

## 18.10 MINERAL REMOVAL

Mineral Removal is a Special Land Use established for authorizing the removal of mineral material exceeding two thousand (2,000) cubic yards from any parcel of land within the Township. The Township recognizes that (1) mineral material is needed to develop and maintain the health, safety, and general welfare of the Township, (2) mineral material is a limited resource, and (3) mineral material must be removed from where it is found. The Township also recognizes that mineral removal may result in the loss of other Township resources, is incompatible with residential uses, and requires the reclamation of the land throughout the mineral removal process. Therefore, after completion of the removal of the mineral material, the land will be an asset to the community, rather than land that is hazardous, unsightly, or unusable for purposes permitted under this Ordinance.

Removal of mineral material from any land in the Township in quantities of up to two thousand (2,000) cubic yards is allowed without permit providing all other ordinance requirements are met. This amount shall be cumulative and shall not relate to any period over which the removal of the mineral material may occur.

This Special Land Use permits the use of qualifying land for mineral removal operations but only after this proposed use of the land has been reviewed and approved in the manner set forth below.

1. **Eligibility for Special Land Use** - To be considered for Special Land Use, land proposed for mineral removal must satisfy the following minimum requirements:

A. **Site Access** - The land must have direct access to a primary arterial street of the Township. This access must either be by having sixty-six (66) feet of frontage on the primary arterial street or this access must have a thirty-three (33) foot wide easement and right-of-way that benefits, is appurtenant to and runs with the land, and which permits general access to the land from the primary arterial street. No land will be deemed having access to a primary arterial street of the Township unless such land is included in the request.

B. **Preliminary Plan** – Submission and Content - Applicants shall prepare and submit a site plan in accordance with this ordinance. In addition, the following information is required:

- i. A current aerial photograph, at a scale the detail of which is not less than the smallest scale available for the site from aerial photographs of the Newaygo County mapping and description department, displaying the area and all lands within nine hundred ninety (990) feet of the site. The aerial map shall show the location of the various uses of the lands required to be included in the aerial map, and the location of the various types and extent of existing natural features such as soils, vegetation, and water bodies. Appropriate overlays at the scale of the aerial photograph may be used to depict topography, slope hazards, soils, vegetation, wildlife habitat, or any other information required by the Township to assess the environmental impact of the proposed mineral removal and rehabilitation to an end-use
- ii. A description of the various types and extent of major ground vegetation, particularly tree species, and endangered species, found within the area proposed for mineral removal.
- iii. A detailed description of any known, anticipated or likely adverse or detrimental effect upon

any aspect of the community or element of the natural and built environment, with respect to both the site of the mineral removal and the surrounding area.

- iv. A description of the type, quality, amount, and value of the mineral material at this site and on the current and potential market for the mineral material to be removed, taking into consideration other sources for this type of material in this market area.
- v. The preliminary plan must provide a narrative for both the mineral removal and the proposed end-use. If the proposed end-use is a planned development and the planned development district for the proposed end-use contains additional preliminary plan content requirements, the preliminary plan for the proposed end-use shall include this content.

C. **Mineral Removal Operation Plan** - An applicant for final mineral removal plan approval shall contain an operational plan. This operational plan shall contain the following information and shall satisfy the conditions stated below:

- i. The date the mineral removal is expected to begin, and the date the mineral removal is expected to be completed. The date the mineral removal is expected to begin must be within one (1) year of final mineral removal plan approval and the date the mineral removal is expected to be completed must be no later than ten (10) years after the date the mineral removal is expected to begin
- ii. Mineral removal shall not be conducted as a twenty-four (24) hour per day operation. The Planning Commission may establish reasonable hours and days of operation taking into consideration, the needs and desires of neighbors and persons who live or work on the routes used by the vehicles engaged in the mineral removal.
- iii. Mineral removal may not occur within one hundred (100) feet of lot lines except that any transit routes for the vehicles used for the mineral removal may be conducted within fifty (50) feet of lot lines.
- iv. The removal and processing methods, including a description of the number and type of all equipment expected to be used in the operation, and the noise rating of each type. Other than beepers which are required by law, equipment used in the operation which emit noise shall not be a nuisance measured at the nearest property line. If the applicant's plan proposes to place a berm (which must be seeded, mulched and maintained to inhibit erosion), between the mineral removal operation and any occupied building which is within one hundred (100) feet of the mineral removal operation then the Planning Commission may approve an operational plan which provides that equipment meeting these noise limitations can be located up to the base of the berm. The berm shall be located above the source of the noise and its peak shall be at least up to the line of sight between the mineral removal operation and any occupied building or buildings located on adjoining property. The berm shall be no closer than 50 feet to the adjoining property line. If the planned duration of the mineral removal operation as set forth in the final mineral removal plan is longer than a one (1) year period, then the Planning Commission may require that evergreen shrub plantings be placed on this berm, the height of which shall be not less than five (5) feet above the crest of the berm and so spaced as to effectively screen the mineral removal operation from any occupied building located within one hundred (100) feet of property line
- v. No mineral material or other excavated material shall be left in such condition or manner as

