

Cottonwood County Ordinance No. 36

MINING, EXTRACTION, AND EXCAVATION

These regulations are adopted pursuant to the authorization and policies contained in Minnesota Statutes Chapter 103 A-I and the Planning and Zoning enabling legislation in Minnesota Statutes Chapter 394.

Subdivision 1. Definitions

Borrow Site: An area outside of a transportation project site and not in a sensitive area from which stone, soil, sand, or gravel is excavated for use at the project site, except the term does not include commercial sources.

County Board: Cottonwood County Board of Commissioners.

Existing Mining, Extraction, & Excavation Operation: Any mining, extraction, or excavation operation in existence at the time of the adoption of Ordinance No.36 dated March 28, 2006, whether permitted or un-permitted.

Grading: To smooth, level or re-arrange the surface or subsurface material to a desired gradient or slope.

Mining, Extraction, or Excavation: The use of land for surface or subsurface removal of sand, gravel, rock, hard rock, soil, or other materials.

Operator: Any person engaged in the business of removing material from the surface or subsurface of the soil, for the purpose of sale, either directly or indirectly, through the use of the material in a marketable product or service.

Person: Any individual, firm, partnership, corporation, organization, trustee, association, or other entity.

Processing: Includes but is not limited to stockpiling of materials, blending of materials; blasting; crushing; screening; washing; scalping; recycling of used aggregate, concrete, or asphalt; concrete and asphalt plants; and dewatering as detailed on application and Conditional Use Permit.

Sensitive Areas: Drinking Water Supply Management Areas (DWSMA), Ten-Year Time of Travel Areas, and One-Year Time of Travel areas as approved by the Minnesota Department of Health (MDH), Calcareous Fens, and other special protection areas or zones that may be delineated by Federal or State mandates.

Topsoil: The surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

Subdivision 2. Purpose

Ordinance No.36 is adopted for the following purposes:

1. Provide for the economic availability and removal of sand, gravel, rock, hard rock, soil, or other materials vital to the continued growth of Cottonwood County.
2. Protect Sensitive areas – Drinking Water Supply Management Areas (DWSMA), Ten-Year Time of Travel Areas, and One-Year Time of Travel Areas as approved by MDH, and other special protection areas or zones that may be delineated by Federal or State mandates.
3. Establish regulations, safeguards, and controls in the unincorporated areas of the County including the unincorporated area of Delft, regarding noise, dust, traffic, drainage, groundwater quality, and other factors which will minimize the environmental and aesthetic impacts on mined or adjacent property.
4. Reduce the potential for pollution caused by wind, soil erosion, and sedimentation.
5. Establishing locations, orderly approval process, and operating conditions under which mining, extractions, or excavation operations will be allowed in the unincorporated areas of the County and to establish conditions which ensure the restoration of mined areas consistent with the existing and planned land use patterns.

Subdivision 3. Scope and Applicability

Ordinance No.36 applies to all land within the unincorporated area of Cottonwood County, including the unincorporated area of Delft. It is not intended by Ordinance No.36 to repeal, amend, or in any way impair or interfere with existing provisions of other laws or ordinances “except those specifically repealed by or in conflict with Ordinance No.36 or with private restrictions placed upon property by deed, covenant, or other private agreement or with restrictive covenants governing the land.

Where Ordinance No.36 imposes a greater restriction upon the land than is imposed or required by such existing provisions of law, ordinance, contract, or deed, the provisions of Ordinance No.36 shall control. In the event of conflicting provisions in the text of Ordinance No.36, or any other County Ordinance, the most restrictive shall apply.

Subdivision 4. Exemptions

Ordinance No.36 does not apply to:

1. Excavations or grading solely for domestic or farm use at that person’s residence or farm.
2. Excavations or grading conducted for landfills, or the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
3. Excavation or grading conducted for preparing a construction site or for building construction purposes to be conducted on the site.
4. Restoration of land following a flood or natural disaster.

5. Nonmetallic mining at sites that affect less than one acre of total area over the life of the mine provided the site is located outside of sensitive areas.
6. Borrow sites as defined in Ordinance No.36 shall not require a Conditional Use Permit provided the site is located outside of sensitive areas.

