physically attractive surroundings compatible with adjacent areas.
- (g) The quality of life of the residents in and around areas which contain potential mineral deposits.
- (h) Maximization of the short- and long-term benefits of mineral extraction.

(3) PERMITTED USES

- (a) Agricultural uses, including farm structures and single-family residences up to two units per farm.
- (b) Forestry.

(4) SPECIAL EXCEPTIONS

(a) NONMINING

(1) Nonstructural conservancy uses<sup>5</sup>, such as:

- (a) Utilities such as telephone, telegraph, and power transmission lines;
- (b) Hunting, fishing, preservation of scenic, historic, and scientific areas, wildlife preserves;
- (c) Hiking trails and bridle paths;
- (d) Accessory uses;
- (e) Public and private parks, picnic areas, golf courses, and similar uses;
- (f) Any other use which the board finds is similar in nature and purpose to the nonstructural conservancy uses herein listed.

- (2) Any use that is allowed as a permitted use or special exception in any district which abuts the Mineral Reservation District<sup>6</sup>

provided that the Board of Adjustment finds that:

- (a) The use is clearly necessary to community development and that this need outweighs potential conflict with mineral conservation and/or mining; and
- (b) The decision to establish the use has taken into account the possibility that it may need to cease in favor of mining at a future time which could be before the natural expiration of such use; and
- (c) The use is subject to special conditions designed to eliminate or minimize conflict with future mineral extraction activities on the same or nearby sites.
- (d) Such other standards as the board may find necessary to fulfill the purposes of nonmining special exceptions in mineral reservation districts.

(b) MINING: Mineral extraction operations on a regular or temporary basis.<sup>7</sup>

(5) APPLICATION FOR AND DECISION ON NONMINING SPECIAL EXCEPTIONS

- (a) The board shall require an application for a nonmining special exception permit. Such application shall contain such information, consistent with the terms of this ordinance, as may be necessary to enable the board to determine the effect of the nonmining special exception on mineral extraction.
- (b) The board shall review the application for completeness, accuracy, and consistency in meeting the standards of this section contained in part 4-a-1 which relate to nonstructural conservancy uses and part 4-a-2 which relate to nonmining special exception standards. Notice shall be given and a public hearing shall be held consistent with the terms of this ordinance.

- (c) The board shall approve, approve conditionally, or deny the application for a nonmining special exception permit, consistent with the terms of this ordinance.
- (d) The board may cause the following conditions to be attached in writing to the nonmining special exception permit:
  - (1) Conditions as to the nature of structural improvements (including paving) designed to facilitate the removal of the improvements at minimum cost in the event the structures must later be eliminated to allow a change of use to mining.
  - (2) The condition that the applicant has registered a notice with the \_\_\_\_\_ County Register of Deeds and filed the notice in such a manner as to be accessible to all persons researching the property title to that parcel stating that the parcel has valuable mineral deposits which may require extraction and that if the extraction occurs, such extraction may cause interference with the use and enjoyment of the property. Proof of such notice shall be required of the applicant.
  - (3) Such other conditions as the board may find necessary to fulfill the purposes of nonmining special exceptions in mineral reservation districts.
- (e) A violation of any conditions attached to the nonmining special exception permit shall be considered a violation of this ordinance, and subject to the penalty provisions listed in this ordinance.
- (f) Any conditions attached to the nonmining special exception permit shall continue to apply to heirs, assigns, transferees, or successors in interest to the application for such permit.

### Comment on Section 3

#### Mineral Reservation Districts

This section serves to illustrate one method of regulating use of potential mineral-bearing lands. It is to be considered as an alternative to Section 4 which deals with the classification of mining as a special exception in certain existing districts. As stated in the Introduction, a county might wish to use both methods of control.

A mineral reservation district is created with a special-purpose section applicable solely to that district. To protect lands with known mineral deposits, the district is created for reasons ranging from protection, location, and feasibility of past and present mining operations to protection of adjacent lands. Included are purposes seeking to enhance reclamation potential and conformance to comprehensive plans.

There are two permitted uses in the district. The first is agricultural uses, which include farm structures and single-family residences up to two units per farm. If a county wishes, the residential uses could be made special exceptions instead of permitted uses. The second permitted use in the Mineral Reservation District is forestry.

Nonmining special exceptions fall into two broad categories. The first group refers to various nonstructural conservancy uses similar to those found in many shoreland zoning ordinances. Included are utilities, hunting and fishing, preservation of scenic areas, hiking trails, parks, and so forth. These nonstructural uses could also be permitted uses. These uses are less incompatible with mining than those special exceptions allowing two residences per farm. The second set of nonmining special exceptions is more general in nature. Any use which is a permitted use or special exception in an adjacent district may become a nonmining special exception in the mineral reservation district, provided that the board of adjustment finds: (1) the use is necessary to community development and outweighs the need for mining; (2) the use may need to cease in favor of mining before the natural expiration of such use; and (3) the use is subject to special conditions designed to eliminate conflict with mining.

Mineral extraction is also a special exception in the mineral reservation district. As noted in the section, the review and decision process on mining permits is contained elsewhere in this ordinance.

A process is outlined for review and decision on the application for a nonmining special exception permit. The board reviews the application for consistency with the terms of the ordinance and holds a public hearing on the matter. The board approves, approves conditionally, or denies the application. Two specific conditions may be attached to the permit, although there is language for additional conditions that the board thinks are warranted. The first provides for the removal of structures at minimum cost in case mining occurs at a later date. The second requires that the applicant place a notice in the chain of title to that parcel that mining may occur on the site. Conditions must be attached in writing to the permit and a violation of the



conditions is a violation of the ordinance. There are provisions that conditions transfer with a change in ownership.

