RESOLUTION # 15 -2018

Resolution offered by Supervisors of the Administration Committee.

Resolved by the Board of Supervisors of Oneida County, Wisconsin:

WHEREAS, Oneida County previously hired outside counsel to draft the now adopted ordinance section 9.60, which regulates metallic mining in Oneida County; and

WHEREAS, the State of Wisconsin has recently amended state statutes with regard to Metallic Mining (*see,* 2017 Wisconsin Act 134);

WHEREAS, the Planning and Development Committee ~~is~~ would like to pursue outside counsel with mining law experience to assist with a review of our current ordinance section ~~9.60~~ 9.601 to ensure that the regulations contained therein are enforceable in light of the recent changes to State law; and

WHEREAS, the Planning and Development Committee has sought out the assistance of Attorney William Scott (Mallery & Zimmerman, Milwaukee location) to review the current ordinance section ~~9.60~~ 9.601 in light of the recent changes to State law; and

WHEREAS, Attorney William Scott provided the attached proposal for his services, and

WHEREAS, the Planning and Development Committee has passed a motion to proceed with Phase 1 of the proposal; and

WHEREAS, the Planning and Development Committee currently does not have within the operating budget the funds necessary for the Phase 1 review or in person meetings with the Planning and Development Committee (a cost of fifteen hundred dollars per meeting according to the proposal); and

WHEREAS, the ~~Mining Oversight/Local Impact Committee~~ Planning and Development Committee is requesting an initial budget transfer of Seven thousand dollars ($7,000.00) for the review of the Ordinance and Three thousand dollars ($3,000.00) for in-person meetings should they be necessary.

NOW, THEREFORE, BE IT RESOLVED, that the Oneida County Budget be amended to include budget line items for the Planning and Development Committee for Legal Services and other costs; and

BE IT FURTHER RESOLVED, **BE IT FURTHER RESOLVED** by the Oneida County Board of Supervisors that the County budget for fiscal year 2018 shall be amended to reflect a transfer from the Contingency Fund to Mining-Legal Fees for Ten-thousand dollars ($10,000.00), of which Seven Thousand ($7,000.00) is for the review of the ordinance and an additional Three thousand ($3,000.00) in reserve for in-person meetings should they be deemed necessary.

Vote Required: Majority = _____ 2/3 Majority = _____ ¾ Majority = _____

The County Board has the legal authority to adopt: Yes 26 No _____ as reviewed by the Corporation Counsel, _____, Date: 2/12/18

Consent Agenda Item: ___ YES ✓ NO

Approved by the Administration Committee this 12th day of February, 2018.

Offered and passage moved by: _____ Supervisor

_____ Supervisor

_____

Bob Mott Supervisor

Supervisor

Supervisor

20 Ayes

0 Nays

1 Absent

0 Abstain

X Adopted

by the County Board of Supervisors this 20 day February, 2018

Defeated

Tracy Hartman, Clerk

Dave Hintz, County Board Chair

Resolution - # Motion by VanRaalte to Amend Resolution #15-2018 Seconded by Sorensen

Supervisors	AYE	NAY	ABS	ABSTAIN
Young	X			
Zunker	X			
Cushing	X			
Jensen	X			
Kelly	X			
Pederson	X			
Pence	X			
Sorensen	X			
Holewinski	X			
VanRaalte	X			
Metropulos	X			
Paszak	X			
Freudenberg	X			
Ives	X			
Timmons	X			
Krolczyk	X			
Mott	—	—	X	
Fried	X			
Winkler	X			
Oettinger	X			
Hintz	X			
TOTALS	20	-	1	
TAGS				
~~Amanda Morga~~n				
Brighid Billing	—	—	X	
Ben Kebusiak	X			

Amend Line 8 Strike 9.60 and Replace with 9.61
Amend Line 11 Strike "IS" between Committee and Wired
Amend Line 12 Strike 9.0 and Replace with 9.61
Amend Line 17 Strike 9.0 and Replace with 9.61
Amend Line 25 Strike "Mining Oversight / Local Impact Committee" and replace with "Planning and development Committee."

Amendment passes

~~Resolution~~ - #

Motion Fails

Supervisors	AYE	NAY	ABS	ABSTAIN
Ives		X		
Cushing		X		
Kelly		X		
Mott	—	—	X	
Fried		X		
Zunker		X		
VanRaalte		X		
Winkler		X		
Pederson		X		
Paszak		X		
Young		X		
Oettinger		X		
Jensen	X			
Metropulos		X		
Timmons		X		
Krolczyk		X		
Pence		X		
Freudenberg		X		
Holewinski		X		
Sorensen		X		
Hintz		X		
TOTALS	1	19	1	
TAGS				
Amanda Morgan				
Brighid Billing				
Ben Kebusiak		X		

August 14, 2017

Resolution #

Motion by Jensen to ~~table~~ postpone resolution 15 until after we have had an opportunity to review the mining best practices from the Wisconsin Counties Association

Seconded by Winkler

Amended
Resolution # 15-2018 – Passed

Supervisors	AYE	NAY	ABS	ABSTAIN
Jensen	X			
Young	X			
Pederson	X			
Paszak	X			
Timmons	X			
Sorenson	X			
Van Raalte	X			
Ives	X			
Kelly	X			
Winkler	X			
Oettinger	X			
Mott	—	—	X	
Pence	X			
Fried	X			
Freudenberg	X			
Holewinski	X			
Metropulos	X			
Zunker	X			
Cushing	X			
Krolczyk	X			
Hintz	X			
TOTALS	20		1	
TAGS				
Bridget Billing	—			
Ben Kebusiak	X			

1

Resolution #15 - 2018: Offered by the Supervisors of the Administration Committee to amend the County budget for the fiscal year 2018 to reflect transfer from the Contingency Fund to Mining-Legal Fees for $10,000.00 for the review of ordinance 9.61

MALLERY & ZIMMERMAN S.C.

A Limited Liability Service Corporation

Cost Estimate - Oneida County
Review of Zoning Code Ch. 6 - Art. 9, for Enforcement Vulnerabilities
January 30, 2018

Article 9.61 of Oneida County's Zoning and Shoreland Protection Ordinance, regarding metallic mineral exploration, prospecting and mining ("Article 9.61"), was written before legislation separated iron mining from sulfide mining and before 2017 Wis. Act 134 ("Act 134") significantly revised sulfide mining law. This cost estimate covers only an analysis of Article 9.61, by William P. Scott, to identify areas and instances of incompatibility with Wisconsin's statutory and codified mining law, including the changes caused by Act 134. The goal of the analysis is to understand where Article 9.61 is unenforceable or vulnerable to legal challenge. Based on the results of the Phase One analysis and discussion with Oneida County, a second scope of work and estimate would be prepared for identifying and correcting areas and specific instances of incompatibility between Article 9.61 and applicable mining law. The final deliverable, after the second phase of work, would consist of a revised Article 9.61 for the County's consideration and possible adoption.

Phase of Work	Work Description	Cost of Work
Phase One - Analysis	Identify provisions of Article 9.61 that are incompatible with Ch. 293, Wis. Stat. or Chs. NR 130, NR 131 and NR 132, Wis. Admin. Code; document each incompatibility with a text revision to Article 9.61 or a briefly stated acknowledgement; identify major alternative approaches for the more complex or extensive incompatibilities so Oneida County may indicate its preference for revision.	Estimated Cost $7,000.00
Phase Two – Prepare Suggested Revisions	Provide revised Article 9.61 containing recommended revisions to make Article 9.61 compatible with Ch. 293, Wis. Stat., and incorporating Oneida County's stated preferences where possible in accordance with Ch. 293, Wis. Stat., and adjusting all distances specified in 9.61.	Estimated Cost $5,000.00 to $12,000

The Work set forth above is based on the following assumptions:

1. The Phase Two work would result in Article 9.61 being inapplicable to ferrous metallic mining.
2. The result of the work will not necessarily comply with court decisions that have affected zoning and property rights law since Article 9.61 was adopted.
3. This cost estimate is only an estimate and may not allow for fully achieving the described work. The cost of Phase Two will be re-estimated at the end of Phase One.
4. Each in-person, 2-hour meeting in Rhinelander would add $1,500.00 of cost (maximum of three).