Subdivision 5. General Provisions

1. No person, firm, or corporation shall hereafter engage in the mining, extraction, excavation, and/or processing of sand, gravel, rock, hard rock, soil, and/or other materials on any land within Cottonwood County without first obtaining a Conditional Use Permit, as regulated in Subdivision 5 of Ordinance No.36.
2. In order for Cottonwood County to grant a Conditional Use Permit for a mining, extraction, or excavation operation or the expansion or change in use of an existing operation, whether under permit or not, all of the following criteria shall be met:
 - a. The operation shall be located in the districts in which it is permitted.
 - b. All other standards for approval of a Conditional Use Permit as contained in the Cottonwood County Zoning Ordinance shall be met.
 - c. The operation shall be consistent with the Cottonwood County Comprehensive Plan and be in compliance with all provisions of Ordinance No.36.
3. **Term.** A Mining, Extraction, or Excavation Conditional Use Permit shall be effective for a period of five (5) years from and after the date of approval, provided the conditions and requirements of the operation and reclamation, as set forth under the land owners/operators application and permit are met. An examination of the premises may be made by the Zoning Administrator or his appointed agent along with the operator, at any time during the term of the operation.
4. **Renewal and Review.** A Conditional Use Permit shall be renewable for a period of five (5) years upon application on a form provided by the Office of the Zoning Administrator and shall be submitted to the Office of the Zoning Administrator a minimum of sixty (60) days prior to the expiration date of the existing permit. With concurrence of the Zoning Administrator and the Planning Commission the permit shall be recommended to the County Board for renewal for a period of five (5) years without requiring a public hearing by the Planning Commission.

If upon review by the Zoning Administrator, Planning Commission, or the County Board, it is determined that the operation is in violation of the conditions or provisions of the Conditional Use Permit or other County Ordinance, a Public Hearing by the Planning Commission shall be held to review the existence of any alleged violations, and the fee for a Conditional Use Hearing shall be paid.

Subdivision 6. Conditional Use Permit Application

An application for a Mining, Extraction, or Excavation Conditional Use Permit shall be filed with the office of the County Zoning Administrator on forms prescribed by the County. The application shall contain the following information:

1. The name, address and signature of the owner(s) of the property.
2. The name, address, and signature of the operator(s).
3. An accurate legal description of the property where the mining, extraction, or excavation shall occur.
4. A map of the property where the mining, extraction, or excavation is to occur that clearly indicates the property lines and the limits of the proposed activity. Topographic data, including contours at 10-foot vertical intervals. Watercourses, marshes, floodplains, wooded areas, rock outcrops, power transmission poles and lines, existing wells, and other significant features shall also be shown.
5. A narrative outlining the type of material to be mined, extracted, or excavated; mode of operation; and an estimate of the amount of material to be removed; plans for blasting; location of settling ponds and outlets; and other pertinent information to explain the request in detail.
6. A narrative outlining the type of processing to be included in the operation.
7. A fee as established by the County Board.
8. A general location map showing the proposed site in relation to any city and/or sensitive area within one (1) mile.
9. A map showing access routes between the property and the nearest arterial road.
10. A map showing location and name of roads or streets, right-of-way width, railroads, and trails on or adjacent to the property.
11. Easements: show widths and identify utility or other purposes on adjacent property.
12. Natural land features showing locations of: watercourses and drainage ways; flood of record; wetlands; sinkholes; basins; and wooded areas.
13. Man-made features: buildings and other structures, wells, dams, dikes, and impoundments of water.
14. Processing areas shall be identified and boundaries shown.
15. Dust control plan.
16. Access road to processing and mining areas shall be shown.
17. Proposed location of principal service or processing buildings or enclosures shall be shown, as well as location of settling basins and process water ponds.
18. The operator shall indicate if blasting is proposed as part of the operation and frequency of blasting.
19. Any other information or reports the Zoning Administrator or Planning Commission deems necessary for purposes of evaluating environmental or aesthetic impacts.
20. Reclamation plan in conformance with Subdivision 11 of Ordinance No.36.

Subdivision 7. Environmental Considerations

1. Cottonwood County shall require a copy of all other State or Federal Permits as they apply to the project.
2. Abandoned wells, if any, shall be sealed in accordance with State and County requirements.
3. Monitoring wells and/or static water level readings of neighboring property owner wells may be required as necessary.
4. Cottonwood County shall require a copy of any impending Environmental Assessment Worksheets (EAW's) or Environmental Impact Statements (EIS's) as determined by the Responsible Government Unit (RGU).

Subdivision 8. General Operating Conditions

The following operating conditions and standards shall be met for all mining, extraction, and excavation operations. (See also Subdivision 10.)