This section is not intended to be a grant of power to prohibit any use of land without compensation. The law of the applicable jurisdiction must be checked in order to ascertain whether the restrictions envisioned by this ordinance are constitutionally permissible by sole reliance on the police power. In Wisconsin, it is assumed that no extra compensation need be paid to the landowner for regulations envisioned by this document if the uses allowed within the Mineral Reservation District permit some reasonable use of the property under the given circumstances.

In addition, the conditions authorized by this ordinance must be reasonable. The county will have to consider development pressures on the mining site and take into account all alternative uses of the mining site, including mineral extraction. The conditions attached to the permit must not be so onerous as to deny reasonable use of the applicant's property, whether the proposed special exception is for mining or nonmining purposes.

#### Section 4

##### Special Exceptions Relating to Mineral Deposits

- (1) In order to assure that mineral deposits are protected from noncompatible adjacent land uses and that mineral extraction operations are properly controlled, while at the same time assuring the maximum amount of flexibility in dealing with mineral deposits whose location is not precisely described, the following amendments are made to the text of the agricultural, forestry, or conservancy <sup>8</sup> district of \_\_\_\_\_ County:

- (a) Mineral extraction shall be a special exception in such district and persons wishing to establish such use shall apply for a mining special exception permit on a regular or temporary basis.<sup>9</sup>
- (b) In such districts, the board shall inquire as to the existence of mineral deposits on or near all sites on which other special exception permits are requested.

## Comments on Section 4

### Special Exceptions Relating to Mineral Deposits

This section represents an alternative which may be used in place of or in combination with Section 3 dealing with Mineral Reservation Districts.

This language is to be added to the special exception provisions for existing zoning districts with special exception provisions already in those zones. Districts suggested in this document include agriculture, forestry, and conservancy. These districts are typically less intensely developed with lower value structural uses than residential or commercial uses. For this reason, industrial zones are not included in the suggested districts for which mining is an additional special exception. This is not to say that mining may not be permitted in industrial districts under any circumstances. A county may wish to consider mining in industrial zones. This document does not discuss this alternative.

The section begins with special language added to explain the purposes of the section. In order to control both noncompatible adjacent land uses and also mining itself and to provide a county with flexibility, this section adds special exception language to districts which already limit intensive structural development through the use of the special exception. This method of special exception might be used in a county where either the major mineral deposits are too numerous to place in a single district or they are not sufficiently identified in terms of data to be placed in a Mineral Reservation District.

The section next makes mining a special exception. All individuals wishing to conduct mining operations on a regular or temporary basis must apply for the appropriate permit.

The next subsection does not deal directly with a mining operation. As mentioned above, one reason that a county might wish to use a mineral special exception could be a lack of sufficient data about mineral deposits in the county. This subsection requires that any individual wishing a special exception in the district supply information on mineral deposits on the proposed site of the use. This section makes no further requirements for anyone not wishing to conduct mining.

The section on Mineral Reservation Districts contained language on non-mining special exceptions, including nonstructural conservancy uses. That language is not contained in this section on mineral special exceptions. The purpose of the nonmining special exceptions was to protect the mining deposits from incompatible land uses. Presumably an agriculture, forestry, or conservancy district already provides some protection from uses incompatible to mining. However, a county which does not use the Mineral Reservation District method might want to place the nonmining special exception language in this section also, in order to protect mining sites.

## Section 5

### Application for a Regular and Temporary

#### Mining Special Exception Permit

- I. The application for a regular mining special exception permit shall be accompanied by information which shall include the following;
- (1) The names and addresses of the applicant, operator, and principal officers, and resident agent of the business if other than a single proprietor.
  - (2) A legal description and map and/or aerial photograph of the tract or tracts of land to be involved and affected by the proposed operation, which may be supplied by the board.
  - (3) The map and/or aerial photograph and accompanying materials shall indicate:
    - (a) Boundaries of the affected and adjacent lands;
    - (b) Surface drainage of the affected land;
    - (c) Location and names of all streams, roads, railroads, utility lines, and pipelines on or immediately adjacent to the area;
    - (d) Location of all structures within one thousand feet of the outer perimeter of the area, present owners and occupants of such structures, and purposes for which each structure is used;
    - (e) Names of the owners of the affected and adjacent lands;
    - (f) Proposed location, areal extent, and depth of intended mine excavation;
    - (g) Proposed location of the mine, waste dumps, tailing ponds, sediment basins, stockpiles, structures, roads, railroad lines, utilities or other permanent or temporary facilities used in mining as defined in Section 2;

- (h) Estimated depth to groundwater.
- (4) A description of the mining and processing equipment to be used;
- (5) A description of measures to be taken to control noise and vibrations from the operation;
- (6) A description of the anticipated hours of operation;
- (7) A description of measures to be taken to screen the operation from view;
- (8) Proposed primary travel routes to be used to transport the mined material to processing plants or markets away from the property;
- (9) A description of the plans for topsoil storage;
- (10) A reclamation plan which shall include:
  - (a) A map or plan and description of the proposed reclamation including grading, final slope angles, highwall reduction, benching and terracing of slopes, slope stabilization and revegetation where applicable, and erosion control, and alternative future land uses;
  - (b) Description of topsoil stripping and conservation during storage and replacement;
  - (c) Plan and description of anticipated final topography, water impoundments, and artificial lakes on the property;
  - (d) Description of plans for disposition of surface structures, roads, and related facilities after cessation of mining;
  - (e) A plan for disposal or treatment of any harmful or toxic materials found in any formations penetrated by the mining operation or produced during the processing of minerals on the affected land, and of chemicals or materials used during the mining or processing operations;
  - (f) The estimated cost of reclamation for the total project;

