

# ONEIDA COUNTY ZONING AND SHORELAND PROTECTION ORDINANCE

## CHAPTER 9 ARTICLE 6 - NON-METALLIC MINING AND METALLIC MINERAL EXPLORATION, BULK SAMPLING AND MINING

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9.60 Non-Metallic Mining

9.61 Metallic Mineral Exploration, Bulk Sampling and Mining

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### 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.

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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.

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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.

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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.

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**Findings.** Oneida County has over 1,127 lakes within its boundaries and approximately 167,000 acres of public forest lands. Oneida County is valued for its scenic beauty and recreational resources. It also has known deposits of nonferrous metallic minerals. Development of nonferrous minerals has potential for adversely impacting groundwater quality and quantity and surface water quality. The ‘boom to bust’ economic cycle of nonferrous mining and the associated development of housing, infrastructure and commercial establishments undertaken to meet the peak demands of a nonferrous metallic mining operation and the temporary nature of the need for such development could result in adverse social consequences in the County. If not properly regulated, nonferrous metallic mineral exploration, bulk sampling, prospecting and mining could have an adverse impact on the environmental character and quality of the communities in Oneida County, as well as an adverse effect on the public health, safety, convenience, morals and general welfare.

**A. Purpose and Intent.** The purpose of this section is to regulate nonferrous metallic mineral exploration, bulk sampling and mining in Oneida County and to promote the public health, safety, convenience, morals and general welfare and accomplish the purposes under Wis. Stat. s. 59.69(1), including but not limited to the protection of water, groundwater, forest and other natural resources, the protection of property values and the property tax base, and to encourage uses of land and other natural resources which are in accordance with their character and adaptability. In addition, it is the purpose of this section to coordinate the requirements of this section with other applicable state and federal requirements. It is not the intent of Oneida County to duplicate or supersede the regulatory authority of the Wisconsin Department of Natural Resources (DNR) or other state and federal government agencies. Furthermore, it is the intent of Oneida County to require applicants to provide the County with copies of all information applicants submit to the DNR, other state agencies and the federal government for the purposes of permitting, with the exception of information that is determined the state to be a confidential trade secret. It is also the intent of Oneida County to require the applicant to

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pay all of the County's costs including but not limited to the review, permitting and monitoring of nonferrous metallic mining.

- B. **Authority.** This Chapter is adopted under authority of the powers set forth in Wis. Stats. ss. 59.01, 59.03, 59.04, 59.51, 59.54(6), 59.57, 59.69, 59.70, 92.07, and 293.
- C. **Interpretation/Severability.** Where provisions of this section of the Oneida County Zoning Ordinance impose requirements or procedures that differ 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.
- D. **Oneida County Metallic Mining Local Impact Committee.** The Oneida County Mining Oversight/Local Impact Committee established under 2.39 (2) (b) of the General Code shall be the Local Impact Committee for Nonferrous Metallic Mining in Oneida County and its formation and actions shall be as set forth 2.39 (2) (b) of the General Code and in accordance with Wis. Stats. ss. 293.33 and 293.41.
- E. **Successor Statutes and Administrative Rules Incorporated.** This ordinance has been passed and published in response to 2017 WI ACT 134 (the "Act"), which removed barriers to the initiation of nonferrous metallic mining in Wisconsin. The provisions of the Act are effective July 1, 2018. The effect of the Act is to amend, repeal, and create certain sections of Wisconsin Statutes. It is anticipated that related statutes and administrative rules and regulations, in effect at the time of publication of this ordinance, will also undergo substantial change in response to the Act. All references and citations to state or federal statutes and/or regulations in this Ordinance shall include any and all modifications, amendments, or revisions thereto that become effective after the effective date of this ordinance. If a specified administrative code reference is determined not to exist or not to apply for any reason and has not been replaced by a different applicable administrative code, then the governance for any topic, standard or purpose served by reference to that specified administrative code shall be the statute that provided the authority under which the referenced rule was last promulgated, and as that statute may be amended.
- F. **Definitions.** The terms defined in Wis. Stat. Ch. 293 are adopted in full to apply to this Ordinance and shall have the same meaning as in that statute. In addition, the term "processing" as applied to an activity at a mining site shall mean milling, concentrating, refining, or chemically treating ore mined at the site.

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- G. Timing Milestones and Triggering Events.** The following significant regulatory milestones and events prescribed by statute, rule, regulation or ordinance, are listed below in the approximate sequence in which they are likely to occur, however any failure of events to occur in this exact sequence shall not be deemed a violation of this Ordinance:
1. Notice of Intent to perform bulk sampling and filing of bulk sampling plan
  2. Notice of Intent to collect data or apply for DNR Mining permit application (“NOI”)
  3. Activation of a Local Impact Committee in Oneida County (including for example, the Oneida County Mining Oversight and Local Impact Committee commencing its activities as a Local Impact Committee under Wis. Stats. s. 293.33)
  4. Filing of County Mining Permit Application and DNR Mining permit application (simultaneous filing of both applications is required; any subsequent filing of additional information or amendments to the DNR Mining Permit Application shall also be filed with the County).
  5. DNR Review of completeness of DNR Mining Permit application and possible request for additional information
  6. County Planning and Development Committee reviews County Mining Permit application.
  7. Environmental Impact Report (“EIR”) (optional, prepared by applicant; if prepared would be submitted to DNR and County)
  8. DNR prepares and provides to the County and affected towns the Draft Environmental Impact Statement (“DEIS”), draft approvals, draft mining permit and summaries of DNR’s analysis of the approval and proposed mining operation
  9. DNR starts the 45-day public comment period
  10. County reviews DEIS and materials released by DNR and prepares to comment
  11. County Planning and Development Committee holds public hearing on DEIS and draft DNR materials
  12. County Planning and Development Committee determination of completeness of County Mining Permit Application
  13. County Planning and Development Committee prepares and delivers written comments to County Board for consideration and submittal to DNR before close of DNR 45-day comment period
  14. Notice of DNR Public Hearing Regarding Permit Issuance
  15. Notice of County Board Public Hearing on proposed Local Agreement(s)
  16. DNR holds public hearing on mine permit application and issuance
  17. DNR reviews record of Public Hearing and responds to hearing comments
  18. Public Hearing regarding proposed Local Agreement(s)

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19. County Board decides to award or deny proposed Local Agreement(s) to which the County is a party
20. Notice of final County Board Public Hearing on Local Agreement(s) and effect on County Mine Permit
21. County Board Decision on Local Agreement(s) and certification of same to Zoning Administrator
22. Zoning Administrator issues Mining Permit if applicant has met all standards, including required Local Agreement
23. DNR Decision Document and Environmental Impact Statement (prepared by DNR)
24. Commencement of Mining Operations, beginning with mine construction
25. Reclamation Commences and is Completed
26. Closure of Mine
27. Long Term Monitoring
28. DNR Issues Partial and/or Full Certificate of Completion
29. County issues Certificate of Completion
30. Continuance and phased release of Financial Assurance(s)
31. Final Release of Financial Assurance(s)