ONEIDA COUNTY ZONING AND SHORELAND PROTECTION ORDINANCE

CHAPTER 9
ARTICLE 6 - NON-METALLIC MINING AND METALLIC MINERAL EXPLORATION, PROSPECTING AND MINING

9.60 Non-Metallic Mining
9.61 Metallic Mineral Exploration, Prospecting and Mining

9.60 NON-METALLIC MINING

Non-metallic mining of and the quarrying of sand, gravel, decomposed granite or solid rock and the processing for manufacture of materials incidental to such extraction, together with the erection of building and the installation of equipment and machinery, may be permitted if the zoning district in which the project is located allows for non-metallic mining, provided the following requirements are met:

A. Application for Conditional Use Permit

The application for the conditional use permit shall include: an adequate description of the operation; a list of equipment, machinery and structures to be used; the source, quantity disposition of water to be used; a topographic map of the site showing existing contour interval no greater than ten (10) feet, trees, propose and existing access roads, the depth of all existing and proposed excavations; and a reclamation plan.

B. Operational Plan

The operational plan shall consider developing that area of the project that is farthest away from lot lines and roads so as to provide for as much natural buffer and residential screening as possible, and the Planning and zoning Committee in any approvals shall consider this type of operation and if approved in any other manner their reasons shall be given in writing.

C. Reclamation Plan

The reclamation plan, except for solid rock quarries, shall be such that all final grades of areas no longer worked shall be no steeper than three (3) feet horizontal to one (1) foot vertical. Any part of an excavation in which water collects to a depth of two (2) feet or more for 30 or more consecutive days shall be drained or filled to prevent such collection of water unless the Committee gives approval to a plan for the creation of an artificial lake. All final grades shall have adequate planting or reforestation to prevent erosion.

D. Topsoil Storage and Reapplication

1. All topsoil shall be saved for future application unless it can be proven that it is not all needed for reclamation. As a standard, a minimum amount of topsoil must be stored and stock piled to cover the entire site operation with four (4) inches.
2. Topsoil shall be reapplied to the slopes as uniformly as possible. Sites which lack adequate topsoil shall have the topsoil applied preferentially to the sloped areas.

E. Rock Quarry

A rock quarry when it is impractical to slope the side shall be surrounded by a six foot open-type woven wire fence.

F. Setbacks

All excavations, roads, stock piles, buildings and structures, shall be at least the following minimum distances from:
1. Adjacent Property: 30 feet
2. Highway: 30 feet from right-of-way line.
3. Visual Clearance Triangle

In each quadrant of every street or highway intersection, there shall be designated a visual clearance triangle bounded by the street center lines and a line connecting them 300 feet from a Class A highway intersection, 250 feet from a Class B highway intersection, and 200 feet from a Class C highway intersection. If two (2) highways of a different class intersect, the largest distance shall apply to both center lines within this triangle, no object over 2 1/2 feet in height above the level of the streets shall be allowed if it obstructs the view across the triangle. Posts and open fences are excluded from this prohibition. Tree trunks shall be exempt from the visual clearance provisions set forth above when they are unbranched to a height of 10 feet and located a minimum of 30 feet apart.

G. Special Use Permit Application

The owners of existing non-metallic mining or quarry operations within one year after the adoption of this Ordinance, shall make application for a Special Use Permit and submit a restoration plan. The restoration plan shall not impose requirements which are economically or engineeringly unreasonable with respect to conditions resulting from operation prior to the enactment of this ordinance.

H. Sureties

The applicant shall furnish the necessary sureties which will enable the County to perform the planned restoration of the site in the event of damage done to property, of default or damage done by the applicant. The amount of such sureties shall be based upon cost estimates reviewed by the Highway Commissioner, or other County employees having expertise and the form and type of such sureties shall be approved by the Corporation Counsel.

I. Other Considerations

The Committee shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character, and land value of the locality and shall also consider the practicality of the proposed reclamation of the site.

J. Damage to County and Town Property

1. If any real or personal property of the County and Town, including timber, town truck roads, County forest roads, and County Truck roads, is damaged or destroyed by virtue of owners operations hereunder on or off the premises, owner shall restore, or pay for the restoration of the same to an acceptable condition and value or may, in the case of personal property, pay fair market value of the damage as compensation therefore.
2. On a town trunk road, County forest road, or County truck road where applicant's equipment and vehicles have been operating, it shall be presumed that any damage to these roads incurred after the applicant initiated its operations was caused by such applicant's operations. The applicant shall have the right to show and shall bear the burden of proof in showing that the indicated damage was not the result of their operations. The determination of responsibility for road damage shall be the responsibility of the County Board of Supervisors.

K. Activities Exempt from Section 9.60:

1. Excavations or grading by a person solely for domestic use at his or her residence.
2. Excavations or grading conducted for highway construction purposes within the highway right-of-way.
3. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.

4. Excavations for building construction purposes.
5. Any metallic mining operation
6. Any activities related to construction of a solid or hazardous waste disposal site except where such activities are conducted at a non-metallic mining site. Other sections of this ordinance may require permits for these activities.

9.61 METALLIC MINERAL EXPLORATION, PROSPECTING AND MINING

A. Purpose and Intent.

1. Findings. Oneida County has over 1127 lakes within its boundaries and approximately 167,000 acres of public forest lands. It is valued for its scenic beauty and recreational resources. It also has known deposits of metallic minerals. If not properly regulated, metallic mineral mining could have an adverse impact on the environmental character and quality of the communities in Oneida County. Among other things, metallic mineral mining operations can drawdown groundwater, impacting both groundwater and surface water resources, and can result in acid mine drainage also impacting groundwater and surface water resources.
2. Purpose. The purpose of this section is to regulate metallic mineral exploration, prospecting and mining in Oneida County to promote the public health, safety, convenience and general welfare and accomplish the purposes under Wis. Stat. § 59.69(1), including but not limited to the protection of water, groundwater, forest and other natural resources, and the protection of property values and the property tax base. In addition, it is the purpose of this section to coordinate the requirements of this section with other applicable state and federal requirements.
3. Authority. This section is enacted pursuant to the authorization in Wis. Stat. §§ 59.69, 59.692, 59.693, 59.694 and Wis. Stat. ch. 293.
4. Interpretation. Where provisions of this section of the Oneida County Zoning Ordinance impose requirements or procedures that vary from other provisions in this ordinance, the provisions of this section shall govern. Should any portion of this section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this section shall not be affected.

B. Definitions.

Except as set forth below, the terms in this section have the meaning set forth in Wis. Stat. ch. 293 and regulations promulgated thereunder. The terms set forth below are defined for purposes of this section only.