- (11) A statement in writing and adequate evidence to indicate the duration of the lease in years;
- (12) A timetable of the commencement, duration, and cessation of mining operations;
- (13) Any and all mining permits held by the applicant within the state;
- (14) Such other information as may be necessary to determine the nature of the operation and the effect of the surrounding area, including the mining reclamation plan;
- (15) The signature of the applicant and date of signature;
- (16) The application shall be accompanied by a fee of \_\_\_\_\_ for each acre of surface area to be disturbed, but the total fee shall not be less than \$35.00.

II. The application for a temporary mining special exception permit shall be accompanied by information which shall include the following:

- (1) The names and addresses of the applicant, operator, and principal officers and resident agent of the business if other than a single proprietor.
- (2) A legal description of the land involved.
- (3) As may be required by the board, a map and/or aerial photograph of the land with any of all of the information as listed in I-3-a,b,c,d,e,f,g, of this section, relating to requirements for maps and/or aerial photographs for regular mining special exception permits.
- (4) As may be required by the board, any or all of the information listed in part I-4,5,6,7,8,9,10,11,12,13 of this section, relating to requirements for information for regular mining special exception permits.
- (5) The signature of the applicant and date of signature.
- (6) The application shall be accompanied by a fee of \_\_\_\_\_ for each acre of surface area to be disturbed, but the total fee shall not be less than \_\_\_\_\_.

III. The board may vote to waive or modify any requirements for information requested under the terms of this Section.

IV. Unless the board votes to waive or modify any requirements of this Section, the application shall not be accepted or deemed to be accepted unless all the information required by this section is supplied by the applicant. In the case of an incomplete application, the review and decision on the application shall not commence and no regular or temporary mining special exception shall be issued.

#### Comment on Section 5

##### Application for a Regular and Temporary Mining Special Exception Permit

The purpose of this section is to provide the board with as much information as possible to reach the correct decision on approval or denial of an application. The information required of the applicant for a regular mining permit includes the names and addresses of all individuals connected with the control of the mine and a map and/or aerial photograph of the site. The map must show certain information, including: the boundaries, surface drainage, and existing structures, both on and also within one thousand feet of the mining site; names of the owners of the affected and adjacent lands; the estimated depth to groundwater; and the proposed extent and location of mineral extraction operations, including processing information. Other information required of the applicant includes description of mining equipment, noise levels, screening devices, hours of operation, topsoil storage plans, and primary travel routes. A reclamation plan must be filed which includes: plans for grading, sloping, terracing, and erosion control; topsoil conservation; descriptions of final topography after mining; plans for the disposition of structures and any harmful chemicals, and the cost of reclamation. The applicant also must provide evidence of his lease, a timetable of operations, a list of all other mining permits held by the applicant, and a fee.

A summary procedure is provided for the applicant who wishes only a temporary mining permit. As indicated later in the ordinance, a temporary permit may be issued for six months. Other than the name, address, and signature of the applicant, together with the fee and legal description of the mining site, the board of adjustment may require for a temporary permit any or all of the information required for a regular permit.

Finally, this section provides that the board may waive or modify any informational requirement. Unless such waiver or modification occurs, all of the listed information must be submitted. If it is not, no permit of any kind may be issued.

## Section 6

### Review and Decision on the Application for a Regular and Temporary Mining Special Exception Permit

A special exception permit for mineral extraction shall be approved by the board of adjustment if found to comply with the following requirements:

- (1) Upon receipt of the application and supporting information, the board shall:
  - (a) Review the application for completeness and accuracy. To accomplish this purpose or to assist in the enforcement of the ordinance, the board may request assistance from other governmental agencies or any educational institution.
  - (b) For a regular mining special exception permit application, hold a public hearing within 30 days at such time and place as established by the board with notice of the hearing published as a Class 2 notice under Chapter 985 of the Wisconsin Statutes. Notice of the time, place, and purpose of such public hearing shall also be sent to the applicant, the county clerk, and the town board members of the affected town. If the proposed special exception is within one-fourth mile of any other jurisdiction, the clerk of that governmental unit shall also be notified. All owners of land, as determined by owners of record in the current tax description records, within 300 feet of the proposed site shall also be notified.
  - (c) The public hearing may be recessed for a reasonable amount of time, as determined by the board, if the board feels that additional information or study is needed. The hearing shall be conducted and a record of the proceedings shall be made according to

procedures as the board shall prescribe.