**H. Exploration.**

1. Permit Required. Exploration is a permitted use subject to review by the Planning & Development Committee that may be allowed in the following zoning districts: District 1-A Forestry; District 8 Manufacturing and Industrial; and District 10 General Use. No person may engage in exploration without securing an exploration permit issued pursuant to this ordinance. A person's application for and acceptance of an exploration permit shall constitute the Exploration Permit holder's binding and irrevocable consent to allow the County to enter any of the Exploration Permit holder's exploration sites in Oneida County at any time for purposes of inspection.
2. Review and Processing of Permit Applications.
  - a. The applicant shall submit an exploration permit application meeting the requirements of this section.
  - b. The application shall be made on an application form provided by the County and shall include all indicated information.
  - c. The form shall be accompanied by a copy of the applicant's complete submittal provided to the DNR to obtain a state exploration license, along with the applicant's written certification that the materials provided are a true, complete and correct copy of the materials submitted to DNR as application for state exploration license as required by Wis. Stat. Ch. 293.

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- d. The application form shall be accompanied by payment of the required fee. The fee for an exploration permit shall be \$1,500.00 per year for the duration of exploration activities, to be paid annually on or before the anniversary date of the application.
3. Notification Requirements. The holder of any Exploration Permit issued by Oneida County shall notify the County in writing, as required in this section, at least ten days prior to commencement of the earlier of preparing any location to serve as a drilling site or commencement of drilling in Oneida County. The notification required by this section shall include the following:
  - a. Copies of any notices of intent to drill provided to DNR under Wis. Stat. Ch. 293 or any rule promulgated thereunder;
  - b. A list of all local and state permits and approvals in effect to allow the intended exploration to proceed;
  - c. An exploration plan as set forth below, provided that where the information required is duplicative of documents filed with DNR, those material may be provided by cross references:
    - (1) Identity of the owner of land on which any drilling site is located;
    - (2) Certification of legal ingress and egress to and including the lands to be explored;
    - (3) Type and distance of nearest water body, including lakes, streams, floodplains and wetlands, to drilling location;
    - (4) Type of equipment or machinery to be used;
    - (5) Time frame for exploration, drillhole abandonment and reclamation in accordance with applicable permits, approvals and applicable provisions of the Wisconsin Administrative Code.
  - d. A schedule of financial assurances and certification that all such assurances will remain in effect for the duration of exploration from commencement of drilling through completion of drill site reclamation. 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 Planning and Development Committee but no less than \$5,000,000.00;
  - e. A description of intended methods for proper segregation, handling, storage and disposal of all waste materials produced in the process of exploration.
4. Further Notifications. The Exploration Permit holder shall provide the County with copies of any reports and forms pertaining to



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drillhole abandonment and to drilling site reclamation that are provided to DNR under Wis. Stat. Ch. 293 or any rule promulgated thereunder, within 5 business days of providing any such information to DNR.

5. Approval Standards.
  - a. The exploration activities shall be designed, constructed and operated in accordance with all applicable standards of the DNR, including both statutory and administrative code standards.
  - b. The exploration activities as proposed, including reclamation, 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 the information contained in its application materials is true and correct.
6. 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. Financial assurance of types and amounts pledged have not been obtained or maintained as certified.
7. Penalties. The penalty for violation shall be levied against the permit holder, or the violator if there is no permit, and shall consist of a forfeiture equal to the County's cost of enforcement plus the cost to reclaim any exploration sites, dispose of exploration wastes, and remedy any damage caused by exploration activities, including environmental restoration and natural resource damages.

**I. Bulk Sampling.**

1. Permit Required. Bulk sampling shall be allowed, subject to review and approval by the Planning and Development Committee, as a permitted use in each zoning district where nonferrous metallic mining is a permitted use, provided all standards are met for both the proposed extraction and the proposed reclamation. A County bulk sampling permit and a state bulk sampling license are required to undertake bulk sampling for nonferrous metallic minerals in Oneida County. Bulk Sampling includes the removal of overburden, sand, gravel, decomposed or solid bedrock and the land disturbing activities incidental to such removal, including the construction of roads and the installation of equipment and machinery to be used in the bulk sampling operation. The County

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bulk sampling permit and reclamation permit shall be issued upon completion of the following requirements:

- a. Notice of Intent to Perform Bulk Sampling. Within two business days of providing a bulk sampling plan to the DNR a person intending to perform bulk sampling in Oneida County shall submit written notification of such intent to the County Zoning Administrator. Such notification shall be accompanied by a fee in the amount of \$5,000.00 and the applicant's certification that the information contained in its application materials is true and correct. If the fee paid is insufficient to cover the County's actual and anticipated costs to administer this section, the County shall request, and the applicant or permit holder shall promptly pay, one or more additional fees in the amounts specified by the County.
- b. Bulk Sampling Plan. The notice of intent to perform bulk sampling shall include a copy of the bulk sampling plan submitted to DNR, less any information in the plan that is entitled to protection as a trade secret, as provided in Wis. Stat. s. 134.90(1)(c), which shall be omitted or redacted from the materials before submittal to the County. Submittal of the bulk sampling plan or any other notice of intent materials to the County shall constitute the submitter's full, unconditional and irrevocable waiver and release of all claims involving trade secrets or breach of confidentiality that otherwise could be brought against the County.
- c. Supplementary Materials. If not included in the state bulk sampling plan, the following materials shall be submitted with the notification of intent:
  - (1) A map identifying all waste sites, access routes and haulage roads to be used in or constructed for the bulk sampling operation.
  - (2) A narrative and map identifying and describing the source, quantity, handling, treatment and disposition of water to be diverted, used, withdrawn, consumed or discharged as part of the bulk sampling operation.
  - (3) A narrative and map identifying and describing the location and nature of any waste storage and treatment facilities to be used in conjunction with the bulk sampling operation.
  - (4) An endangered and threatened species review and survey report and plan of the proposed bulk sampling operation site and surrounding area within 300 feet.
  - (5) A cultural and historical resources review and survey report and plan of the entire area to be disturbed and the surrounding area within 50 feet of area to be disturbed.