1. "Active mine site" means the area owned or under lease by the operator including the above ground and underground mine workings, surface facilities and structures, surface water and wastewater treatment facilities, stockpiled material including material for backfill, overburden, topsoil and ore, but not including road, rail, utility or pipeline corridors.
2. "Applicant" means a person who has applied for or received an exploration permit or a prospecting permit or a mining permit.
3. "Board" means the Oneida County Board.
4. "Committee" means the Oneida County Planning and Zoning Committee.
5. "County Recreational Area" has the meaning set forth in the Oneida County Ordinances § 14.10(1).
6. "DNR" means the Wisconsin Department of Natural Resources.
7. "Life of the Operation" means the period of time from when permits are issued under this section to 40 years after the mine has permanently ceased operation.
8. "Mining and Prospecting" means metallic mineral mining and prospecting as defined under Wis. Stat. ch. 293.
9. "Mining Impact Committee" means the Oneida County Mining Oversight/Local Impact Committee.
10. "Mining or Prospecting Permit" means a special conditional use permit under this section.
11. "Net Substantial Positive Economic Impact" to the County as determined by the Committee means the total value contributed by the mining operation to the community including direct payments and indirect economic benefits to the County employment, tax base, business activity and other positive economic impacts, minus the direct and indirect costs assumed by the taxpayers of the County or the affected town, city, village or school district as a result of services provision, highway improvements or other expenditures projected to have to be made in conjunction with the project whether with respect to or as a result of construction, operation, closure and/or long term care, together with considerations of present or future unemployment, job retraining, educational and other impacts upon the public and private sectors in the County.
12. "Significant subsurface subsidence" means any cave ins, sinkholes, depressions, shaft openings or settling of the surface of the ground over a reclaimed open pit or shafts, tunnels, adits or other openings associated with a mining or prospecting project permitted under this Ordinance.
13. "Solution mining" means the extraction of ore by the use of chemical reagents, including but not limited to cyanide heap leaching, vat leach mining or in situ leach mining techniques.

14. "State Natural Area" has the meaning set forth in Wis. Stat. § 23.27.
15. "Mining site" means the surface area disturbed by a mining operation, including the surface area from which the minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways, pipelines and pipeline corridors, and any surface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

C. Restrictions on Mining and Prospecting.

1. Special Conditional Use Permit Required. Mining and prospecting operations and mining site whether conducted or located in whole or in part within this county may be allowed under a special conditional use permit in accordance with the provisions of this section, but only in the #08 Manufacturing/Industrial zoning district.
2. Prohibitions.
   a. Mining and prospecting is prohibited in all zoning districts other than the #08 Manufacturing/Industrial zoning district.
   b. Mining and prospecting is prohibited in any county shoreland-wetland district, including those portions of the Manufacturing/Industrial zoning district which include shoreland-wetlands, unless the impacted shoreland-wetlands site is removed from shoreland-wetland status in accordance with the shoreland wetland provisions of this chapter.
   c. Mining and prospecting activities are prohibited within any of the following described areas unless it can be demonstrated that the activity will not have an adverse impact upon the described area. The areas include both the above-ground portion and the underground portion extending vertically from the site boundaries within the specified setback areas.
      (1) Within 1,000 feet any navigable lake, pond, or flowage.
      (2) Within 300 feet of any navigable river or stream.
      (3) Within 2,500 feet of any State Natural Areas or County recreational areas.
      (4) Within 200 feet of wetlands of 0.1 acre or more as determined by criteria utilized by the DNR for delineating wetlands.
      (5) Within 2500 feet of any residence, or within 1500 feet of any commercial structure or active farm building;
      (6) Within 1500 feet of any water well used for drinking water outside of the active mine site.
      (7) Within a floodplain.
   d. The following types of metallic mineral mining and prospecting activities or operations are prohibited:

(1) The process of solution mining.
(2) Smelting or refining.
(3) Disposal of mining wastes at a prospecting or mining site in this county from a prospecting or mining site outside of this county.

D. Special Conditional Use Permit Process.

1. Baseline Studies. At the time the applicant files a notice of intent under Wis. Stat. § 293.31 for a prospecting or mining site located in Oneida County, the applicant shall file a copy of the notice of intent with the Committee. At the same time, the applicant shall also file a description of the county baseline study it will be undertaking in accordance with § 9.61.E.3.b. The Committee will have 60 days to comment on the scope of the county baseline study.
2. Application. The applicant shall submit a mining or prospecting permit application in accordance with the requirements of this section.
3. Time Schedule. Within 120 days of receiving a mining or prospecting permit application, the Committee shall issue an initial schedule and process for the application's review. Such schedule and process shall be tentative in nature and subject to revision or amendment based upon, among other things, the complexity of the application and the technical and time needs of the Committee.
4. Public Hearing. The Committee shall conduct at least one public hearing on each prospecting or mining permit application, the number and nature of which shall be as determined necessary by the Committee and as set forth in the schedule issued pursuant to subsection (3.) above.
5. Committee Recommendation. Within 90 days following the final public hearing under subsection (4), the Committee shall issue a recommendation either granting, denying or conditionally granting the proposed mining or prospecting permit.
6. Hearing by the County Board. The Committee's recommendation and all application materials shall be transmitted for a hearing and decision by the County Board. The hearing shall be *de novo* and utilize the contested case procedures for the Board of Adjustment. The hearing shall be scheduled no sooner than 90 days nor later than 120 days following the release of the draft EIS by the DNR.

E. Special Conditional Use Permit Application Requirements.

1. General Information. Upon application for a mining or prospecting permit, the applicant shall provide the following information:
   a. The name and address of the applicant.

b. A legal description of all lands in the proposed mine site or proposed prospecting site together with parcel identifier numbers.
c. A description of the applicant ownership interest in the parcels and mineral rights.
d. A detailed map drawn to scale and showing all features described in currently 9.34(B)(2)(b) of the Oneida County Zoning and Shorelands Protection Ordinance and applicable set back areas for each feature listed in § 9.61.C.2.

2. State and Federal Documents. The applicant shall provide the Committee with copies of the following documents with respect to the proposed mining or prospecting permit:
   a. All applications and any amendments to such applications for all necessary approvals, licenses and permits from the DNR and any other agency of the State of Wisconsin and any federal agency with jurisdiction over the prospecting or mining site or operation. All such applications must have been deemed complete by the agency to whom they have been submitted.
   b. Copies of the environmental impact report prepared under Wis. Stats. § 23.11 relating to any state permit applications.
3. Prospecting and Mining Information.
   a. General. An applicant for a mining or prospecting permit shall provide an application which includes the information listed below. Where the information is presented in documents filed with state or federal agencies, the material can be submitted by cross reference provided that each reference identifies the referenced document, section and pages covering that specific item. The Committee reserves the right to require the applicant to submit additional information if necessary to evaluate the special conditional use permit application.
   b. Baseline Conditions Report. The applicant shall study and describe the baseline conditions for the proposed prospecting or mining site, for the area reasonably expected to be most impacted by the activity and for the County as a whole, including an estimate of such baseline conditions for the project life of the proposed operation if the proposed operation were not permitted. The baseline conditions studied shall include:
      (1) Economic activity, including tourism, employment, property values and tax base;
      (2) Ground water, including the quantity and quality of groundwater resources utilizing all operative wells within the active mining site and any public or private wells within 3 miles of the active mine site. At least one year of baseline monitoring shall be collected.
      (3) Surface water and wetlands, shoreland and floodplain areas;

(4) Air quality;
(5) Noise levels;
(6) Major land uses, including existing zoning, land use patterns, housing, transportation and traffic patterns and visual appearance;
(7) Demographic information, including population, cultural and ethnic information;
(8) Utilities, schools, police and fire protection, sewage treatment, and other public services; and
(9) Terrestrial information, including geology, significant land features, wildlife and vegetation.

c. Local Impact Report. The application shall include an analysis of all significant impacts of the proposed mining operation on all baseline conditions identified above as well as impacts from temporary shutdowns of substantial duration and permanent termination of mining operations.

d. Compliance Report. The application shall demonstrate how the proposed mining or prospecting operation will satisfy each of the requirements set forth in § 9.61.F.

e. Mining or Prospecting Operation Plan. A description of all significant aspects of the proposed mining or prospecting operation shall be provided including, but not limited to the following:
(1) Anticipated timing of each major phase from construction through reclamation;
(2) All major facilities, including mine shaft or opening, headframe, mill or other processing facility, tailings disposal system, other waste disposal areas, sediment ponds, offices and other structures, roads, railroad lines, and utilities;
(3) Expected ranges of volumes or tonnages and composition of all significant mine products, including all mine tailings and other wastes;
(4) Maximum lateral extent and minimum and maximum depth of underground workings;
(5) Methods and justification of methods for sealing all shafts and other entries;
(6) Principal types of mining and processing equipment to be used;
(7) Reagents to be used in processing;
(8) Noise and vibration levels expected from the operation;
(9) Plans for visual screening;
(10) Anticipated hours of operation, months during the year the activity will occur and number of years the operation will be active;