- (d) For a temporary special exception permit application, the board may require a public hearing as described under (b) and (c).
- (2) The board shall approve an application for a regular mining special exception permit when the application, in addition to all other requirements, meets the following standards listed below:
  - (a) That the establishment, maintenance, or operation of the special exception shall not endanger the public health, safety, or general welfare;
  - (b) That the establishment, maintenance, or operation of the special exception will not substantially affect the existing use of adjacent property, and will not have a substantially adverse effect on the long-term future use of the adjacent property;
  - (c) That adequate utilities, access roads, drainage, traffic plans, and other site improvements have been, are, or will be provided;
  - (d) That the special exception shall conform to all governmental regulations pertaining to the activity itself;
  - (e) That the mining operation shall conform to applicable air and water quality standards;
  - (f) That the noise, vibration, and dust levels at the property lines be within the levels determined by the board;
  - (g) That an undeveloped buffer zone, commencing not less than 20 feet from the property line of the mining site or such other distance as the board finds necessary for the protection and safety of adjacent property from mining, with a stable angle of slope repose shall be provided along property lines;
  - (h) Where deemed practicable and necessary by the board, an earth bank or vegetative screen shall be erected and/or maintained to



screen the mining operation from view from any residential district located within one-half mile of the operation;

- (i) Where deemed necessary by the board, each mining operation shall be enclosed by at least a single-strand barbed-wire fence, maintained at all times, with warning signs spaced no more than 200 feet apart to indicate the presence of a mining area.
  - (j) That an application shall not be of a speculative nature, nor shall the mining cause harm to adjacent property;
  - (k) Such other standards that will permit the board to evaluate and decide on a regular mining special exception permit.
- (3) The board shall grant, grant with conditions attached, or deny the application for a regular mining special exception permit within a reasonable time after the public hearing. Prior to granting, granting with conditions attached, or denying the regular mining special exception, the board shall make findings of fact based upon the evidence presented that the standards of this ordinance will or will not be met.
- (a) Upon approval of the application, the board shall notify the applicant in writing of the decision and where applicable establish the amount of bond necessary to assure reclamation of the affected land according to the reclamation plan. Upon receipt of the established bond from the applicant, the board shall issue a regular special exception mining permit for an initial term of not more than five years. The applicant shall commence significant development of mining operations within two years of the date of issuance of such permit. At the written request of the board the applicant shall submit proof in writing of the significant development of mining operations. A violation of the terms of

the regular mining special exception permit may result in a forfeiture, a fine, or suit by the county according to the terms of this ordinance.

- (b) The board may approve the regular mining special exception permit with conditions attached to the permit in writing. Such conditions may cover such subjects as control of operations, bonding and surety mechanisms, periods of operation, access, and any other standard or requirement listed under the terms of this ordinance. A violation of the conditions attached to this permit shall be a violation of this ordinance and shall be subject to the penalty provisions contained in this ordinance. Any conditions attached to the regular mining special exception permit shall continue to apply to heirs, assigns, transferees, or successors in interest to the application for such permit.
- (c) Upon disapproval of the application, the board shall notify the applicant in writing stating the reasons for disapproval as well as the necessary action, if any, that the applicant may take to complete the application in an acceptable form. No application which has been denied, in whole or in part, may be resubmitted for six months from the date of denial, except for new evidence, change of conditions, or such other reason as the board may accept.
- (4) The board may approve an application for a temporary mining special exception permit for a term not to exceed six months.
  - (a) The board may subject the granting of the temporary mining special permit to any or all of the standards listed in part 2 of this section, relating to the standards for a decision on a regular mining special exception permit.

- (b) The board shall grant, grant with conditions attached, or deny the application for the temporary mining special exception permit within a reasonable time after any public hearing the board may hold. Prior to granting, granting with conditions attached, or denying the temporary mining special exception, the board shall make findings of fact based upon the evidence presented that the standards will or will not be met.
- (1) Upon approval of the application, the board shall notify the applicant in writing of the decision and where applicable establish the amount of bond necessary to assure reclamation of the affected land according to any reclamation plan. Upon receipt of the established bond from the applicant, the board shall issue a temporary mining special exception permit. A violation of the terms of the temporary mining special exception permit may result in a forfeiture, a fine, or suit by the county according to the terms of this ordinance.
- (2) The board may approve the temporary mining special exception permit with conditions attached to the permit in writing. Such conditions may cover such subjects as control of operations, bonding and surety mechanisms, periods of operation, access, and any other standard or requirement listed under the terms of this ordinance. A violation of the conditions attached to this permit shall be a violation of this ordinance and shall be subject to the penalty provisions contained in this ordinance. Any conditions attached to the temporary mining special exception permit shall continue to apply to heirs, assigns, transferees, or successors in

interest to the application for such permit.

- (3) Upon disapproval of the application, the board shall notify the applicant in writing stating the reasons for disapproval as well as the necessary action, if any, that the applicant may take to complete the application in an acceptable form. No application which has been denied, in whole or in part, may be resubmitted for six months from the date of denial, except for new evidence, change of conditions, or such other reason as the board may accept.

- (c) The board may extend the effectiveness of a temporary mining permit for an additional six-month period upon request of the operator, subject to the provisions of public notice and hearing contained in part 1-b,c of this section, relating to publication requirements.

#### Comment on Section 6

##### Review and Decision on the Application for a Regular and Temporary Mining Special Exception Permit

Section 6 provides for the review and decision process that the board follows once an application for a regular or temporary mining special exception permit is filed. For either type of permit, certain common steps are followed.

The board may request technical assistance from any governmental agency or educational institution for help in evaluating the application. The board reviews the application for completeness and accuracy. For a regular mining special exception permit application, the board must hold a public hearing within 30 days after submission of the application. Notice of the hearing is sent to the applicant, the county clerk, the affected town board, the clerk of any adjacent jurisdiction within one-quarter mile of the site, and all owners of land within 300 feet of the site. The hearing may be recessed if the board feels it is necessary, and a record shall be kept of all proceedings.