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- (6) The types and amounts of financial assurances proposed to be provided to the DNR.
  - (7) A schedule of calculations providing full and itemized details showing why the operation will not result in displacing more than 10,000 tons of materials per mining site.
  - (8) A schedule of calculations providing full and itemized details showing why the proposed financial assurances will be sufficient to complete all necessary reclamation activities should the operator fail to initiate or satisfactorily complete said reclamation activities.
  - (9) A reclamation plan meeting the standards and requirements set forth in Oneida County Zoning Ordinance sections 22.05 or 22.10, which shall apply to all bulk sampling proposals, operations, sites and reclamations.
2. Applicable Setbacks. Bulk sampling is prohibited in any areas where nonferrous mining is prohibited, including within any areas prohibited in Wis. Admin. Code, NR 132.18, unless an exemption is granted by DNR. The areas include both the above-ground portion and the underground portion extending vertically from the site boundaries within the specified setback areas as follows:
  - a. Any area designated as unsuitable as described in Wis. Admin Code NR 132.03(25)(a)(b);
  - b. Within 1,000 feet any navigable lake, pond, or flowage;
  - c. Within 300 feet of any navigable river or stream;
  - d. Within a floodplain;
  - e. Within 1,000 feet of the nearest edge of the right-of-way of any of the following: any state trunk highway, interstate or federal primary highway; the boundary of a state public park; the boundary of a scenic easement purchased by the DNR or the Department of Transportation; the boundary of a designated scenic or wild river; a scenic overlook designated by the department by rule; or a bike or hiking trail designated by the United States Congress or the Wisconsin Legislature; unless, regardless of season, the site is visually inconspicuous due to screening or being visually absorbed due to natural objects, compatible natural plantings, earth berm or other appropriate means, or unless, regardless of season, the site is screened so as to be aesthetically pleasing and inconspicuous as is feasible;
  - f. Within wetlands, to the extent regulated under Wis. Stat. ss. 293.13(2)(c)8 and 281.36 or any other applicable source of regulation.
3. Prohibited Areas. Bulk sampling activities are prohibited within any of the following described areas unless it is determined by the Planning and Development Committee that the activity will not have an adverse impact upon the described area. The areas include

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both the above-ground portion and the underground portion extending vertically from the bulk sampling site boundaries within the specified setback areas as follows:

- a. 800 feet of any land owned by a city, village or town, excluding road right of ways;
  - b. 800 feet of any residential structure;
  - c. 650 feet of any non-residential structures;
  - d. 1,200 feet of any water well used for potable water.
4. Buffer Zones. A 500 foot vegetated buffer zone shall be established and maintained from the boundaries of the bulk sampling site, except for identified haulage ways. 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 bulk sampling site. The buffer zone is to remain during active bulk sampling and for a period of 20 years following completion of bulk sampling reclamation unless an alternate use is approved by the County as part of the bulk sampling reclamation plan, or as provided in the mine reclamation plan if the site becomes part of a nonferrous metallic mining operation.
5. Financial Assurances.
- a. The supplemental operational plan and reclamation plan shall include financial assurances consistent with Oneida County Non-Metallic Reclamation Ordinance section 22.06 and sufficient to pay for all reclamation activities including site reclamation, damage to property, damage to natural resources or liability for environmental pollution.
  - b. The County shall be named as an additional insured on any insurance policy and as an additional beneficiary on any bond or other security applicable to the bulk sampling.
6. Penalties.
- a. Bulk Sampling Without Permit. The penalty for bulk sampling without a County bulk sampling permit shall be shut-down of the bulk sampling operation; forfeiture of any mineral, rock or other earth materials extracted without permit; a fine in the amount of the County's estimated cost to reclaim the site; a penalty of \$10,000 to \$50,000 per day, applied from commencement of the bulk sampling operation until the site reclamation is complete and; the County's costs of enforcement. These penalties shall be in addition to any fine or penalty for any other violations committed in conduct of the bulk sampling.

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- b. Bulk Sampling Not Described In Approved Plan. The penalty for performing bulk sampling other than as described in a bulk sampling plan as noticed to the County and approved by the DNR is all of the following: forfeiture of the County bulk sampling permit; forfeiture of any bond or cash deposit used to satisfy any requirement for financial assurance pertaining to bulk sampling or reclamation of a bulk sampling site; a fine equal to the amount by which the projected cost to reclaim the site exceeds the available financial assurance; and the County's costs of enforcement. These penalties shall be in addition to any fine or penalty for any other violations committed in conduct of the bulk sampling. In calculating the fine for the cost of site reclamation, the calculated cost of reclamation shall be offset by the amount of the actual proceeds of any financial assurance provided by the operator that are paid toward the reclamation.
7. Permit. Upon the County's determination that the application is complete, the applicable standards have been met, and the financial assurances are reasonable in type and amount as supported by appropriate calculations, the County will issue the bulk sampling permit. No County bulk sampling permit shall be effective or otherwise valid for use until the operator has received a state bulk sampling license for the same bulk sampling activity.

**J. Notice of Intent to Collect Data or Apply for Mine Permit.**

1. At the time a person provides written notice to DNR of either intent to apply for a prospecting or mining permit or intent to gather data to support an application to the DNR for prospecting or mining permit with respect to any land in Oneida County, such person shall provide written notice to the Zoning Administrator for Oneida County identifying the applicant's name and contact information, estimated time frame for completing any proposed pre-application data gathering, estimated time frame for submitting a DNR mining permit application, location and probable extent of potential mining site, statement regarding likely mining methods will include underground, open pit or other methods.
2. A notice of intent shall include all materials provided in writing to the DNR, including the initial and all supplemental submittals, except those materials the DNR is obligated to hold confidential shall not be provided to Oneida County.
3. A notice of intent shall be accompanied by payment in the form of a check or money order made payable to Oneida County, Wisconsin in the amount of \$5,000.00, which shall serve as the initial review fee. The person providing notice of intent is obligated to reimburse Oneida County upon demand for the actual and reasonable

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expenses incurred by Oneida County in administering its regulations and participating in the state regulatory process with respect to the notice of intent including, without limitation, the County's costs of participating in any local impact committees formed and public hearings held with respect to the notice of intent, and the cost of expert advice rendered to assist the County in administering its regulations with respect to the notice of intent.

4. The County shall track and account for all its expenses and costs incurred as a result of the notice of intent and shall invoice the person providing notice of intent on a periodic basis, but not less than every 30 days, and the person providing notice of intent shall pay each invoice in full within 15 days of receipt.
5. Failure to comply with the requirements of this section shall be grounds for denial of any zoning permit requested by the person providing the notice of intent, by any person affiliated with the person providing the notice of intent, or with respect to any portion of the proposed mining site identified in the notice of intent.

**K. Local Agreement Required.**

1. Local Agreement Required. The County Board may not approve, and the County may not issue, any County Mining Permit until, in accordance with this section, two-thirds (2/3) of the County Board has approved the County Mine Permit by a simple majority, and the County is party to a fully executed and binding local agreement with the applicant for County Mine Permit.
2. Mining Impact Committee to Serve as Local Impact Committee. As soon as notice of intent has been filed under Wis. Stat. s. 293.31 or pursuant to this Ordinance, the Mining Impact Committee shall serve as the Local Impact Committee for Oneida County for the purposes enumerated in Wis. Stat. s. 293.33 and in addition have the responsibilities as may be assigned to it by the County Board. The Mining Impact Committee shall serve as a joint committee under Wis. Stat. s. 293.33 (2), unless no other government eligible to form a local impact committee under Wis. Stat. s. 293.33 joins or cooperatively designates the County Local Impact Committee as its local impact committee, in which case the County Local Impact Committee shall be and serve as a separate committee under Wis. Stat. s. 293.33 (1). If the County Board designates the Mining Impact Committee to serve as a joint committee under Wis. Stat. s. 293.33 (2), at the discretion of the County Board, the County Board may designate another committee to serve as the separate local impact committee under Wis. Stat. s. 293.33 (1) in addition to the joint local impact committee.