(11)An estimate of the number of employees directly employed by the operation by phase including construction, as well as an estimated breakdown of the number of employees by job classification and estimated wage rates;

(12)An estimate of the number of employees expected to be recruited from the county, including a general description of the applicant's recruitment and training program;

(13)An estimate of anticipated utility and other public service and facility requirements; and

(14)A description of anticipated County and other local government services required or requested and their anticipated costs over the life of the operation.

f. Reclamation Plan. A reclamation plan shall be prepared and submitted with an application for either prospecting or mining. Such a plan shall include the following:

(1) a description of the proposed reclamation including final land use, final land shape, estimated final topography, and the annual sequence of reclamation activity to be conducted;

(2) a description of the ability and capacity of the reclaimed land to support the proposed sequential use;

(3) a description of the measures to be taken to protect topsoils prior to prospecting or mining;

(4) a description of the grading and back filling sequences, final slope angles, highwall reduction, benching and terracing of slopes, slope stabilization, and erosion control;

(5) a description of the reclamation of waste areas, tailings ponds, haulage roads, railroads, access roads, surface structures and related facilities;

(6) a description of the final surface drainage, waste impoundments, and artificial lakes of the affected property;

(7) a description of plant types, planting sequences, and maintenance or replacement of vegetative cover both during the proposed operation and upon completion of site reclamation;

(8) a plan for the adequate covering or disposal of all pollutant-bearing minerals or materials;

(9) the estimated cost of reclamation on a per acre of total project basis and proof that bonds sufficient to provide for such cost have been or will be provided to the DNR pursuant to state law;

g. Drawings. An application shall include detailed maps to scale as required by Section 9.61.E.1.d. in addition to a series of maps or plans showing the proposed sequence of the proposed operation, direction and depth of the proposed operation,

expansion of waste dumps and tailings ponds and other materials movement.

h. Compliance History.
   (1) The applicant shall provide the Committee with the following information about its environmental compliance performance history for the 15 year period prior to the filing of its application:
      (a) Any forfeiture by the applicant, principal shareholder of the applicant or a related person of a mining reclamation bond that was posted in accordance with a permit or other approval for a mining operation in the United States or Canada.
      (b) A civil judgment or criminal conviction of the applicant, a related person or an officer or director of the applicant for a violation of law for the protection of the natural environment arising out of the operation of a mining site in the United States or Canada.
      (c) The bankruptcy or dissolution of the applicant or a related person that resulted in the failure to reclaim a mining site in the United States or Canada in violation of a state, provincial or federal law.
      (d) The permanent revocation of a mining permit or other mining approval issued to the applicant or a related person if the permit or other mining approval was revoked because of a failure to reclaim a mining site in the United States or Canada in violation of state, provincial or federal law.
   (2) Based on the information provided, the Committee reserves the right to request additional information.

4. Financial Responsibility.
   a. Insurance. Applications for a prospecting or mining permit shall be accompanied by a certificate of insurance certifying that the applicant has in force a liability insurance policy issued by an insurance company authorized to do business in Wisconsin covering all prospecting or mining activities of the applicant and affording personal injury and property damage protection in a total amount deemed adequate by the Committee but no less than $25,000,000.00. Such insurance coverage must remain in effect for 40 years following permanent termination of prospecting or mining operations.
   b. Form 10K. Applications for a prospecting or mining permit shall be accompanied by a copy of the applicant's three most recent annual reports and Forms 10K as filed with the Securities and Exchange Commission. If these documents do not exist, then the applicant shall submit a report of the applicant's current

assets and liabilities or any other data deemed necessary by the Committee to establish that the applicant is competent to conduct prospecting or mining activities in Oneida County.

c. Groundwater Trust Fund.

(1) The applicant shall deposit into an interest-bearing trust account $5,000.00 for each well within 0.5 miles of the probable worst case draw down contour of one foot as determined by computer modeling undertaken by the DNR (hereinafter referred to as the "groundwater impact area"). The original deposit, any additional deposits and other accumulated interest shall remain in the trust account for a period of 40 years after permanent termination of mining operations. If no outstanding claims are pending at the end of the 40 year period, any remaining balance shall be returned to the operator. The applicant agrees to establish the trust account at a bank or financial organization mutually agreeable to it and the County.

(2) The applicant shall agree to monitor all private or public wells within the groundwater impact area on a regular schedule established by the County for water quality and quantity upon issuance of any permit under this section. Results of such monitoring shall be reported to the County and each individual well owner and current resident of the property.

(3) The trust amount shall be first used to pay for replacing any contaminated, damaged or depleted wells and/or for providing water to any well owner/claimant whose well has been contaminated, damaged or depleted and whose well is within the groundwater impact area. The mine operator may object to payment of these claims only if it can establish that the contamination, damage or depletion is not due in whole or in any part to the mining operation.

(4) Any person whose well is contaminated, damaged or depleted beyond the groundwater impact area may apply for funds for a replacement well or alternate water supply if that person can demonstrate that the contamination, damage or depletion was due in whole or in any part to the mining operation.

(5) The Mining Impact Committee is designated to supervise and administer the well fund. It shall approve of the distribution of monies from said fund to claimants under this subsection. In so doing, it shall be empowered to hold meetings to ascertain the entitlement of the claimant to compensation, to ascertain the amount of such damages and to authorize disbursements to the claimant or to

purchase and provide water to the claimant. The Mining Impact Committee shall also monitor the fund and if the fund is not adequate to cover actual or pending claims, the Committee shall request the operator to provide adequate funding within 30 days.

d. Property Value Trust Fund.
   (1) The applicant shall establish an interest bearing trust account at a bank or financial organization mutually agreeable to it and the county in the amount of 25% of the equalized value of the property within three miles of the active mine site and the groundwater impact area, to cover decreased property value that may result from the property's proximity to the active mine site. The original deposit, any additional deposits and other accumulated interest shall remain in the trust account for a period of 40 years after permanent termination of mining operations. If no outstanding claims are pending at the end of the 40 year period, any remaining balance shall be returned to the operator.
   (2) Any property owner within three miles of the active mine site or the groundwater impact area may request an appraisal of their property reimbursed from the fund not more than once every five years or upon sale of their property. If their property shows a loss exceeding other prevailing losses to similar properties in the County, the property owner shall receive compensation of twice the value of the loss from the property value trust fund.
   (3) Any property owner outside three miles of the active mine site or the groundwater impact area may submit a claim to the trust fund if an appraisal of the property demonstrates a loss in property value and the owner can demonstrate that the loss is the result of the property's proximity to the active mine site.
   (4) The Mining Impact Committee is designated to supervise and administer the property value trust fund in accordance with the procedures for the groundwater trust fund set forth above.

F. Special Conditional Use Permit Standards.

1. General Requirements.
   a. Before issuing a permit under this section, the County shall satisfy itself that the applicant shall meet the minimum conditions set forth in this section. In addition, should the factual circumstances of the proposed mining or prospecting

project warrant it, the County may impose more restrictive conditions than those expressed below and/or additional or further conditions, all of which shall be designed to promote the public health, welfare and safety.

b. The applicant for a prospecting or mining permit shall demonstrate that it has applied for all necessary approvals, licenses and permits for the proposed project from the DNR (including, but not limited to, those under chs. 30, 31, 107, 280 to 299), from any other agency of the State of Wisconsin, and from any federal agency with jurisdiction over the mining or prospecting site or mining operation.

c. The prospecting or mining project shall be implemented in accordance with a design which addresses the following operational considerations:

(1) Adequate security measures, including measures to limit access to the site so that public exposure to potential operational hazards is reduced or eliminated.

(2) Provision of utility services to the site.