The board is required to approve a special exception permit if certain standards are met. These include: (1) that the mining does not affect the public health, safety, and general welfare; (2) that the special exception

will not affect the existing use of adjacent property or have a substantially adverse effect on adjacent property's future use; (3) that adequate utilities, drainage, and site improvements are provided; (4) that all governmental regulations are adhered to; (5) that environmental standards are followed; (6) that noise, vibration, and dust levels are within the board's standards; (7) that an undeveloped buffer zone of at least 20 feet be established; (8) that the board, where feasible, may require a fence or vegetative screen; (9) that the application shall not be speculative in nature; and (10) that the mining shall not harm adjacent property.

The board is required to grant, grant conditionally, or deny the application. The board must apply certain standards. For permit approval, the board must establish the amount of bond prior to issuance of the permit for a period of up to five years. The applicant must submit proof of the significant development of mining within two years. A violation of the permit may result in certain penalties.

The board may approve a permit with conditions attached in writing to the permit. The conditions may cover subjects such as control of operations, bonding and security mechanisms, and period of operations. A violation of the conditions is a violation of the ordinance. All conditions transfer to successors in interest to the application.

Finally, when the permit is denied, the applicant is notified in writing and informed of any action which can be taken to complete the application acceptably. Except for new evidence or change of conditions, no new application may be submitted for six months.

The board may grant a temporary permit for an initial term of not more than six months. There are several reasons why a board might wish to grant a temporary permit. The applicant might wish to conduct mining operations on a site prior to another use of the property. The board might wish to keep close watch over an operator for a variety of reasons. Thus a six-month permit might be issued. Another purpose of the temporary permit might be to allow for the mining of construction materials on a short-term basis. This permit could satisfy short-term material needs and allow for use of materials on or near a construction site. Generally, these material needs are under time constraints related to bidding, project scheduling, and weather conditions.

The board may or may not hold a public hearing for the temporary permit. In some cases a public hearing could have the effect of delaying the construction period unnecessarily. The board may use any or all of the standards applicable for a regular permit in the evaluation of a temporary permit. The board grants, grants conditionally, or denies the application for the temporary permit. Upon approval, the board may establish the amount of bond. A violation of the permit is a violation of the ordinance. Conditions may be attached to the permit to cover the same subjects as conditions which may be attached to a regular permit. A violation of the conditions is a violation of the ordinance, and the conditions apply to successors in interest to the application. In the case of denial, the applicant is notified in writing and is given an opportunity to cure defects in the application. Unless there is new evidence or a change in conditions, no application may

be resubmitted until six months later. A temporary mining permit may be renewed for one additional six-month period after a public hearing.

## Section 7

### Bonding and Other Security Mechanisms<sup>10</sup>

- (1) Prior to the issuance of a mining special exception permit, the operator, if required by the board, shall deposit with the board a bond conditioned on faithful performance of all the requirements of this ordinance and all the rules of the board. The bond shall be in an amount and of a kind to be determined by the board. In lieu of a bond, the operator may deposit cash, government securities, or land of equivalent value with the board.
- (2) The board shall establish the length of the bonding period, which may be less than the permit period, and the amount of the bond necessary to cover the cost of the reclamation of all areas disturbed by the mineral extraction operation during the bonding period, less that amount of bond that the operator has deposited with the appropriate governmental agency as security for the particular mining operation.
- (3) Any operator who obtains a mining permit from the board for two or more project sites within this jurisdiction may elect, at the time the second or any subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has under each of his mining permits issued in \_\_\_\_\_ County less that amount deposited for the particular sites with the appropriate governmental agencies. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the board of adjustment.

- (4) At the termination of each bonding period, the board of adjustment shall review the bond amount on mining and reclamation progress and shall either maintain the existing bond, return all or a portion of the existing bond, or request the operator to increase the amount of the bond.
- (5) The operator may file with the board a request for release of bond at such time as the operator feels that all reclamation has been satisfactorily completed or is in progress in accordance with the approved reclamation plan on any or all of the affected lands. Such request for release of bond shall include the name and address of the operator, the permit number, a legal description of the area, and a final reclamation report on the area for which the release of bond is requested. The final reclamation report shall contain the following information:
- (a) Name and address of the operator, permit number, and legal description of the land;
  - (b) A map and/or aerial photograph which may be supplied by the board, on which the operator shall indicate the final contours, slope angles of the affected land, surface water drainage and ponds, and the locations of any remaining structures and roads;
  - (c) A description of reclamation activities leading to completion of the approved reclamation requirements including: topsoil disposition and thickness, revegetation practices, disposition of waste dumps, tailing ponds, and surface structures, haulage and access roads, sediment control practices, and maximum depth of artificial lakes or ponds;

- (d) Operators of all underground mineral extraction operations shall also submit a complete plan of all entries, workings, and levels as well as a description of the sloping and ground support methods at the cessation of operations;
- (e) For underground mining operations, a description of the stability of lands overlaying the underground workings and a description of methods to be used for sealing all shafts, adits, inclines, and other mine entries;
- (f) Such other pertinent information and maps as may be required to evaluate the completion of reclamation and the advisability of returning the operator's bond.

Final release of the bond shall not occur until the operator files a final reclamation plan under the terms of this ordinance.