to constitute a danger to persons who may enter the mineral removal area at any time or on any day on which mineral removal is not occurring. At a minimum, this means that all banks of excavated material shall be graded to slopes having a vertical to horizontal ratio of not greater than one (1) foot of elevation for each two (2) feet of horizontal distance after the cessation of daily operation. A less restrictive grading requirement may be approved by the Planning Commission if a constructed welded wire fence, or a fence of equally substantial material, of at least four (4) feet in height, is located on the site and is so maintained and located that any slopes steeper than one (1) foot of elevation for each two (2) feet of horizontal distance cannot inadvertently be approached by any persons who may enter the mineral removal area. The driveway to the mineral removal area shall have a gate of the same quality material at the same height as the fence described above. This fence shall be locked whenever mineral removal is not occurring.

- vi. A description of the proposed measures to limit the dust generated by the mineral removal, including dust generated by the movement of vehicles on and off the site, and a description of the routes to be used by vehicles carrying the minerals off the site. There shall be at least one (1) driveway which enters onto a public street from the mineral removal area, and this public street must be a primary arterial street of the Township.
- vii. No final mineral removal operation being developed in more than one phase shall be approved if the final mineral removal plan approval does not comply with the operational plan requirements of an approved final mineral removal plan.

D. **Final Mineral Removal Plan – Site Rehabilitation Content** - The applicant for a final mineral removal plan shall provide a site rehabilitation plan that includes the following information:

- i. A narrative description of the planned site rehabilitation, including a description of the methods that will be used to accomplish the rehabilitation, the timing of the rehabilitation, and the estimated costs of the rehabilitation, including a detailed breakdown of these estimated costs.
- ii. A supplemental final mineral removal plan, which may be an overlay to the final mineral removal plan required by this Article. This supplemental final mineral removal plan shall show:
  - a. Final grades for the land after rehabilitation at a contour interval not exceeding two (2) feet together with a description of the soil type if the final grade of any portion of the land is greater than one (1) foot of elevation to each three (3) feet of horizontal distance. Water courses, ponds, or lakes; Landscaping and vegetative plantings
  - b. A narrative description explaining how the end-use will be accomplished and how the end-use will comply with the Township's general development plan and other applicable requirements of this Ordinance.
- iii. The site rehabilitation plan shall satisfy the following minimum requirements:
  - a. The type and amount of topsoil, which will be replaced upon the site, shall be appropriate in type and quality to the end-use or end-uses, and shall not be less than two (2) inches in depth, unless otherwise approved by the Planning Commission as part of the site rehabilitation plan. The final grade of the site shall have a ratio of elevation to horizontal

distance that will be stable given the type of soil on the slope.

- b. The topsoil shall be stabilized with plantings or structures to prevent erosion; plantings of grasses, shrubs, trees and other vegetation shall be located on the site so as to maximize erosion protection, screen less attractive areas, and enhance the natural beauty of the site.
- c. No storage or dumping of stumps, boulders or other debris shall be permitted on the rehabilitated site.
- d. Final surface water drainage courses and areas of surface water retention shall be laid out and constructed at such locations and in such manner as to enhance the end-use, and so that the original drainage patterns and amount of drainage off the site is not changed.
- e. No final mineral removal plan for a PDMR district being developed in more than one phase shall be approved if the applicant for final mineral removal plan approval is not in compliance with the site rehabilitation requirements of an approved final mineral removal plan for another portion of the same PDMR district.
- f. Any other circumstances, matters, factors or reasons which the applicant wishes to offer or explain with respect to the final mineral removal plan.

**E. Termination of Special Land Use Permit Upon Failure to Submit, Receive or Retain Approval for a Final Mineral Removal Plan** - If a final mineral removal plan, which satisfies the requirements of this ordinance, has not been submitted by the end of the one (1) year period after approval, the Special Land Use Permit shall automatically be revoked. If a site is to be developed in stages, and the applicant fails to submit a final mineral removal plan for the second stage, or for any subsequent stage, prior to development of that stage and within one year after completion of mineral removal operations for the previous stage (if there is only one prior stage) or all previous stages (if there are more than one prior stages), the Special Land Use Permit shall automatically be revoked.

**F. Change of Final Mineral Removal Plan** – The final mineral removal plan, including all conditions imposed upon any final mineral removal plan approval, shall remain unchanged except upon the consent of the Planning Commission. Upon a request for a change in the final mineral removal plan, the Planning Commission shall decide whether the proposed change warrants a complete or partial final mineral removal plan review. In the case of a minor deviation, which neither affects the intent of the approved final plan nor violates any ordinance or statute, field changes may be approved by the Zoning Administrator, who shall then advise the Planning Commission of all such changes in writing. The Planning Commission shall maintain a record of all changes to the final mineral removal plan and this record shall be filed by the Secretary of the Planning Commission with the permanent record of the final plan.