(3) Provision of other public services to the site by contract or otherwise including police and fire protection and transportation services.

(4) Dust and odor suppression.

(5) Blasting limitations.

(6) Noise and light control.

(7) Methods of transportation and identification of substances and materials to be transported to and from the site.

(8) Hours of operation.

2. Environmental Protection Requirements.

a. Wastewater Discharges.

(1) All wastewater discharges to surface or ground water shall be in accordance with all applicable federal or state approvals, licenses and permits, including but not limited to those under Wis. Stat. ch. 281, 283 and 293.

(2) All wastewater discharges to surface or ground water shall occur on the active mining site or to surface waters immediately adjacent to the active mining site.

(3) All wastewater discharges shall to the maximum extent practicable be discharged to groundwater rather than surface water, unless the discharge to the surface water is demonstrated to be more protective of the environment.

b. Surface Water Discharges.

(1) All stormwater including stormwater runoff, snow or ice melt runoff and surface runoff and drainage from the active mine site, shall at a minimum be managed and controlled in accordance with federal or state regulations, including but

not limited to those under Wis. Stat. ch. 30 and Wis. Admin. Code chs. NR 151, 216 and 132, except that the active mine site shall also be designed to manage and control a 50 year storm event.

(2) To the maximum extent practicable, surface water runoff from a 24 hour, 50 year storm event shall be diverted around portions of the facilities containing ore, product or mine or prospecting waste.

(3) Any surface water runoff from portions of the facilities containing ore, product or mine or prospecting waste shall be treated as wastewater.

c. Surface Water Impacts.

(1) To the maximum extent practicable, prospecting and mining sites and facilities must be designed, constructed and operated to minimize impacts on navigable waters, wetlands, shorelands and floodplains.

(2) All activities in or near navigable waters shall be in accordance with all applicable federal or state approvals, licenses and permits including but not limited to those under Wis. Stat. chs. 30 and 31, 33 U.S.C. § 1344 and all applicable shoreland, shoreland-wetland, and floodplain zoning ordinances.

d. Air Emissions. All air emissions shall be in accordance with all applicable federal or state approvals, licenses and permits.

e. Solid and Hazardous Waste.

(1) All solid and hazardous waste which is not subject to the mine permit issued by the DNR shall be disposed of in a licensed solid waste or hazardous waste facility. All solid or hazardous waste subject to the mine permit shall be disposed in accordance with the terms and conditions of the mine permit.

(2) Reagent and chemical storage, use and disposal must be conducted in a manner to minimize potential harm to public health and safety or to the environment. Wastes, from whatever source associated with the project, should be recycled or treated to the maximum extent practicable using the best available demonstrated control technology.

f. Groundwater.

(1) The project shall be located, designed, constructed and operated in a manner as to protect ground water quality in accordance with the standards imposed under the mine permit issued by the DNR.

(2) No withdrawal of ground water or de-watering of mines shall be allowed if it would detrimentally affect either the quality or quantity of a public or private water supply.

(3) The applicant has established a groundwater trust fund in accordance with the requirements of this section.
(4) The project shall comply with all applicable state and federal permit requirements on discharges to groundwater.

3. Site Criteria.
   a. Buffer Zones.
      (1) A buffer zone 500 foot wide around the active mine site or prospecting site shall be maintained. The buffer zone is an area to be left in its natural state except for the planting of native trees or shrubs to provide an aesthetic visual barrier to the active mine site. The buffer zone is to remain during active mining and for a period of 40 years following permanent termination of mining or prospecting unless an alternate use is approved by the county as part of the reclamation plan.
      (2) Structures are not allowed within the buffer zone except for roads, railways and utilities. Roads, railways and utilities shall be designed to minimize their impact on the buffer zone to the maximum extent practicable.
   b. Prospecting and mining site facilities should be designed to minimize surface area disturbance and facilitate reclamation.
   c. Prospecting and mine facilities should be placed where least observable from off-site in any season. They should be painted and maintained in a manner visually compatible with the associated vegetation and earth conditions.
4. Reclamation.
   a. At completion of mining, all tunnels, shafts or other underground openings shall be sealed and filled to the maximum extent necessary to prevent significant subsidence, groundwater contamination or other safety, health or environmental hazards.
   b. At completion of mining, all surface structures constructed on the mine site shall be removed from the site, unless they are converted to an acceptable alternative use, subject to approval by the County and in accordance with the state permits.
   c. Adequate measures shall be taken to prevent significant surface subsidence. If such subsidence does occur, provision for reclamation of the affected area shall be taken.
   d. All topsoil shall be preserved for purposes of future use in reclamation for this project.
   e. Disturbed soils shall be revegetated for stabilization and reclamation, with the objective of re-establishing a variety of populations of plants and animals indigenous to the area immediately prior to prospecting or mining, unless such re-establishment, is inconsistent with the reclamation plan as defined herein.

f. The reclamation plan shall call for the removal of waste water pipelines, pumping stations and/or outfall structures among other structures unless they are converted to an acceptable, alternative use, as determined by the County in which event they may be authorized to be maintained but only if in compliance with the operator's state permits.

5. Economic Impact. The applicant for a mining permit shall demonstrate the following:
   a. The mining operation is projected to result in a net positive economic impact in County as a whole and in the area reasonably expected to be most impacted by activities prior to permanent termination of mining.
   b. The mining operation is projected not to result in a net adverse economic impact in the County as a whole and in the area reasonably expected to be most impacted by activities over the life of the proposed operation including 40 years after the permanent termination of mining.
6. Environmental Compliance Standards.
   a. The County may refuse to grant a mining permit based on proof of poor fiscal and managerial ability and/or the environmental compliance and performance history for the past fifteen (15) years in Wisconsin, other states in the United States and Canada.
   b. The County shall deny a mining permit based on the following:
      (1) The applicant or related person has had a mining permit permanently revoked within the last 15 years because of a failure to reclaim a mine site within the United States or Canada;
      (2) The applicant or related person has forfeited a mining bond in the United States or Canada within the last 15 years unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount was sufficient to cover all costs of reclamation;
      (3) The applicant or related person has been convicted of a criminal violation in the past 15 years arising out of a violation of environmental protection laws in the United States or Canada; or
      (4) The applicant or related person has within the last 15 years declared bankruptcy or undergone dissolution that resulted in a failure to reclaim a mine site in the United States or Canada.
7. Adverse Impacts. The County shall deny a permit if any of the following situations may reasonably be expected to occur during or for 40 years following permanent termination of prospecting or mining:

a. Significant landslides or substantial deposition from the proposed operation in stream or lake beds.
b. Significant surface subsidence which cannot be reclaimed; or
c. Hazards resulting in irreparable damage to any of the following, which cannot be avoided by removal from the hazard area or mitigated by purchase or by obtaining the consent of the owner.
   (1) dwellings
   (2) public buildings
   (3) schools
   (4) churches
   (5) cemeteries
   (6) commercial or institutional buildings
   (7) public roads, or
   (8) habitat required for survival of vegetation or wildlife designated as an endangered species through prior inclusion in rules adopted by the DNR if such endangered species cannot be firmly re-established elsewhere.

8. Public Lands.
   a. Notice and Consultation. Any application for prospecting or mining permit on lands owned in whole or part by the state or federal governments, the County, towns or any other political subdivisions of either the state or federal governments, shall be provided to the governmental body or administrator in charge of each such parcel or tract of land, and such governmental body or administration shall be consulted by the Committee before a permit recommendation is made.
   b. Consistency with Public Purpose. Before a prospecting or mining permit is issued it shall be determined by the Board, that such use of the land is not in violation of any laws or regulation governing the public use of said land and that such use of the land in question shall not unduly interfere with or violate the purpose or purposes for which such land is owned and maintained by the governmental body in question.