- (6) Upon receipt of a request for release of the bond, the board shall:
  - (a) Inspect the designated lands;
  - (b) Publish, following a class 2 notice under Chapter 985 of the Wisconsin Statutes, notice that the release of bond application is pending and specify a 30-day period for filing of complaints with the board against the release of bond;
  - (c) Publish, following a class 2 notice under Chapter 985 of the Wisconsin Statutes, notice of a public hearing at such time and place as the board determines to consider the request for release of bond and make a determination on the validity of complaints. The notice required in part 6(b) of this section and this subsection may be published at the same time, but in all cases the public hearing shall be held at least 30 days after the notice required in part 6(b) of this section;



- (d) If the reclamation is found to be satisfactory and all valid complaints have been satisfied, the board shall release the appropriate amount of bond 30 days after the public hearing.
  - (e) If the reclamation is found to be unsatisfactory, so notify the operator by registered mail setting forth the reasons for denial of release of bond and the corrective action necessary for release of bond.
- (7) Nothing in this section shall be construed to infringe upon the board's authority to take appropriate action on bonds, including forfeiture of all or part of the bond for cause. Forfeiture shall not be approved by the board unless there has been publication of notice and a public hearing held consistent with the terms of this ordinance.
- (8) The mining operator shall maintain a public liability insurance policy issued by an insurance company authorized to do business in the state of Wisconsin which affords personal injury and property damage protection for any individual and for adjacent property for the term of the permit or permit renewal. The total amount of the insurance shall be determined by the board, but shall be not less than 50,000 dollars.
- (9) Each operator shall notify the board of cessation of all mining activity at the project site no later than 60 days before operations are to cease. Such notice shall indicate the operator's name, address, and permit number.
- (10) The requirements of this section shall apply to the successor in interest to the operator upon the sale or transfer of assets of the mining operation.

## Comment on Section 7

### Bonding and Other Security Mechanisms

This section requires that the operator secure a performance bond prior to approval of an application for a mining special exception permit. The purpose of the bond is to assure proper reclamation of the land after mining, and it is of an amount and of a kind to be determined by the board. The length of the bonding period is determined by the board, and the amount of the bond can be reduced by bonds required for the same site by other governmental jurisdictions. If an operator has more than one site in a county, all the bonds required for each site in that county may be combined into a single bond to cover all mining operations in the county. The board reviews the bond at the end of the bonding period and takes appropriate action.

The operator can file a request for a release of bond when reclamation is completed or in progress. The release application contains the name and address of the operator, the permit number, legal description of the land, and a final reclamation report. The operator indicates on a map and/or aerial photograph the land contours, slopes, drainage, ponds, and any remaining structures and roads. The operator submits a description of the reclamation activities including topsoil disposition, revegetation, disposition of processing sites, sediment controls, and information on water impoundments. In addition, there are special requirements for an underground mine, including a description of workings, entries, ground supports, overlaying land stability, and plans for sealing the entries to the mine.

The board inspects the lands, publishes a notice that the bond is to be released, and specifies a 30-day period in which to receive complaints. At the end of that period a public hearing on the release of bond is held. The board releases the bond if reclamation is satisfactory and all valid complaints are satisfied.

The operator is required to carry a public liability insurance policy of at least \$50,000 to protect the public and adjacent property from harm from the mining operations. Finally, the operator shall notify the board of cessation of operations 60 days before it occurs. The requirements of this section apply to successors in interest to the mining operation.

## Section 8

### Existing Mining Operations and Expansion of Mining Activities

- (1) Any operator producing mineral materials from a mining operation at the date of enactment of this ordinance shall not need a regular or

temporary mining special exception permit to continue mining.

- (2) Upon the enactment of this ordinance, the board shall, by resolution, define the criteria for expansion of mining operations so that the applicant knows what an expansion of mining operations constitutes at the time the application for a mining permit is filed for a new mine.
- (3) Any operator who holds any mining permit issued under the terms of this ordinance or who operates a pre-existing mine under part 1 of this section shall apply for a regular or temporary mining special exception permit if:
  - (a) the amount of mineral materials produced on an annual basis increases substantially; or
  - (b) the amount of waste materials produced on an annual basis in the mineral extraction process increases substantially; or
  - (c) the mining and processing equipment used in the operation changes substantially; or
  - (d) the normal hours of operation increase substantially; or
  - (e) the amount of noise, vibration, and dust from the operation increases substantially; or
  - (f) the extent of the area of the mining operation increases beyond the limits of land designated or held for that purpose at the time of adoption of this ordinance; or
  - (g) any other substantial increase in the mining or method of operations at the mining site, as determined by the formal decision of the board.
- (4) The board, when considering the application for a regular or temporary mining special exception permit, as required by this section, shall consider the effect of the total mining operation, including reclama-

tion of the entire site, to the extent feasible.

#### Comment on Section 8

#### Existing Mining Operations and Expansion of Mining Activities

This section provides a method for regulating expansions both of mines that were in operation before the enactment of this ordinance and of mineral operations for which a permit has been granted under the terms of this model document. Under this ordinance, no original permit is required for mines in operation when this ordinance takes effect. This reflects Wisconsin zoning law. The rule may be different in other states. Under this ordinance, a mine in operation on the date of enactment of this zoning ordinance becomes a legal nonconforming use.

The board is required to define in advance the types of expansion of mining operations for which a permit is required. These definitions must be in effect at the time the applicant applies for a mining special exception permit for a new mine. Thus the operator will know that another permit is required for expansion of a mine, even though a permit was granted for the original operation. In the case of a pre-existing mine, it is not so important for the board to define the criteria of expansion at the time of permit application, because an application need not be filed for a pre-existing mine. It is assumed that the board will become aware of an expansion of a pre-existing mine, and that the operator of the nonconforming use will know that the county must give permission for an expansion of the nonconforming use.

The ordinance seeks to require an operator of any mine who wishes to expand the operation to apply for a permit as if the expansion were a new mine. Obviously, the procedure of mining calls for intensive use of a small amount of land for a certain period of time. A question arises if the operation moves to nearby adjacent land. Is this an expansion or is it a continuation of the existing use? As mentioned in Wisconsin, the law of nonconforming uses for mining is unsettled. This may not be the case in other jurisdictions. This document assumes that such changes are expansions.