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3. Negotiating Process.
  - a. All conditions established pursuant to this ordinance may be subject to one or more local agreements negotiated by the Mining Impact Committee and signed by the County pursuant to Wis. Stat. s. 293.41.
  - b. In carrying out their activities with respect to local agreements, the County Board and Mining Impact Committee shall abide by the requirements of the Wisconsin Open Meetings Law, Wis. Stat. s. 19.81 et seq.
4. Approval Process.
  - a. Governing Body. The County Board is the governing body for the purposes of approving a local agreement under Wis. Stat. s. 293.41 to which the County is a party.
  - b. Public Hearing. The County Board shall not approve a local agreement until after holding a public hearing which is duly noticed as a class 2 notice under Wis. Stat. s. 985.
  - c. Other Governments. Any local agreement to which the County is a party must also be approved by the governing body of any town, village, city or tribal government that is also a party, which approval may only be provided following public hearing duly noticed as a class 2 public notice under Wis. Stat. s. 985.
5. Timing.
  - a. No local agreement shall be approved for public hearing under Wis. Stat. s. 293.41 until the applicant has filed all applications for all necessary approvals, County Mining Permits 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 with primary responsibility for issuing the respective permits and approvals and the applicant has filed the Environmental Impact report under Wis. Stat. s. 23.11 relating to any state permit applications.

Note (1): There is no triggering event or decision rendered by the DNR which certifies that an application for a mining permit is “deemed complete.” The application is deemed complete at the time that the comment period has expired and further information has not been requested by the DNR.

Note (2): It is the intent of the County to commence communication and negotiation of local agreements with the applicant any time after the filing of the Notice of Intent to collect data or apply for a mining permit from the DNR. The County will not approve any local agreements until after the applicant has

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submitted all permit application information required by the DNR and the County.

- b. A local agreement pursuant to Wis. Stat. s. 293.41, either individual between Oneida County and the applicant or joint between Oneida County, the applicant and one or more other affected units of government, shall be complete and fully executed by all intended parties prior to the issuance of a County Mining Permit.
6. Non-Applicability Provisions.
- a. The local agreement may not declare any portions of this ordinance non-applicable to a nonferrous metallic mining operation or include variances from this ordinance except upon an affirmative vote of a majority 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. Any exceptions, variances, or rezoning must comply with federal and state law.
  - b. A local agreement may include the right to reopen and modify the local agreement after it has been approved under conditions specified in the local agreement. In such a case, the agreement shall be modified in accordance with the approval process set forth above except that any vote to reopen and modify must be made by a two-thirds (2/3) vote of the County Board.

**L. County Mining Permit Required.**

1. The requirements of Section 9.61 of Article 6 of Chapter 9 of the Oneida County General Code of Ordinances (Chapter 9.61 or “this section”) apply to any development and operation of nonferrous metallic mining sites within towns that have adopted Chapter 9.61, and the operators of any such sites, effective upon passage and publication according to law.
2. No person or business entity may commence construction or reclamation of a nonferrous metallic mine or conduct nonferrous metallic mining or processing of nonferrous metallic minerals in Oneida County unless in conformance with a valid nonferrous metallic mining permit (“County Mining Permit”) issued by the County pursuant to and in conformance with Chapter 9.61.
3. A County Mining Permit shall not be issued by Oneida County unless in accordance with this section and the General Requirements of Chapter 9.61 all listed requirements are met, including the conditions, restrictions, prohibitions and limitations on mine location, construction, operation, and reclamation and method of storage and disposal of mining wastes, financial assurance and



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any other listed requirements, all as necessary to achieve the intent of Chapter 9.61.

4. Conditions established by the County Mining Permit pursuant to Chapter 9.61 must be met at all times or the applicant may be found in violation and be subject to forfeitures, penalties, permit suspension or revocation or other enforcement provided herein.
5. A County Mining Permit issued pursuant to Chapter 9.61 shall become effective on the date the applicant is issued a nonferrous metallic mining permit by the State of Wisconsin (“State Mine Permit”) for the identical mining site.
6. Any County Mining Permit issued pursuant to Chapter 9.61 shall be in addition to any local agreement entered into by the County and the applicant. Local agreements executed by Oneida County may address or supersede conditions set forth herein.
7. Any County Mining Permit issued pursuant to Chapter 9.61 shall be in addition to any other state, federal or local permits, licenses or approvals necessary for any mine construction or any aspect of the mining operation.

**M. Application Requirements for Nonferrous Metallic Mineral Mining Permit.**

1. An application for a County Mining Permit shall be filed with the Zoning Administrator contemporaneously with the filing of a DNR Mining Permit application.
2. The application submitted for a County Mining Permit for a nonferrous metallic mining permit shall not be determined to be complete, unless the following is submitted:
  - a. The proper application fee, the applicant’s certified statement that the information provided in its application is true and correct and an electronic copy and one paper copy of all required application materials;
  - b. Copies of all deeds, leases and landowner agreements for proposed mine site;
  - c. Complete application for mining pursuant to Wis. Stat. s. 293.37 and Wis. Admin. Code NR 132.06;
  - d. All State and Federal documents with respect to the proposed mining permit and the following information:
    - (1) Environmental Impact Report, if prepared with respect to the proposed mining operation.
    - (2) Environmental Impact Statement pursuant to Wis. Stat. s. 293.39.
    - (3) Mining Operational Plan pursuant to Wis. Admin Code NR 132.07.

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- (4) Plan of operation for any mining waste site(s) to be operated as part of the mining operation, including the long term maintenance plan and proof of financial responsibility pursuant to Wis. Admin. Code NR 182.
- (5) Reclamation Plan pursuant to Wis. Admin Code NR 132.
- (6) Hydrologic study which identifies and characterizes groundwater resources that potentially could be impacted by the mining activity, including all accessible public and private wells subject to depletion or contamination.
- (7) A map and aerial photo identifying the proposed locations of existing and proposed permanent and temporary structures showing setback distances to property boundaries, right of ways, potable wells and private onsite wastewater treatment systems.
- (8) A description of the proposed primary travel routes to transport material to and from the mining site, type of vehicles used in transport, average loaded weight of vehicle, and the anticipated schedule of travel to be used for transporting. The description shall identify the following information:
  - (a) The anticipated need for road modifications resulting from the likely mine-related traffic impacts, including both primary and secondary impacts and shall fully describe the existing reasonably foreseeable mine-related changes to traffic patterns, traffic volume, the class of roads associated with those patterns, the existing and preferred bearing capacity of said roads and any advisable load-related or traffic volume-related needs and restrictions.
  - (b) All reasonably foreseeable road construction and maintenance needs arising in Oneida County and affected towns from operation of the proposed mine and reasonably foreseeable secondary impacts of the mining operation which may result in the demand for additional road improvements, including, but not limited to, transport of materials and equipment to and from the mining site.
- (9) A description of the proposed frequency and amount of blasting, if any, to be used in the operation.
- (10) A description of measures to be taken to control dust including during mining, stockpiling, and on haul roads (internal and external).
- (11) A description of measures to be taken on the mining site with vegetative or other screening devices to screen or buffer the operation from view from adjacent properties.