G. Special Conditional Use Permit Implementation.

1. Relationship to Local Agreements.
   a. Negotiating Process.
      (1) In the event that the Board enters into negotiations with a proposed operator of a mining project pursuant to Wis. Stats. § 293.41, the Chairperson of the Board or his/her designee shall be named to serve on the Mining Impact Committee. The Chairperson of the Town Board of each town in which the proposed mining site is located or his/her designee shall

be named to serve on the Mining Impact Committee as an advisory member.

(2) All negotiating sessions held pursuant to § 293.41 whether by the County Board or by another representative committee on behalf of the County, shall be in open session except when a closed session is necessary to develop negotiating strategy outside of the presence of representatives of an applicant. All other business of the negotiating committee shall be transacted in open session.

b. Approval Process.

(1) Governing Body. The governing body for the purposes of approving a local agreement under Wis. Stat. § 293.41 is the County Board.

(2) Timing. No local agreement shall be approved for public hearing under Wis. Stat. § 293.41 until the applicant has filed all applications for all necessary approvals, licenses and permits from the DNR and any other state or federal agency with jurisdiction over the prospecting or mining site or operation, and those permit applications have been deemed complete by the agency to whom they have been submitted, the applicant has filed the environmental impact report under Wis. Stat. § 23.11 relating to any state permit applications, and the DNR has released its draft Environmental Impact Statement.

(3) Non-Applicability Provisions. The local agreement may not declare any portions of this ordinance non-applicable to a prospecting or mining operation or include variances from this ordinance except upon an affirmative vote of three-fourths of the members of the County Board and upon the affirmative vote of the Town Board of each Town in which the proposed mining site is located. In addition, any exceptions, variances or rezoning from state mandated zoning requirements must comply with the standards prescribed by state law.

(4) A local agreement shall include the right to reopen and modify the local agreement after it has been approved if it is determined, upon the basis of newly discovered evidence, including evidence presented at state or federal hearings, that prospecting or mining activity pursuant to the agreement would endanger the public health, welfare or safety. In such a case the agreement shall be modified in accordance with the approval process set forth above.

2. Permit Fees.

a. Application Fee. The application fee for a mining special conditional use permit shall be in the amount of $50,000.00.

This fee may be used to cover costs incurred prior to the county's first billing for actual costs. The balance shall be held in trust until the final billing for actual costs has been paid and then refunded to the applicant.

b. Actual Costs.
   (1) The applicant for a proposed mining or prospecting project shall be responsible for all costs reasonably incurred by the County as necessary to evaluate the operator's application for a special conditional use permit and for any permits required from the State of Wisconsin and the Federal Government, and to participate in any administrative or legislative meetings, public hearings and adjudicatory or contested hearings related to such mining project, including the hearings required under this section.
   (2) The applicant shall also be responsible for those costs incurred before or after the application for the special conditional use permit is filed with the County and for monitoring any such mining project which becomes operational, continuing for the life of the operation.
   (3) Costs under this subsection shall include staff time, equipment and material costs, professional experts and legal counsel. Such costs shall not exceed those which are reasonably charged for the same or similar services by professional experts of the type retained. The County shall also avoid duplication of services where reasonably possible, taking into consideration the normal duties and responsibilities of the staff.

c. Prior to processing an application for a permit under this section, the Committee shall estimate the cost involved in the permit review and approval process. The Committee shall require additional security beyond the application fee if necessary and an agreement from the applicant that it will pay all processing costs billed to it.

d. Costs under this section may be billed to the applicant for reimbursement to the County on a monthly basis and shall be paid within 30 days of such billing. Should the applicant fail or refuse to pay costs within thirty (30) days upon request or demand from the County, the County may stop the processing of the permit application.

e. If an applicant withdraws its application at any time after its submittal, all fees and charges assessed for work to that point in time by the County shall be paid by the applicant.

3. Permit Transfers.
   a. Notice. In the event that the permit holder to which a special conditional use permit is granted under this section seeks to

divest itself in whole or in part of a continuing interest in either the mineral rights subject to the permit, or of the project itself or of any of the rights or responsibilities assigned to it under the permit and transfer such rights and responsibilities to a third party, it shall give prior notice thereof to the Board.

b. Review.
   (1) The Board shall not unreasonably withhold consent to such transfer; however, it shall have the right to demand proof of the assignee's fiscal and managerial ability to fulfill the requirements of the permit, including the information in § 9.61.E.3.h.
   (2) The permit holder shall provide a review fee of $1500 to cover the cost of processing and shall be liable for any additional actual costs under § 9.61.G.2.
   (3) The Board may refuse to grant assignment of a permit if the proposed assignee has demonstrated its inability or refusal to abide by laws and regulations as based upon its performance history or that of its parent corporations or subsidiaries in accordance with § 9.61.F.6. If necessary, to protect the interest of the public, the Board may refuse to release the original permit holder from responsibility under the permit.

4. Commencement, Suspension Modification and Termination of a Special Conditional Use Permit.
   a. Commencement. The granting of a special conditional use permit shall not be deemed effective until the operator shall have procured all necessary permits from the state and federal agencies to construct, operate and close the prospecting or mining operation. Construction must be commenced within two (2) years of the effective date of the last state and federal permit issued or the special conditional use permit shall be null and void.
   b. Suspension and Termination.
      (1) An operator must provide notice to the Committee as soon as possible of any temporary halt of mining operations lasting more than 180 days including a statement showing projected loss of employment.
      (2) The applicant must provide the notice to the Committee at least one year prior to permanent termination of mining operations.
      (3) Prior to the end of each calendar year, the applicant must provide to the Committee notice of any significant changes in the timing of the phases of its mining operations. The mining permit may be revoked if these changes would result in a substantial loss of tax revenues to the County. In order to

avoid the revocation of its mining permit, the applicant may pay its total projected annual tax payments to the County within 60 days of the Committee's notice of the revocation of the mining permit.

(4) Upon receipt of a notice of temporary halt in mining or upon a cessation lasting more than 180 days, whichever is sooner, the County may require that the operation take additional measures to ensure that public health, safety and welfare are protected during the temporary cessation of mining operations, including but not limited to, a temporary cap on tailing facilities, additional security measures, additional erosion control measures, and other site stabilization measures.

(5) A suspension longer than 3 years shall be considered permanent abandonment and require the operator to commence closure and reclamation.

c. Permit Modification.

(1) The County reserves the right to reopen and modify a special conditional use permit after it has been granted if it is determined, upon the basis of newly discovered evidence, including evidence presented at state or federal hearings, that prospecting or mining activity pursuant to the permit would endanger the public health, welfare or safety.

(2) In order to reopen a permit, the Committee shall identify the specific terms of the permit subject to reopening and shall first hold a public hearing and present its recommendations to the Board. The Board shall reconvene the hearing in accordance with the procedures in § 9.61.D.6. No modifications to an existing permit shall be made unless supported by the preponderance of the newly discovered evidence.

H. Enforcement.

1. Permit Revocation or Suspension. The Committee may revoke or suspend a prospecting or mining permit issued under this section utilizing the procedures set forth in this chapter for permit revocation if it determines that:

a. Statutes, ordinances, or permit requirements have been violated; or

b. Trust fund amounts have not been increased to adequate levels as specified by the Mining Impact Committee; or

c. Insurance coverage has lapsed or fallen below required levels.

d. Actual costs have not been paid for permit processing, monitoring or review.

2. Compliance with State and Federal Regulations.
   a. Strict compliance with all state and federal laws, regulations and permits is required of any holder of a County prospecting or mining permit. Failure to comply with such laws, regulations or permits shall give the Committee the right to suspend or revoke any County permits.
   b. If state laws or regulations are amended to become less restrictive, the applicant is still required to comply with the standards which were in place at the time the special conditional use permit was granted unless the permit is amended by a three-fourths vote of the County Board.
   c. Whenever state, federal or County requirements are in conflict, the strictest standard shall govern.