1. Setback distance requirements for all mining, extraction, excavation, stockpiling, or land disturbance:
 - a. 20 feet of adjoining property lines, except in cases where adjacent property owners have a written, signed, notarized agreement to mine up to the property line with a copy submitted to the Office of the County Zoning Administrator.
 - b. 300 feet to the boundary of an adjoining property residentially zoned or contiguous property subdivided into residential lots.
 - c. 20 feet to the right-of-way line of any existing or platted street, road, or highway.
 - d. 100 feet from the berm of any public or private open drainage ditch system.
 - e. If two or more mining operations are contiguous to one another, the common boundary may be mined, extracted, or excavated if all parties involved sign a notarized agreement on a form provided by the office of the County Zoning Administrator, including a joint reclamation plan.
 - f. 50 feet from the ordinary high water (OHW) mark of any public water provided erosion control measures are in place.
 - g. 50 feet from an existing well.
2. Noise - All equipment and other sources of noise must operate so as to be in accordance with Federal and State standards for noise.
3. Dust control shall be maintained and followed during operation.
4. Necessary and adequate signage for public safety shall be provided as needed. (Example "Trucks Hauling")

5. All equipment used for mining, extraction, or excavation, shall be constructed, maintained, and operated in such a manner as to prevent, any leak or escape of fluids which could contaminate surface or ground water.
6. The operator shall restrict runoff from the site to lakes, rivers, streams, drainage ditches, tile intakes, other DNR Protected Waters and Wetlands, sensitive areas, and adjacent properties.
7. Site Clearance - All stumps and other debris resulting from the excavation or related activities shall be disposed of by approved methods.
8. Appearance/Condition. The owner/operator shall maintain buildings, plants, and the mining, extraction, or excavation area in a neat condition. Weeds and other unsightly or noxious vegetation shall be controlled as necessary to preserve the appearance of the landscaped area.
9. Waste Disposal.
 - a. Any waste generated from the mining operation, including sewage, hazardous waste, or waste from vehicle or equipment maintenance, shall be disposed of in accordance with Federal, State, and County requirements.
 - b. No hazardous waste, rubbish, trash, waste tires, junked vehicles, junked machinery, junked equipment, or pieces there-of shall be allowed to accumulate at a mining, extraction, or excavation site.
10. Processing. Any mining, extraction, or excavation operation in which processing is proposed shall meet the following performance standards:
 - a. The application shall include the nature of the processing and equipment, location of the plant, source of water, disposal of water, reuse of water, and stock piling sites.
 - b. Operations with processing equipment shall meet the following criteria:
 - 1.) All Federal and State standards for air, water, and noise quality.
 - 2.) Setback requirements as set forth in Ordinance No.36, including Shoreland setback requirements if applicable.
11. Spillage of material on any roadway shall be removed by the owner/operator as quickly as possible.
12. Fuel Storage. All on-site storage of fuel shall meet County, State and Federal standards.
13. Hours of operation shall be determined at the Conditional Use Hearing based on location and proximity of neighbors and neighboring residents.
- 14 Added Provisions. The operator shall comply with such other requirements which Cottonwood County, from time to time, may find necessary to adopt for protection of the health, safety, and welfare of the citizens of Cottonwood County.

Subdivision 9. Temporary Processing

All Temporary Processing Operations shall require a Conditional Use Permit which may be applied for separately or in conjunction with an application for a Mining, Extraction, or Excavation Conditional Use Permit.

1. All Recycling, crushing/processing or storage of used aggregate, concrete, and asphalt shall require a Conditional Use Permit subject to the following criteria:
 - a. The processing equipment shall be located so as to minimize the effect on surrounding property owners.
 - b. Provide site plan and map showing proposed location of machinery and equipment, piles, and other necessary locations.
 - c. Site selection shall not have a negative effect on the health, safety and welfare of the residents of Cottonwood County.
 - d. All Federal and State standards for quality of air, water, and noise shall be met.
2. All Temporary Asphalt and Concrete Plants shall require a Conditional Use Permit subject to the following criteria:
 - a. All setbacks as set forth in Ordinance No.36.
 - b. All Federal and State standards for quality of air, water, and noise shall be met. An air quality permit shall be obtained from the Minnesota Pollution Control Agency.
 - c. The owner/operator shall provide a plan to prevent surface and groundwater contamination.
 - d. Equipment shall be located in such a manner so as to have the least environmental and aesthetic impact; a protective pad and/or a berm may be required.
 - e. Site selection shall not have a negative effect on the health, safety, and welfare of the residents of Cottonwood County.
 - f. No materials may be excavated or removed from the site without a Conditional Use Permit for mining, extraction, and excavation.