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- (12) A description of proposed lighting to be used during the mining operation; including location, type, style and intensity of lighting to be used and its power source(s).
- (13) A description of security and safety measures including any proposed fencing, gating, or signing.
- (14) A description of the anticipated hours of operation including startup, shutdown, and maintenance of all equipment.
- (15) A description of how and where the ore extracted will be processed.
- (16) If for any reason a mining permit is not required by the DNR or if the application requirements for a State of Wisconsin mining permit change substantially from those in effect on the effective date of this chapter, the applicant shall provide the County with all of the information, materials and application content that would be required to be provided to the DNR under the mine permit application process of Wis. Stat. s. 293.37.

**N. General Requirements for Nonferrous Metallic Mining Operations.**

- 1. All mines permitted pursuant to this section shall be located, constructed, operated and reclaimed to protect and promote the public health, safety, convenience, morals and general welfare and accomplish the purposes set forth under Wis. Stat. s. 59.69(1).
- 2. Nonferrous metallic mining may be permitted by the Oneida County Board in accordance with section 9.61 of this code as a permitted use in the following districts: District 1-A Forestry; District 8 Manufacturing and Industrial; and District 10 General Use. The powers of the County Board include, but are not limited to, establishing conditions which regulate the duration, transfer or renewal of the permit.
- 3. The applicant for a mining permit shall demonstrate that they have applied for all necessary approvals, licenses and permits for the proposed project from the DNR (including, but not limited to, those under Wis. Stat. ss. 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 mining operation.
- 4. Mining activities are prohibited within any areas prohibited in Wis. Admin. Code NR 132.18, unless an exemption is granted by DNR. The areas include both the above-ground portion and the underground portion extending vertically from the site boundaries within the specified setback areas as follows:
  - a. Any area designated as unsuitable as described in Wis. Admin. Code NR 132.03(25)(a)(b);
  - b. Within 1,000 feet any navigable lake, pond, or flowage;

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- c. Within 300 feet of any navigable river or stream;
  - d. Within a floodplain;
  - e. Within 1,000 feet of the nearest edge of the right-of-way of any of the following: any state trunk highway, interstate or federal primary highway; the boundary of a state public park; the boundary of a scenic easement purchased by the DNR or the Department of Transportation; the boundary of a designated scenic or wild river; a scenic overlook designated by the department by rule; or a bike or hiking trail designated by the United States Congress or the Wisconsin Legislature; unless, regardless of season, the site is visually inconspicuous due to screening or being visually absorbed due to natural objects, compatible natural plantings, earth berm or other appropriate means, or unless, regardless of season, the site is screened so as to be aesthetically pleasing and inconspicuous as is feasible;
  - f. Within wetlands, to the extent regulated under Wis. Stat. ss. 293.13(2)(c)8 and 281.36 or any other applicable source of regulation.
5. Mining activities are prohibited within any of the following described areas unless it is determined by the Planning and Development Committee 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 mining site boundaries within the specified setback areas as follows:
- a. 800 feet of any land owned by a city, village or town, excluding road right of ways;
  - b. 800 feet of any residential structure;
  - c. 650 feet of any non-residential structures;
  - d. 1,200 feet of any water well used for potable water.
6. Buffer Zones. A 500 foot vegetated buffer zone shall be established and maintained from the boundaries of the mining site, except for identified haulage ways. 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 issuance of certificate of completion by DNR of mining unless an alternate use is approved by the County as part of the reclamation plan.
7. Mine Reclamation Standards. The standards set forth in Wis. Admin. Code NR 132.07(4)(g) and NR 132.08 shall apply to nonferrous metallic mineral mining activities in Oneida County.
8. Location and Operation. A nonferrous metallic mineral mining project shall be located, designed, constructed and operated in such a manner so as to prevent any surface or subsurface

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discharge from the facility into navigable waters or groundwater that would cause a violation of any applicable water quality standard contained in or promulgated pursuant to Wis. Stat. Chs. 160, 281, 283 and 293, or constitute an unlawful discharge of any hazardous substance under Wis. Stat. Ch. 292 or any other State, Federal or local law.

9. Financial Assurance. Every County Mining Permit shall require the permit holder to maintain in constant effect the financial assurances required by this ordinance in addition to the financial assurances required for the State Mine Permit. Any lapse or shortcoming in type or amount of any financial assurance required by the County or State shall be grounds for revocation of the County Mining Permit. The required financial assurances shall survive any transfer of ownership of the County Mine Permit, until specifically released by the County. Any insurance policies used by the applicant to satisfy any financial assurance requirement shall name the County and other political subdivisions affected by the mining operation as beneficiaries or additional insureds, in kinds and amounts as set forth in section P, below. Financial assurances for County Mining Permits shall include:
  - a. General Liability Insurance.
  - b. Pollution Liability Insurance.
  - c. Other Financial Assurance(s) Required by DNR
  - d. Groundwater Trust Fund.
  - e. Property Value Compensation Fund.
  - f. Road Damage Compensation Trust Fund.
  - g. Political Subdivisions Compensation Fund
10. Control of Environmental Pollution. The Applicant shall comply with the standards of Wis. Stat. Chs. 160, 280, 281, 283, 285, 291, 292 and 293 and related Wisconsin Administrative Codes including, but not limited to, Wis. Admin Code Chs. NR 102, 103, 105, 132, 135, 140, 142, 151, 182, 200 et seq., 300 et seq., 500 et seq., 660 and 700 et seq.; and with any applicable standards of Wis. Stat. Ch. 289.
11. Groundwater Protection. The Applicant shall comply with all applicable standards for protection of groundwater quality and quantity set forth in and established pursuant to the Wis. Stat. Chs. 160, 289 and 293 and those set forth in Wis. Admin. Code, Chs. NR. 130, 131, 132, 140 and 820. Should for any reason the standards under Wis. Admin Code Ch. NR 132, not apply, the groundwater shall be protected in accordance with the standards of Wis. Admin Code Ch. NR 140.
12. Surface Water Protection. The Applicant shall comply with the requirements of:

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- a. The Non-Agricultural Performance Standards set forth in Wis. Admin. Code Ch. NR 151.
  - b. The water quality standards set forth in Wis. Admin. Code Chs. NR 102, 103, 104 and 105.
  - c. The provisions of Wis. Admin. Code Chs. NR 132, 182, 207, 216, 269, and 270.
  - d. 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 and/or state regulations, including but not limited to those under Wis. Stat. Ch. 30 and Wis. Admin. Code Chs. NR 151, 216 and 132.
  - e. All activities in or near navigable waters shall be in accordance with all applicable federal or state approvals, including but not limited to those under Wis. Stat. Chs. 30 and 31, and 33 U.S.C. Section 1344 and all applicable shoreland, shoreland-wetland, and floodplain zoning ordinances.
13. Wastewater Discharges. The Applicant shall comply with the standards of all wastewater discharges to surface or ground water in accordance with all applicable federal or state approvals; including but not limited to those under Wis. Stat. Chs. 160, 281, 283, 289, 292 and 293.
14. Water Supplies. The Applicant shall comply with the standards of Wis. Stat. Chs. 160, 293.65, and 30, 31, 280, and 281. any related Wisconsin Administrative Codes and any related Federal laws.
15. Hydrologic Studies. The results of any hydrologic studies conducted in furtherance of any Environmental Impact Report or otherwise provided to the DNR shall be provided to Oneida County; applicant shall pay the cost of a licensed professional hired by the County to interpret the results.
16. Well Monitoring. The Applicant shall, prior to commencement of construction of any mine, and during the period of operation of any mine, and for forty (40) years after completion of mine reclamation, pay the cost of well monitoring. Periodic well monitoring shall occur for all private and public wells, subject to, or potentially at risk of, depletion or contamination, as identified by a hydrologic study approved by the County. The identified wells shall be monitored beginning before the onset of mine development and mining, in order to provide baseline data concerning quantity and quality of water adequate for all purposes, including, but not limited to, determining the validity of any well damage claim. The well network, individual well locations, monitoring intervals and analytical parameters shall be established before permit approval and shall be included in the permit as a condition of permit validity and any failure to monitor shall be sufficient grounds for permit

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- revocation. The well monitoring required under this chapter shall be performed by an independent licensed professional hired by the County. All monitoring data shall be a public record.
17. Air Quality Standards. The Applicant shall comply with the standards of Wis. Admin. Code ss. NR 400 et seq.
18. Hazardous Waste Standards. The Applicant shall comply with the standards of Wis. Admin Code NR 662 et seq.
19. Solid Waste Standards.
- a. The Applicant shall comply with the standards set forth in and established pursuant to Wis. Stat, Chs. 289 and 293 and the standards set forth in Wis. Admin. Code Chs. NR 182, 528, and 538.
  - b. All solid and hazardous waste which is not subject to the mine permit issued by the DNR shall be disposed of at a solid waste or hazardous waste facility.
20. Traffic Safety, Road Maintenance and Infrastructure. All studies, plans, reports and analyses regarding roads, traffic, traffic safety, drainage, utilities, and public utilities shall be in conformance with Wisconsin Department of Transportation standards.
21. Mine Safety and Security. The applicant shall comply with the requirements of Wis. Admin. Code NR 132.07(3)(i) and (j), NR 132.07(4)(m), and NR 132.17(2).
22. Prevention of Adverse Impacts.
- a. The Applicant shall comply with the standards of Wis. Admin. Code NR 132.08(2)(c).
  - b. The applicant shall not allow adverse impacts during mining operations, or 40 years following issuance by DNR of a certificate of completion of mining, including, but not limited to those situations set forth in Wis. Admin. Code NR 132.10(1)(j), as follows:
    - (1) Significant landslides or substantial deposition from the proposed operation in stream or lake beds;
    - (2) Significant surface subsidence which cannot be reclaimed;  
or
    - (3) 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;
    - (4) Dwellings;
    - (5) Public buildings and land;
      - (a) Schools;
      - (b) Churches;
      - (c) Cemeteries;
      - (d) Commercial or institutional buildings;
      - (e) Public roads; or

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- (f) 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.
23. Limitations on Blasting.
- a. The applicant shall comply with the requirements of Wis. Admin. Code NR 132.07(5) and SPS Chapter 307.
  - b. Blasting hours may be regulated by the conditions placed on the County Mining Permit.
  - c. All blasting shall be done in compliance with State and Federal guidelines and requirements, including Wis. Admin. Code SPS 307.
  - d. All blasting must be done by a state licensed and certified blaster, who shall have a certificate of liability or proof of liability insurance.
  - e. Blasting logs shall be provided to the County upon written request within 72 hours, excluding weekends, and legal holidays. Blasting logs shall include but not limited to, the date, time and location of any blasting activities.
24. Public Lands.
- a. Notice and Consultation. The County shall provide notice of any application for 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, to the governmental body or administrator responsible for each such parcel or tract of land, and such governmental body or administration shall be consulted by the County Board before action is taken on the County Mining Permit and/or exemption.
  - b. Consistency with Public Purpose. Before a County Mining Permit is issued it shall be determined by the County 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.
25. Local Agreement. A local agreement, pursuant to Wis. Stat. 293.41, between Oneida County and the applicant shall be in effect prior to the issuance of a County Mining Permit.
26. Effective Date of County Mining Permit. The County Mining Permit shall take effect on the same date that the State Mining Permit becomes effective.



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O. **Financial Assurance and Responsibility.** The period of the financial assurance is dictated by the period of time required to reach milestones as set forth below. The financial assurances set forth below shall survive any transfer of ownership and/or the County Mining Permit, until specifically released by the County.

1. General Liability Insurance.

Applications for a mining permit shall be accompanied by a copy of a certificate of insurance, as required by the DNR, certifying that the applicant has in force general liability insurance policy issued by an insurance company authorized to do business in Wisconsin or evidence that the operator has satisfied state or federal self-insurance requirements. Insurance shall cover all exploration, bulk sampling and mining activities of the applicant and afford personal injury and property damage protection. Insurance provisions shall remain in force throughout the mining and reclamation operations and provide coverage of operations in the United States and shall be consistent with current Oneida County insurance minimum coverages. In addition, applicant shall demonstrate pollution impairment liability coverage of not less \$10,000,000 per claim and \$10,000,000 in aggregate, provided said individual and aggregate limits and policies shall apply only to the mining operation permitted by Oneida County. Oneida County shall be named as an additional insured on all certificates used to comply with this section.

Note: Oneida County Minimum Coverages, as of April 2018, are:

- Wisconsin Statutory Workers Compensation Coverage Minimums.
- General Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and Property Damage.
- Professional Liability Coverage, \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- Automobile Liability \$1,000,000 per occurrence and in aggregate for bodily injury and property damage.
- Excess Liability Coverage, \$1,000,000 over the General Liability and Automobile Liability Coverage.
- If aircraft are used in conjunction with this project, \$2,000,000 per occurrence and in aggregate for bodily injury and property damage.