**G. Termination of Final Mineral Removal Plan Approval** - A final mineral removal plan shall be valid for one (1) year from the date of approval. If mineral removal pursuant to the final mineral removal plan has not commenced by the end of this one (1) year period, the final mineral removal plan approval shall automatically terminate. If mineral removal pursuant to the final mineral removal plan has commenced during the one (1) year period after approval, but it is not proceeding meaningfully, the Planning Commission, after holding a hearing at which the applicant shall have the opportunity to be heard, may revoke the final mineral removal plan

approval if the Planning Commission determines after the hearing that the applicant has not diligently proceeded to develop the applicant's site according to the approved final mineral removal plan within the one (1) year period. If the Planning Commission has approved a final mineral removal plan subject to any condition and the applicant has not satisfied the condition within the time limit, if any, included in the condition, but in any event within one (1) year from the date of approval of the final mineral removal plan, the Planning Commission, after holding a hearing with the applicant, may revoke the final mineral removal plan approval upon finding that the condition has not been satisfied. The Secretary of the Planning Commission shall notify the applicant in writing of the time, date and place of any hearing of the Planning Commission.

Nothing provided in this Section shall be construed to prevent an applicant from reapplying for final mineral removal plan approval after the termination or revocation of a final mineral removal plan.

H. **Twenty-Acre Maximum** – If the mineral removal site is less than twenty (20) acres in size, the applicant may develop the site in one or more stages. If the site is twenty (20) acres in size or larger, the site shall be developed in stages of no larger than twenty (20) acres in each stage. If the site is to be developed in stages, each stage shall be separately subject to the final mineral removal plan procedures, requirements, and standards set forth in this Article, even though an applicant may apply for and receive final mineral removal plan approval for more than one stage at a time. Mineral removal may occur in any portion of the site that has received final mineral removal plan approval, but in no event shall more than twenty (20) acres of any site be actively involved in a mineral removal operation at any one time. Land that is involved in the transport of mineral material from the mineral removal operation and land that contains berming, which has been placed onto the site in accordance with a final mineral removal plan and this Article, shall not be included in these twenty (20) acres maximum.

I. **Performance Guarantee** – In addition to the provisions of this Article, an applicant for a final mineral removal plan shall agree in writing with the Township to submit a performance guarantee acceptable that shall name the Township as the insured party. The performance guarantee shall be in such amount as is required by the Planning Commission and shall be conditioned upon the timely and faithful performance by the applicant of all the terms and conditions of the final mineral removal plan. In establishing the amount of the performance guarantee, the size, scope and timing of the proposed mineral removal, the probable cost of site rehabilitation in the event of default or other non-compliance with the final mineral removal plan, the estimated cost to the Township of compelling compliance with the final mineral removal plan and enforcing this performance guarantee by judicial proceedings or otherwise, and such other facts and conditions as are relevant in determining an appropriate amount of the performance guarantee, shall be considered.

A separate performance guarantee may be required for each final mineral removal plan in the case of mineral removal on a site larger than twenty (20) acres. The performance guarantee shall be acquired by the applicant and delivered to the Township prior to commencement of mineral removal and shall be kept in force and shall be renewed by the applicant each year thereafter during the continuance of mineral removal until the site rehabilitation has been accomplished in accordance with the site rehabilitation plan. The performance guarantee shall be reviewed each year and may be adjusted in amount each year by the Planning Commission, based upon the expected cost of site rehabilitation according to the site rehabilitation plan at that time. Failure to maintain and timely renew this performance guarantee shall be a breach of a condition of the final mineral removal plan.

J. **Change to Approved End-Use** – After mineral removal has been completed, the site or any portion of the site shall be inspected by the Zoning Administrator to determine whether the site or portion of the site has been rehabilitated according to the approved site rehabilitation plan. Upon receipt of a zoning compliance certificate from the Zoning Administrator, the rehabilitated site or portion of the site may be developed according to the preliminary plan for the end-use. To proceed with development of the site, the owner must comply with all other requirements of this Ordinance upon the development of the proposed end-use, including final plan approval if the end-use is a planned development. Notwithstanding any other provision of this Ordinance, the proposed end-use shall be subject to site plan review and approval according to the procedure set forth in this Ordinance for same, whether the proposed end-use would otherwise be required to receive site plan approval.

K. **Mineral Material Located in a Recorded Plat** - Mineral material which is located in a plat which is recorded after the effective date of this Ordinance, may be moved in excess of quantities of two thousand (2,000) cubic yards per two (2) contiguous acres, but not in excess of an average of fifteen thousand (15,000) cubic yards for every three (3) acres of land included in the plat, subject to the requirement that all of this mineral material must be removed during the twelve (12) month period after the date of recording of the plat.