Subdivision 10. Sensitive Areas

Mining, Extraction, or Excavation within sensitive areas, Drinking Water Supply Management Areas (DWSMA), and Ten -Year Time of Travel may occur if care is used to ensure that the operations, management of the area, and reclamation efforts do not present a serious risk to groundwater quality as determined by the Planning Commission or the County Board..

Any Mining, Extraction, or Excavation Conditional Use Permit Application that proposes to be located in a sensitive area will be scrutinized for any potential impact on these areas. Any permit to be issued in sensitive areas may include special provisions as set forth by the Planning Commission and/or the County Board.

Special provisions include but are not limited to the following:

1. Surface water runoff shall be controlled to avoid infiltration within all vulnerable portions of a DWSMA of a public water supply well.
2. Onsite sewage treatment systems shall be excluded from the one-year time of travel area of a DWSMA.
3. In areas where protective or geological cover has been removed, no long term storage of fuel and petroleum products will be allowed in order to reduce the potential for leaking oil, fuel, hydraulic fluid, antifreeze, or other automotive fluids to enter aquifer materials,
4. An asphalt batch plant and related activities may be located within the vulnerable portions of a sensitive area if located on an impervious pad with secondary containment.
5. A copy of the any Dewatering Permit or any Groundwater Appropriation Permit as required by MN DNR prior to any use of a high capacity well associated with a mining extraction, or excavation operation, shall be provided to the Office of the Zoning Administrator.
6. No Underground Injection Well or Class V Injection Wells shall be located in sensitive areas.
7. Plans for reclaiming land that is mined, extracted, or excavated of geological cover shall address how future land use or the surface-water drainage or runoff will be controlled to reduce the direct infiltration of contaminants into the aquifer.
8. Reclamation shall be phased in as mining, extraction, or excavation progresses, with public water supply wells time of travel areas having the highest priority for reclamation.
9. Vegetation used for reclamation shall be native species or similar species that do not require regular or seasonal applications of nutrients or pesticides.

Subdivision 11. Reclamation

A Reclamation plan shall be prepared for the planned after-use of affected areas and the nature and extent of reclamation. A detailed reclamation map shall be provided designating which parts of the land shall be reclaimed for forest, pasture, crop, home-site, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. The reclamation plan and map shall contain:

1. Proposed contours after any proposed filling.
2. Depth of restored top soil if restoration is proposed.
3. Type of fill, if fill is proposed. No demolition materials, including but not limited to concrete, cement, or asphalt, shall be used as fill.
4. Type of planting or restoration shall be in accordance with the desires of the property owner. If natural re-vegetation is proposed, it shall be so stated. Noxious weeds shall be controlled.
5. If the operator finds the characteristics of the mining, extraction, and/or excavation area to be different than what was previously determined, changes may be made in the original reclamation plan by mutual

consent of the landowner, the operator and the County Planning Commission. Such change shall preserve, as substantially as possible, the original reclamation plan, and shall also provide for the previously unknown variables.

6. The plan shall include a written statement containing an explanation of the character of the site to be mined, extracted, and/or excavated, and the character of the surrounding territory. If a development schedule cannot feasibly be prepared, it shall be so stated and written reasons submitted.
7. If reclamation will result in a body of water, plans should include measures to stabilize the banks, minimize erosion and surface water runoff, and any other measures necessary to protect the water body.

Within a period of twelve (12) months after the termination of a mining, extraction, and/or excavation operation, or within twelve (12) months after the expiration of a Conditional Use Permit, all buildings and other structures not otherwise allowed under the Cottonwood County Zoning Ordinance shall be removed from the property and the property restored in conformance with the reclamation plan.

Subdivision 12. Bond

A Bond is required as a guarantee that either upon termination of the permit or of the operation, the ground surface of the land used shall be restored in conformity with the reclamation plan filed with the mining, extraction, or excavation application as outlined in Subdivision 11 of Ordinance No.36.

The bond shall be filed with the County Auditor/Treasurer and a copy shall be given to the Office of the Zoning Administrator and shall be in such form as the County Board shall prescribe payable to Cottonwood County in the amount set by the County Board. The bond shall be in force until reclamation is completed and the completion is certified.