2. Applications for a mining permit shall be accompanied by a copy of all other proof of financial assurance, as required by the DNR, pursuant to Wis. Stat. s. 293.51.

3. Groundwater Trust Fund.

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- a. The applicant shall make a deposit into an interest-bearing trust account for each well potentially impacted, as identified by the hydrologic study, in the amount of \$15,000.00. The original deposit, any additional deposits, as requested by the Local Impact Committee, pursuant to par. e, below, and other accumulated interest shall remain in the trust account for a period of 100 years after certificate of completion, issued by the DNR. If no outstanding claims are pending at the end of the 100-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 identified by Oneida County.
  - b. The applicant shall pay the cost for the County to monitor all potentially impacted private or public wells as identified by the hydrologic study. The applicant shall also pay the cost of any licensed professional hired by the County to collect and interpret the results.
  - c. The groundwater trust fund shall be used to pay for replacing any contaminated, damaged or depleted wells and/or for providing potable water to any well owner/claimant whose well has been contaminated, damaged or depleted. 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.
  - d. Any person whose well is contaminated, damaged or depleted beyond the identified hydrologic study area may apply for funds for a replacement well or alternate water supply if that person can demonstrate, by the preponderance of the evidence, that the contamination, damage or depletion was due in whole or in any part to the mining operation.
  - e. The Oneida County Local Impact Committee or their designee is designated to supervise and administer the Groundwater Trust Fund. It shall approve of the distribution of monies from said fund to claimants under this subsection. The Local Impact Committee shall be empowered to hold meetings and hire licensed professionals to assist him or her in the proceeds of ascertaining 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 Groundwater Trust Fund shall also be monitored to determine if there are adequate funds to cover actual and/or pending claims. The Local Impact Committee shall request the operator to provide additional funding within 30 days if funding is deemed inadequate.
4. Property Value Compensation Fund.

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- a. The applicant may enter into a property value compensation agreement with any political subdivision where property values are, or are likely to be, impacted by the mining operation.
  - b. The Local Impact Committee for Oneida County or their designee shall negotiate any Property Value Compensation Fund agreements to which the County would be a party, and to supervise and administer any Property Value Fund that is created in lieu of immediate cash payments from the applicant to affected landowners. Any agreements negotiated under this section may only be approved by the County Board, following hearing duly noticed.
  - c. Oneida County, at the cost of the applicant, may hire a licensed independent agent to create a distribution plan for a compensation fund which identifies property whose values have suffered or may suffer a substantial economic impact as a result of mining operations. Criteria to be used for the determination of impact shall come from the Environmental Impact Report and DEIS, and other criteria as determined by the licensed independent agent. Prior to the commencement of any mining, the operator shall compensate those property owners identified in the distribution plan.
5. Road Damage Compensation Trust Fund.
- a. The applicant may enter into a roadway maintenance agreement with any political subdivision whose roads are, or are likely to be, affected by the mining operation.
  - b. The applicant shall fund an irrevocable road damage compensation trust. The applicant shall initially deposit funds in an amount determined by the Local Impact Committee to be the reasonably anticipated cost to construct, maintain, repair and reconstruct all affected public roadways to meet the traffic demands to be caused by the mining operation. The cost projection shall be based on a roadway improvement and maintenance engineering study required by the Planning and Development Committee, at the applicant's expense.
  - c. The Oneida Local Impact Committee or their designee shall negotiate any roadway maintenance agreements to which the County would be a party and supervise and administer the fund. The Local Impact Committee shall approve the distribution of monies from said fund to claimants under this subsection. The Local Impact Committee shall be empowered to hold meetings and hire licensed professionals to assist it in the process of ascertaining the entitlement of the claimant to compensation, the amount of damages, and authorizing disbursements to the claimant. The Local Impact Committee may seek the cooperation and assistance of the County Infrastructure

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Committee and County Highway Commissioner, if any, in planning and undertaking all road studies, planning, construction, maintenance and repair pursuant to the road damage compensation trust. The trust fund shall also be monitored to determine if there are adequate funds to cover actual and/or pending claims. The Local Impact Committee shall request the operator to provide additional funding within 30 days if funding is deemed inadequate.

6. Political Subdivisions Compensation Fund.
  - a. The applicant may enter into a local impact agreement with any political subdivision which is, or is likely to be, impacted by the mining operation.
  - b. Oneida County, at the cost of the applicant, may hire a licensed independent agent to create a distribution plan for compensation to political subdivisions that have suffered or may suffer a substantial economic impact as the result of mining operations. Criteria to be used for the determination of impact shall come from the Environmental Impact Report and Statement, and other criteria as determined by the licensed independent agent. Prior to the commencement of any mining, the operator shall compensate those political subdivisions identified in the distribution plan.
7. Application Fee.
  - a. The application fee for a nonferrous metallic mining County Mining Permit shall be in the amount of \$50,000. This fee will be used as an advance deposit to cover actual costs, described below. The balance of the fee together with any additional payments received from the applicant, less any costs incurred that have been billed by the County, shall be held by the County in a segregated fund until the final billing for actual costs has been paid, at which time any excess funds held in the segregated fund shall be refunded to the applicant. Not less than annually the County shall account for and make public a record summarizing all transactions involving either deposit to or withdrawal from the segregated fund.
8. Actual Costs.
  - a. The applicant for a proposed mining project shall be responsible for all costs reasonably incurred by the County as necessary to: evaluate the operator's application for a County Mining Permit; evaluate any applications for permits required from the State of Wisconsin and the Federal Government to undertake the proposed mining; and participate in any administrative or legislative meetings, public comment opportunities, public hearings and adjudicatory or contested case hearings related to

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such mining project, including the hearings required under this section.

- b. The applicant's responsibility for costs reasonably incurred by Oneida County shall include both before and after the application for the County Mining Permit is filed with the County and for monitoring any such mining project which becomes operational, continuing for the life of the operation and during the 40 years following closure.
- c. Costs under this subsection shall include staff time, travel expense, equipment and material costs, licensed professionals and legal counsel. Such costs shall not exceed those which are reasonably charged for the same or similar services by licensed professionals 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.
- d. The County shall use standard cost and time accounting practices to document its time and expenses in performing any work and purchasing any equipment and services that will be billed to the applicant or charged against the segregated account.
- e. Prior to processing an application for a permit under this section, if the County determines that the cost involved in permit review and approval will exceed \$50,000, the County shall supply the applicant with an estimate of the cost involved in the permit review and approval process.
- f. Costs under this section may be billed to the applicant for reimbursement to the County on a quarterly basis and shall be paid within thirty (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 and deny any permit that has not been issued. A County Mine Permit shall not be issued until any fees incurred prior to issuance have been paid in full.
- g. 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. Any balance would be refunded to applicant.
- h. A condition of any County Mining Permit that is issued shall be the payment of all County costs of administering the permit, in annual installments, based upon estimates to be provided by the County, the first estimate to be provided with the permit and subsequent estimates to be provided on the anniversary date of the permit, each such estimate to be paid in full within 30 days of receipt.