As to metallic mining, the new Wisconsin statute, Chapter 318 of the Laws of 1973, provides some support for the regulation of the expansion of nonconforming uses. The new Chapter 144.87 provides that an increase or decrease in the area of a project site, or a change in the mining and reclamation plan, will be processed in the same manner as an original application. In the same law, Chapter 144.85 requires that all applications for mining permits show that the mining and reclamation plan and comprehensive plan conform with all applicable zoning ordinances. The argument might be made that if the zoning ordinance requires a permit for the expansion of nonconforming uses, state law requires that these particular applications conform to those ordinances. Thus the county has power to regulate expansion of nonconforming uses. However, as mentioned above, this document assumes that regulation of the expansion of nonconforming uses is legally acceptable.

Section 8 lists several types of expansions that may require a permit application. These include substantial increases in the following: the

amount of materials produced; the amount of waste materials; change in the type of mining equipment; hours of operation; the amount of noise, vibration, and dust; and the extent of the mining area.

Finally, the board is empowered to consider the effect of the total operation when an application is required under this section. This of course should not be construed to give the board power to close an existing mine. However, it might be possible to require reclamation of both the pre-existing site and the expansion. The power of the board to accomplish this should be ascertained in each jurisdiction. This document assumes such power exists in Wisconsin.

## Section 9

### Change, Renewal, and Transfer of Mining Special Exception Permits

- (1) An operator holding a mining special exception permit may at any time apply to the board for amendment, cancellation, renewal, transfer, or change in a regular or temporary mining special exception permit or reclamation plan, provided that:
  - (a) This section shall not include an expansion of a mining operation which is subject to another section of this ordinance.
  - (b) This section shall not include a removal of mined land from the areal extent of the approved permit, which is subject to another section of this ordinance.
  - (c) This section shall not include a release of a bond or other security mechanism, which is subject to another section of this ordinance.
  - (d) This section shall not include the renewal of a temporary mining special exception permit, which is subject to another section of this ordinance.
- (2) The application for the amendment, cancellation, or change shall be submitted to the board which shall approve, approve conditionally, or

deny the application subject to the following standards:

- (a) The operator shall identify the tract of land and shall supply the permit number of the project to be removed from the project site or to be affected by any change in the mining operation or reclamation plan;
  - (b) If the application is to change a permit for a tract of land which has had no mining operations conducted upon it, the board shall ascertain by inspection that no mining has occurred. After so finding, the board shall order the release of any bond or security instrument and shall amend the mining special exception permit to reflect the removal of the unmined land from the project site;
  - (c) Such other standards consistent with the terms of this ordinance which provide for proper amendment, cancellation, and change to the permit.
- (3) A regular mining special exception permit shall be renewed at the end of the permit term for successive five-year terms after public hearing and notice so long as the operator continues to produce mineral materials from the property, conforms to the approved reclamation plan, and conforms to the provision of this ordinance and is within the timetable of operations as established by Section 5-I-12 of this ordinance.
- (4) No operator shall assign, sell, lease, or transfer in any manner any rights granted under a regular or temporary mining special exception permit until the succeeding operator has complied with all the requirements of this ordinance, including all requirements of the reclamation plan and the filing of a bond of like amount with the board. Upon compliance with the requirements of this ordinance, the board shall release the first operator from the requirements of this ordinance, including any bond, and transfer the permit to the successor operator.

- (5) Any application granted with conditions attached under the terms of this section shall have the conditions attached in writing to the document of approval. Such conditions may cover any standard or requirement listed in this ordinance. A violation of the conditions shall constitute a violation of this ordinance, subject to penalties listed in this ordinance.

#### Comment on Section 9

#### Change, Renewal, and Transfer of Mining Special Exception Permits

Section 9 provides provisions for changes in the terms of the mining permit, including the reclamation plan, after the permit has been issued. The purpose behind this section is to give flexibility to the board to deal with any unforeseen circumstances that arise during the permit term.

There are certain exclusions to this section for matters covered elsewhere in this ordinance. These include: (1) the expansion of a mining operation; (2) the removal of mined land from an approved permit; (3) the release of bond applicable to a mining site; and (4) the renewal of a temporary mining special exception permit.

The board shall grant, grant conditionally, or deny an application for amendment, cancellation, or change of the permit. The applicant supplies the basic information on the project, including identification of the land and permit number. If the land has not been mined, the board inspects the land and if satisfied, changes the permit and releases the applicable amount of bond.

A regular mining special exception permit shall be renewed after public hearing and notice for successive five-year terms if the operator continues to mine at the site and follows the terms of this ordinance. This section provides general language for the transfer or sale of the mining permit. This is to be construed as additional language to other provisions contained elsewhere in this ordinance. In essence, the holder of the permit is not released from the responsibilities of the permit until the successor operator has complied with all the provisions of this ordinance. Finally, conditions attached to the application under this section must be in writing and can cover all the subject matter in this ordinance, and a violation of the conditions is a violation of the ordinance.

## Section 10

### Inspections

- (1) Upon issuance of a regular or temporary mining special exception permit, the board or its approved agents may inspect the project site to determine compliance with the requirements of this ordinance.  
Inspections may also include the required records of a mining operation.
- (2) Such inspection shall be at reasonable times with notice provided to the operator.