If upon termination of a Mining, Extraction, or Excavation Conditional Use Permit or of the operation itself and no effort has been made by the owners or operators to reclaim the ground surface of the land based upon the reclamation plan provided under Subdivision 11 of Ordinance No.36, the Bond shall be used to cover the costs associated with reclamation of the ground surface. The Bond shall also be used to cover all costs of enforcement of the terms of the reclamation plan, including but not limited to attorney fees and other associated costs.

Upon completed restoration in accord with the reclamation plan and certified by the Zoning Administrator, the performance bond shall be returned to the applicant.

Subdivision 13. Existing Operations

1. Within one (1) year of the effective date of this ordinance, all existing mining, extraction, and/or excavation operations that have not been permitted under this ordinance shall be required to register with the Office of the County Zoning Administrator.
2. Information required for registration shall include, but not be limited to:
 - a. Name, address, and signature of property owner.
 - b. Name, address, and signature of operator.

- c. Accurate legal description or map of the existing operation including boundary lines and mining, extraction, and/or excavation depths.
 - d. Any processing, recycling, temporary asphalt or concrete plants on-site with location identified.
 - e. Blasting proposed, if applicable.
 - f. Existing wells.
 - g. Existing structures.
 - h. Reclamation narrative.
3. Any type of expansion or change in the operation as supplied by the owner in Subdivision 13, 2 shall require the operation to come into full compliance with all the rules and regulations of Ordinance No.36.
 4. All Existing non-permitted mining, extraction, and or/excavation operations which registered under Subdivision 13, 1 and 2, and any other existing operations shall be required to apply for a Conditional Use Permit within five (5) years of the effective date of Ordinance No.36.

Subdivision 14. Enforcement, Violations, and Penalties

1. Any firm, person, or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or who resists enforcement of any provisions of Ordinance No.36 shall upon conviction be fined not more than one thousand dollars (\$1,000.00), or imprisonment of not more than ninety (90) days, or both, for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
2. In the event of a violation or threatened violation of any of the terms of Ordinance No.36, the County may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance or other appropriate action to court if necessary to prevent, restrain, correct, or abate such violations or threatened violations. Upon motion, the court may award costs, disbursements, and reasonable attorney's fees and witness fees, which costs and fees can be assessed against the land.
3. Whenever necessary to enforce any of the provisions of Ordinance No.36 or whenever there is reasonable cause to believe that a violation of Ordinance No.36 has occurred or is about to occur, the County Zoning Administrator or an authorized agent of the County may enter any building or upon any premises at all reasonable times to inspect or to perform any duties imposed by Ordinance No.36. If the building or premises is occupied, the authorized inspector shall first present proper credentials prior to entry. If the building or premises is unoccupied, the authorized inspector shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises prior to entry. If entry is refused, the County shall have recourse to every remedy provided by law to secure entry, including administrative and judicial warrants.

Subdivision 15. Termination of Permit

1. Any permit granted pursuant to Ordinance No.36 may be revoked for a violation of any provisions of Ordinance No.36, or violation of any condition(s) of the permit.
2. Revocation shall not occur earlier than ten (10) county working days from the time written notice of revocation is served upon the permittee or, if a hearing is requested, until written notice of the County Board action has been served on the permittee. Notice to the permittee shall be served personally or by registered or certified mail at the address designated in the permit application. The written notice of

revocation shall contain the effective date of the revocation, the nature of the violation or violations constituting the basis of the revocation, the facts which support the conclusions that a violation or violations have occurred, and a statement that if the permittee desires to appeal, a request for a hearing must be filed within ten (10) working days, exclusive of the day of service. The hearing request shall be in writing, stating the grounds for appeal, and served personally or by registered or certified mail to the Cottonwood County Zoning Administrator by midnight of the tenth (10th) county working day following service. Following the receipt of a request for a hearing, the County Board shall set a time and place for the hearing. Fees will be charged based on resolution of the County Board. Fees may cover all administrative costs associated with the appeal request for a public hearing.

Subdivision 16. Severability

Every subdivision, provision, or part of Ordinance No.36, is declared severable from every other subdivision, provision or part; and if any subdivision, provision or part hereof shall be held invalid, it shall not affect any other subdivision, provision, or part.

Subdivision 17. Date of Effect

Ordinance No.35 shall be in full force and effect from and after its passage and publication as provided by law. Adopted this 28th day of March, 2006.

Chairman, County Board

Attest: _____
Cottonwood County Auditor/Treasurer