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**P. Environmental Impact Report and Statement.** Oneida County will timely review and comment on any environmental impact report prepared by the applicant and any environmental analysis, draft environmental impact statement and final environmental impact statement prepared by DNR pursuant to Wis. Stat. ss.1.11, 293, and Wis. Admin. Code Ch. NR 150. The Planning and Development Committee will prepare a recommendation for the County Board and the Board will act and timely provide the County's comments to the DNR.

**Q. Inspections and Reports.**

1. Inspections. Upon application for a County Mining Permit, the applicant and property owner are deemed as a condition of application to have consented to allow inspections of the mining site and all mining operations by the County for the purpose of determining compliance with the provisions of this section and the terms conditions of the County Mining Permit. Inspections may occur pursuant to this section upon showing of proper identification, with or without advance notice to the applicant and/or property owner.
2. Reports. Operator shall supply copies of all mine operation reports provided to the DNR until such time that a certificate of completion is issued.

**R. Effective Date of Permit and Commencement of Mining Operations.** The granting of a County Mining Permit shall not be deemed effective until the operator has procured all necessary permits from the state and federal agencies to construct, operate, close, reclaim, and monitor the mining operation; process any ore from the mine in Oneida County; manage and reclaim any mining waste resulting from the mining operation; and provide all financial assurances required by those permits. Construction must be commenced within two (2) years of the effective date of the last state and federal permit issued or the County Mining Permit shall be null and void.

**S. Permit Modification.**

1. The County reserves the right to reopen and modify a County Mining Permit after it has been granted if it is determined, upon the basis of substantial evidence, including evidence presented at state or federal hearings, that mining activity pursuant to the permit would endanger the public health, welfare or safety.

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2. In order to reopen a permit, the County or the County Mining Permit permittee shall identify the specific terms of the permit subject to reopening and file an application for a public hearing with the Planning and Development Committee, which shall hold a public hearing on the matter before making a recommendation to the County Board. The County Board shall hold a public hearing in accordance with the procedures in Chapter 2 of the General Code, before deciding the matter. No modifications to an existing permit shall be made unless supported by the substantial evidence and approved by the County Board.
3. Successors in Interest. In the event one operator succeeds to the interest of another by sale, assignment, lease, or otherwise, the operator holding the County Mining Permit shall notify the Zoning Administrator. Such transfer of ownership shall constitute grounds for the County Board to re-open and/or modify the County Mining Permit to protect the public health, welfare or safety. Any successor acquiring rights of ownership, possession or operation of the permitted mine shall be subject to all existing conditions of the County Mining Permit and any conditions established as a result of County Board action.
  - a. No transfer of the County Mining Permit may occur until the successor has satisfied all financial assurance requirements under this code.
  - b. All forms of financial assurance must name the County as the beneficiary.
  - c. The successor shall also provide proof that it has satisfied all financial assurances required by the DNR.
  - d. The operator holding the permit shall maintain proof of financial assurance until the successor acquiring ownership, possession or operation of the mine obtains County Board approval.
4. In the event the state/federal laws and/or regulations are amended to the extent that the terms and conditions of the County Mining Permit are affected, the applicant shall apply for a modification to the permit within 6 months of the effective date of such amendments.

**T. Violation/Enforcement.**

1. Conducting Metallic Mining Operations without a County Mining Permit are subject to the following:
  - a. After the fact permit application fees; and
  - b. Penalties under section 9.61(V) below and allowed by Statute.
2. Such other and further relief, including but not limited to, equitable relief granted by a court of competent jurisdiction.

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3. Permit Revocation or Suspension. The Zoning Administrator may revoke or suspend a mining permit issued under this section if it is determined that there is substantial evidence that any of the following has occurred:
  - a. Statutes, ordinances, or permit requirements have been violated;
  - b. Financial Assurance has not been provided as required or has lapsed;
  - c. Insurance coverage has lapsed or fallen below required levels;
  - d. Actual costs have not been paid timely upon request for permit processing, administration, monitoring or review;
  - e. Applicant has failed to comply with County, State and Federal Regulations;
  - f. Failure to strictly comply with County, State and Federal laws, regulations or permits;
  - g. The mine is idle for two (2) consecutive years.

U. **Penalties.** Except as otherwise specified herein, any operator violating this section shall, upon conviction, pay a forfeiture of not less than \$1,000 nor more than \$25,000, plus costs per day for each day a violation continues. Forfeitures for second or subsequent offenses shall be not less than \$5,000 nor more than \$50,000 plus costs per day for each day a violation continues.

9.62 MORATORIUM ON BULK SAMPLING. (#9-2018)

A. **Purpose and Intent.**

The purpose of this ordinance is to temporarily impose a moratorium to allow the State of Wisconsin to write administrative code to regulate bulk sampling and allow Oneida County adequate time to study, review, and consider the impacts of 2017 Wisconsin Act 134 as it relates to bulk sampling and amend its ordinances to appropriately protect the public health, safety, and welfare after it learns the scope of regulation under the administrative code. Furthermore, by ensuring all bulk sampling is subject to the same regulation, this moratorium will result in uniformity of regulation of bulk sampling in the County and uniform protections to the public health, safety, and welfare, without precluding any land owner from any other lawful uses of their property.

B. **Authority.**

The Oneida County Board has the specific authority under Wisconsin Statutes including but not limited to §59.02(2) and §59.68 Wis. Stats.



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**C. Adoption.**

This ordinance, adopted by a majority of the Oneida County Board of Supervisors with a quorum present and proper notice having been given, provides for the imposition of a moratorium on bulk sampling, provided that the moratorium does not apply to an applicant who has acquired legally vested rights prior to the adoption of this ordinance.

**D. Definitions.**

1. Bulk Sampling means excavating in a potential mining site by removing less than 10,000 tons of material, including overburden and any other material removed from any portion of the excavation site, for the purpose of obtaining site-specific data to access the quality and quantity of the nonferrous metallic mineral deposits and of collecting data from and analyzing the excavated materials in order to prepare the application for a mining permit or for any other approval. Bulk sampling does not constitute prospecting within the meaning of §293.01(18) Wis. Stats.

**E. Moratorium Imposed.**

The Oneida County Board of Supervisors hereby imposes a moratorium on bulk sampling provided that the moratorium does not apply to an applicant who has acquired legally vested rights to the issuance of a license prior to the adoption of this ordinance.

**F. Duration of the Moratorium.**

This moratorium shall be in effect for eighteen months up to and including January 1, 2020, or until the Wisconsin Department of Natural Resources completes the rule making process regarding bulk sampling.

- 9.63 [Reserved for future use]
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- 9.68 [Reserved for future use]
- 9.69 [Reserved for future use]