I. Exploration.

1. Permits Required. Exploration is a conditional use that may be allowed the following zoning districts: #01 Forestry, #04 Residential Farming, #08 Manufacturing/Industrial and #10 General Use. No person may engage in exploration without securing an exploration permit issued pursuant to this Ordinance.
2. Review and Processing of Permit Applications.
   a. The applicant shall submit an exploration permit application meeting the requirements of this section.
   b. Within 120 days of receiving an exploration permit application, the Committee shall issue an initial schedule and process for the application's review. Such schedule and process shall be tentative in nature and subject to revision or amendment based upon, among other things, the complexity of the application and the technical and time needs of the Committee.
   c. The fee for an exploration permit shall be $1500.00 per year for the duration of exploration activities to be paid annually on or before the anniversary date of the application.
   d. The Committee shall conduct at least one public hearings on each exploration permit, the number and nature of which shall be as determined necessary by the Committee and as set forth in the schedule issued pursuant to subsection (a) above.
3. Application Requirements.
   a. The applicant shall provide the Committee with copies of the exploration permit application submitted to the DNR under Wis. Stat. ch. 293.

b. The applicant shall submit an exploration plan as set forth below. Where the information is provided in documents filed with the DNR, material can be provided by cross references.
   (1) Type of exploration.
   (2) Type of equipment or machinery to be used.
   (3) Easements to surface rights or use of lands.
   (4) Ingress and egress.
   (5) A topographical map which shows the lands to be explored.
   (6) Location of initial exploration sites in relation to property lines and set back requirements in accordance with § 9.61.C.2. The location of subsequent exploration sites must also be provided to and approved by the Committee.
   (7) Location of exploration sites in relations to lakes, streams, floodplains and wetlands.
   (8) Ownership of mineral rights.
   (9) Legal description of the property.
   (10) Method and time frame for exploration hole abandonment and reclamation in accordance with NR 130.06(1), Wis. Adm. Code, or its successor rule(s).
   (11) Timetable for exploration activities.

c. The applicant shall submit a copy of the title to the property demonstrating ownership by the applicant or the legal agreement entitling the applicant to access the property and conduct exploration activities.

d. Insurance. Applications for an exploration permit shall be accompanied by a certificate of insurance certifying that the applicant has in force a liability insurance policy issued by an insurance company authorized to do business in Wisconsin covering all exploration activities of the applicant and affording personal injury and property damage protection in a total amount deemed adequate by the Committee but no less than $5,000,000.00.

e. Bond. Applications for an exploration permit shall be accompanied by a bond in the amount of $50,000.00 conditioned on faithful performance of the requirements of the Committee.

f. Waste disposal. The applicant shall provide a method for proper disposal of all waste materials from drill holes.

4. Approval Standards.
   a. The exploration activities shall be designed, constructed and operated in accordance with the standards implied by the DNR.

b. The exploration activities are not incompatible with existing land uses.
c. The Committee shall establish notification and inspection procedures applicable to the various stages of drilling and abandonment and procedures for the proper abandonment of drill holes.
d. The applicant shall certify that it is in compliance with the requirements of § 9.61.F.6.

5. Enforcement. The Committee may revoke or suspend an exploration permit issued under this section utilizing the procedures set forth in this chapter for a permit revocation if it determines that:
   a. Statutes, ordinances, or permit requirements have been violated; or
   b. Bond amounts have not been increased to adequate levels as specified by the Committee; or
   c. Insurance coverage has lapsed or fallen below required levels.

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WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2017 Wisconsin Act 134 [2017 Assembly Bill 499]	Nonferrous Metallic Mining

2017 Wisconsin Act 134 makes a number of changes to laws relating to nonferrous metallic mineral prospecting and mining, as summarized below.

SULFIDE ORE PERMITTING CONDITIONS

The Act repeals a requirement under which applicants for a nonferrous mining approval must provide, and the Department of Natural Resources (DNR) must verify, information showing that a sulfide mining operation in the United States or Canada has operated for at least 10 years without polluting surface water or groundwater and that a sulfide mining operation in the United States or Canada has been closed for at least 10 years without polluting surface water or groundwater.

APPLICABILITY OF GROUNDWATER STANDARDS

In the context of nonferrous metallic mining or prospecting, the Act provides that groundwater contamination enforcement standards do not apply below the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used for human consumption and is not hydrologically connected to other sources of groundwater that are suitable for human consumption. Under current law, groundwater standards generally apply from the land surface down through all saturated geological formations.

WETLANDS

The Act eliminates special administrative code provisions applicable to impacts to wetlands caused by a nonferrous mining operation. Under the Act, generally applicable wetlands requirements apply to a mining site.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: http://www.legis.wisconsin.gov.

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BULK SAMPLING

Under current law, a person may apply to the DNR for an approval to engage in exploration for, prospecting for, or mining of nonferrous metallic minerals. The Act creates a separate approval process for "bulk sampling" of nonferrous metallic minerals, defined to include excavating in a potential mining site by removing less than 10,000 tons of total material, including overburden, to assess the nonferrous metallic minerals present or gather data to support a mining application.

Under the Act, a person who intends to conduct bulk sampling must file a bulk sampling plan with the DNR, which triggers a streamlined process for obtaining any approvals necessary for the activity. Specified information is required to be included with the plan, and the person who intends to conduct bulk sampling must file a bond in an amount determined by the DNR (but not less than $5,000) to cover costs of conducting a revegetation plan.

The Act also provides that the DNR is not required to prepare an environmental impact statement (EIS) related to a bulk sampling application.

MINING PERMIT APPLICATION TIMELINE

The Act makes various changes to the process for approval of nonferrous metallic mineral prospecting and mining permits, including changes related to pre-application data collection and the timeline under which consideration of a mining application must be conducted. The Act also requires the DNR to seek to enter into a memorandum of understanding (MOU) with the applicant, the U.S. Army Corps of Engineers, and other relevant federal agencies, which may include an agreement between the DNR and the applicant regarding alternative timelines for the permitting process.

Unless an alternative timeline is provided for under a MOU, the timeline for review of an application for a nonferrous prospecting or mining permit is as follows:

1. The DNR has 180 days after application submittal to provide comments and request additional information. If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.
2. If the DNR requests additional information under step 1, it has 90 days after the applicant submits additional information to again provide comments and request additional information.[1] If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

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[1] If the applicant makes a substantial modification to the mining or prospecting plan during this phase of the process that significantly changes the information necessary to prepare the EIS or adequately review an application, the DNR may re-start the review process (this may only be done one time).

3. If the DNR requests additional information under step 2, it has 180 days after the applicant submits additional information to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

HIGH CAPACITY WELL APPROVAL

Under current law, a nonferrous prospecting or mining permit applicant must obtain a high capacity well approval if the applicant will withdraw groundwater or dewater mines at a rate and capacity of more than 100,000 gallons each day. The DNR is prohibited from issuing this approval if the withdrawal or dewatering will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. [s. 293.65 (3), Stats.] Under the Act, the DNR is authorized to impose conditions on such an approval to avoid these outcomes, including requiring that the applicant replace, increase, or temporarily augment waters of the state.

HEARING AND REVIEW PROCESS

Under current law, a "master hearing" is held after the DNR issues a final EIS, draft mining or prospecting permits, and any other draft approvals that are required for the prospecting or mining project. This master hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. After the master hearing, the DNR issues its decision on the application and related approvals. [ss. 293.43, 293.45, and 293.49, Stats.]

Under the Act, the DNR will conduct a public informational hearing (not a contested case hearing) on the draft prospecting or mining permit, the draft EIS, and other necessary approvals. Following the DNR's decision on whether to approve these permits and approvals, a person may petition for a contested case hearing if the person believes that he or she is aggrieved by the DNR's decision and the petition is filed within 30 days of that decision. If a contested case hearing is requested and held, the Act requires the hearing examiner to issue a decision within 270 days after the DNR approves or denies the mining or prospecting permit.