## Comment on Section 10

### Inspections

This section provides for reasonable inspections of the records and site of the mining operations. Notice is to be given to the operator. The purpose of this section is to enable the board to ascertain that the requirements of this ordinance are followed by the permit holder.

## Section 11

### Penalties

- (1) Whenever the board finds a violation of this ordinance at a mining operation within \_\_\_\_\_ County, including unapproved deviation from the reclamation plan, it shall be recorded and the board shall send the operator by registered mail an order specifying the nature of the violation, time of violation, and corrective steps necessary to achieve compliance with this ordinance.
- (2) The board shall cancel the mining special exception permit held by a mining operator who fails to comply with the order within 30 days after the order is served unless the operator named therein, withinin



10 days after notice, requests in writing a hearing before the board.

Failure to show just cause for the continued violation and lack of compliance with the order shall result in permit cancellation and immediate cessation of all mining activities on the affected property.

- (3) Any person, firm, corporation, cooperative, operator, or any other group of persons convicted in a court of law of engaging in a mining operation without a valid permit from this jurisdiction shall be required to forfeit not less than \_\_\_\_\_ nor more than \_\_\_\_\_ per day for each and every day the operation is found to be in violation of this ordinance.

- (4) Compliance with the terms of this ordinance may also be enforced by injunctive order at the suit of the county.

#### Comment on Section 11

#### Penalties

This section provides the board with the power to control violations of this ordinance. The board records the violation, and sends an order by registered mail to the violator specifying the nature and time of the violation and corrective steps needed to cure the violation.

The board will cancel the mining special exception within 30 days after the order is served, unless the operator requests a hearing within 10 days after the order is served. The board is given standards by which it may cancel a permit. These standards include failure to show just cause for the violation and lack of compliance with the order. Cancellation of the permit shall require an immediate cessation of all mining activities.

There are also additional provisions for fines to be imposed by the county for violation of this ordinance. The county may also assure compliance with the terms of the ordinance by injunctive suit.

## Section 12

### Suitability for Subdivision

- (1) Whenever an application for a subdivision, as defined by \_\_\_\_\_ of the \_\_\_\_\_ ordinance of \_\_\_\_\_ County, is made in the Mineral Reservation District to the \_\_\_\_\_, the \_\_\_\_\_ shall inquire as to the location of mineral deposits on or near the proposed site of the subdivision.
- (2) For the purposes of protecting lands with known mineral deposits which are potentially valuable for extraction of mineral deposits, the \_\_\_\_\_ may disapprove the site of the proposed subdivision on the grounds of unsuitability of the lands for subdivision under Chapter 236.45(1) of the Wisconsin Statutes.
- (3) The \_\_\_\_\_ in applying the provisions of this section shall make findings of fact after a public hearing upon which it bases the conclusion that such subdivision site is not suitable for that subdivision.

### Comment on Section 12

#### Suitability for Subdivision

This section will be placed in the county subdivision ordinance if the county has enacted an ordinance governing plat approval. Thus this language will not necessarily be in close proximity to the other sections in this model document as placed into the ordinances of a county.

Under section 236.45 of the Wisconsin Statutes, counties are given power to regulate subdivisions more strictly than the general statewide standards imposed elsewhere in Chapter 236. One of the powers provided for in section 236.45(1) allows for a determination that a site is or is not suitable for subdivision. This section provides a standard for judging the suitability of land in a mineral reservation district for subdivisions.

Typically, the planning commission approves subdivision plats. Under this section, the planning commission inquires about mineral deposits on or near the site of a proposed subdivision in a mineral reservation district. For the purposes of protecting known deposits, the planning commission may disapprove the subdivision site as unsuitable. This is to be accomplished after a public hearing. This section is placed in this document to provide an additional method of control for noncompatible land uses to any county which wishes to use this type of regulation.

## NOTES

1. 266 Wis. 475, 63 N.W. 2d 697 (1954).
2. 272 Wis. 1, 74 N.W. 2d 70 (1956). For a listing of cases from other jurisdictions, see "Prohibiting or Regulating Removal or Exploitation of Oil and Gas, Minerals, Soil or Other Natural Products within Municipal Limits," 10 ALR 3d 1226.
3. Throughout this ordinance, the planning and zoning committee of the county board of supervisors may be substituted for the board of adjustment. In Wisconsin, at the county level, the appeals board is known as the board of adjustment. In most other jurisdictions this unit will be known as the board of appeals.
4. Throughout this ordinance, a conditional use may be substituted for the special exception.
5. These uses are taken from the model shoreland protection ordinance of the Wisconsin Department of Natural Resources (1967). For additional permitted uses, including those related to water-centered activities, consult that document.
6. It is the intent of this ordinance that structural uses in the Mineral Reservation District be those conditional uses or special exceptions allowed in adjacent districts, with additional requirements designed to assure compatibility with mineral extraction. If there is more than one district adjacent to the proposed Mineral Reservation District, one should be selected to provide the basis for structural uses in the Mineral Reservation District.
7. The process for decision and review on mining special exception permits begins later in the ordinance.
8. These districts are only suggested. Another example might be open space. If the county does not wish to identify specific districts with this additional special exception language, the county might use words similar to "districts in which nonstructural conservancy uses are permitted uses" or "districts in which commercial developments are subject to special exceptions." The purpose behind naming these districts is to allow only nonintensive development in areas of known mineral deposits.
9. See note 7.
10. This ordinance does not speak to other issues of bonding, such as apportionment of the amount between several jurisdictions if the operator defaults, or performance standard bonding. These issues would have to be decided upon at the time the bond was required.

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