Under the Act, judicial review is available to a person aggrieved by a DNR decision relating to nonferrous metallic mineral exploration, bulk sampling, prospecting, and mining, in the court for the county in which the majority of the proposed activity would occur. A petition for judicial review of a hearing examiner's decision following a contested case hearing must be brought within 30 days of the decision.

The Act does not authorize a person to request a contested case hearing on a DNR decision relating to exploration or bulk sampling.

FEES

The Act exempts a nonferrous metallic mining operation from specified solid waste disposal fees that would be required under current law.

PREDICTIVE MODELING

Under the Act, if the DNR requires an applicant for a nonferrous mining permit to conduct engineering and hydrologic modeling to evaluate whether a waste site in the proposed mining operation will violate groundwater or surface water quality standards, the period of time to be examined may not extend longer than 250 years after closure of the mining waste site.

FINANCIAL ASSURANCE REQUIREMENT

Under current law contained in administrative code, an applicant for a nonferrous metallic mining permit must create and maintain an irrevocable trust, and maintain this trust in perpetuity, to ensure the availability of funds for preventative and remedial activities. [s. NR 132.085, Wis. Adm. Code.] The Act eliminates this requirement and, instead, creates two new statutory financial assurance requirements.

First, the Act requires a nonferrous metallic mining operator to provide one of several specified forms of financial assurance, prior to beginning mining operations, to cover unforeseen remedial contingencies not otherwise covered by the reclamation bond and waste site long-term care bond, including for the provision of a replacement water supply if required under the Act. The amount of this financial assurance is equal to 10% of these other two bonds through the life of the mining operation. For the 40 years following the end of extraction activities at the mining site, the operator must maintain this bond in an amount equal to 10% of the amount of these two bonds at the time that the operator ceased extraction. The bond must be released no later than 40 years after the end of extraction activities.

Second, the Act requires a nonferrous metallic mining operator to provide proof of financial responsibility for the reasonably anticipated costs to be incurred during the period between 40 and 250 years after closure of the mining waste site to repair or replace any engineered cover systems or tailings water management control systems used at the mining site or mining waste site. This proof of financial responsibility must be provided at the time of closure of the mining waste site, in an amount to be calculated at the time that the nonferrous mining permit is approved. The DNR must base this amount on the net present value discounted at a rate of at least 5% per year. The Act requires that the proof of financial responsibility be created in one of a listed number of forms, all of which are interest-bearing. The funds available may be used by the operator or the DNR to conduct the anticipated repairs or replacements and any remaining funds are to be returned to the operator.

The Act does not modify other forms of financial assurance required under current law, such as requirements for insurance and financial requirements related to completion of the reclamation plan and long-term care of a waste facility. The Act does specify that the DNR may not impose a financial assurance requirement that is not provided for in statute.

Effective date: July 1, 2018

Prepared by: Larry Konopacki, Principal Attorney
Anna Henning, Senior Staff Attorney

January 5, 2018
(Revised January 23, 2018)

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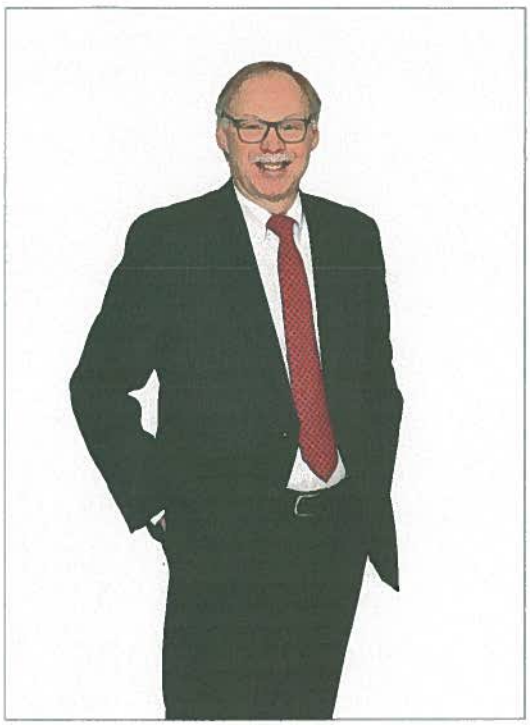

William P. Scott

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Bill Scott is both an attorney and licensed professional geologist. For over 25 years, he has concentrated his legal practice on environmental and natural resources law as applied to real estate development, mergers and acquisitions, enforcement defense and regulatory compliance and permitting.

Bill represents private and public sector clients on real estate development and regulatory matters. Bill's geological training and experience with administrative agencies helps his clients plan and execute practical solutions to difficult problems. He applies his geological knowledge and legal experience to achieve optimal results, whether with regulatory compliance, permits, exemptions, approvals, variances, environmental cleanup or case closure. He has significant experience developing strategy for and directing brownfield redevelopment; performing transactional due diligence and liability allocation; orchestrating environmental impact analysis; preparing mining regulations; and resolving controversy in asbestos abatement, dam regulation, shoreland zoning and water law. He has been very successful in resolving controversy by accomplishing client objectives through negotiation and without litigation.

Bill received his B.A., M.S., and J.D. degrees from the University of Wisconsin-Madison. Before law school, Bill worked seven years as a geologist with the University of Wisconsin-Extension Geological and Natural History Survey. During law school, he interned with the Wisconsin Public Intervenor and served as law clerk for the Environmental Protection Unit of the Wisconsin Department of Justice.

Bill is admitted to practice in Wisconsin, as well as the U.S. District Court for the Eastern and Western Districts of Wisconsin. He is a member of the American Bar Association Section on Environment, Energy, and Resources; the State Bar of Wisconsin Section on Environment; and the Milwaukee Bar Association.

2-20-18

Hello,

My name is Mary Krueger, I am a resident in the Town of Lynne and the Clerk/Treasurer for our Township. I first want to apologize for being unable to attend this meeting but thank you for taking the time to read my letter. I did attend the Mining 101 in Minocqua and the last meeting at the Courthouse with the Forestry and Planning & Zoning Committees.

The Town of Lynne is a small community in the Southwest corner of Oneida County and I feel we are sometimes overlooked. The Town of Lynne is very nice place to live and visit. All around us, we have beautiful woods and breathtaking waterways. Any mention of mining just makes me cringe. Mining is something that should not been done when our environment is at risk of being ruined. I sure don't want mining done in my backyard. How would you like mining done in your backyard?

I ask that Oneida County consider zoning that would not allow mining to be done in our County. There are no guarantees that our environment will not be affected. What about the noise and smell that can be associated with mining? Not to mention our water tables. What will happen to them? What will happen to the Willow Flowage, Willow Lake, and Pier Lake? There are so many unknowns. Why do we want to take a path that can be disastrous to all involved? Not just to the Town of Lynne but to Oneida County and all surrounding areas. The mining site being considered in the Town of Lynne is very close to the Willow Flowage which is so pristine, why would we even want to consider putting a mine in?

If you have not had the opportunity to visit us, we welcome you to come and see firsthand what I mean. As a County Official, making such an important decision about mining it is your responsibility to see what is at stake. There are so many unknowns and no guarantees that our environment will be left unscathed now or 20 years after mining. We are all responsible for our environment so that future generations can appreciate what we currently have.

The Willow is a thriving vacation destination bringing people from all over, all year long for fishing, 4-wheeling, snowmobiling, hunting, etc. Not to mention the tranquility that so many seek. We have 5 resorts in our area that can stay open year-round. That shows how this area is sought out as a place to live and a vacation destination. Please keep mining out.

Please consider what we can lose if mining is done in the Town of Lynne. No price tag should be placed on the health and well-being of all individuals in all communities. I have talked with other full-time residents, seasonal property owners and vacationers, and I have not found even 1 individual that feels mining would benefit us. As tax paying residents in Oneida County please consider and understand our concerns. We only have the best interest in our environment and do not want it ruined or destroyed. A petition will be routed to show just how many individuals are against this.

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