

METAMORA TOWNSHIP

**PROPOSED ZONING ORDINANCE AMENDMENT FOR
NATURAL RESOURCE EXTRACTION PLANNED UNIT DEVELOPMENT**

[PART TWO OF TWO ZONING ORDINANCE AMENDMENTS TO BE COMBINED AS
ONE SECTION OF THE ZONING ORDINANCE]

**SECTION _____. PLANNED UNIT DEVELOPMENT CLASSIFICATION FOR
TRANSITORY EXTRACTION OF NATURAL RESOURCES**

PART I

**ADMINISTRATIVE DETERMINATION OF ENTITLEMENT TO APPLY FOR
PLANNED UNIT DEVELOPMENT CLASSIFICATION FOR TRANSITORY
EXTRACTION OF NATURAL RESOURCES**

*[insert Part I as recommended by Planning Commission, with
modifications needed to coordinate Part I with Part II]*

PART II

**LEGISLATIVE DETERMINATION OF APPLICATION FOR REZONING TO
PLANNED UNIT DEVELOPMENT CLASSIFICATION FOR TRANSITORY
EXTRACTION OF NATURAL RESOURCES**

An applicant for a transitory extraction of natural resources use as addressed in MCL 125.3205 ("Transitory Extraction Use") may apply for legislative approval of a rezoning of its property to Transitory Extraction Use Planned Unit Development classification under this Part II ("Part II") only if the Township Board first makes the administrative determination that the applicant has demonstrated the administrative requirements specified in Part I of this section.

**A. RECONCILIATION OF THE GRAVEL STATUTE WITH THE ZONING
ENABLING ACT AS A WHOLE; CREATION OF PLANNED UNIT
DEVELOPMENT CLASSIFICATION FOR EXTRACTION USE**

The Gravel Statute (MCL 125.3205) directs that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property in the entire Township if it is demonstrated that no very serious consequences would result from the extraction of those natural resources, referring to the standards in *Silva v Ada Township*, 416 Mich 153 (1982) ("the Silva Standard"). There are fundamental issues pertaining to the Silva Standard that require attention in this ordinance in order to reconcile the Silva

Standard with the Zoning Enabling Act, MCL 125.3201, *et seq.*, as a whole (“ZEA”), and with the exercise of the zoning authority as approved by the courts:

- (1) Whether there are “very serious consequences” is a question ambiguous on its face. Although some attempt is made in the Gravel Statute to provide examples of more specific standards to determine very serious consequences, the Gravel Statute specifies that these more specific examples are *in addition* to the Silva Standard, and thus do not provide the needed clarification.
- (2) Implicit in the Silva Standard adopted by the Gravel Statute are important characteristics of Transitory Extraction Use, matters of both fact and law, that require clarification in order to reconcile the Gravel Statute with the ZEA as a whole, including:
 - (a) Unlike most land uses, a Transitory Extraction Use amounts to a transitory use that will have a duration based on various circumstances such as the quantity and quality of resources to be extracted in a particular location, the extent and duration of ‘need’ for the resources from such location, and other factors. “Extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations.” *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982).
 - (b) The Gravel Statute, read in isolation, purports to allow for Transitory Extraction Use in a manner entirely distinct from the planning and use district allocation specified in the ZEA as a whole, with the Legislature in the Gravel Statute directing the Courts to apply a specific Due Process standard to scrutinize a denial of a proposed use. Such mandated Due Process standard has not been adjudicated by the Courts; rather, the legislatively mandated standard is distinct from and foreign to the Due Process standard established by the Courts and applied in all other zoning considerations.
 - (c) The Gravel Statute, read literally, authorizes approval for Transitory Extraction Use within any zoning district, even though the general rule applicable to the exercise of zoning authority is to *separate* uses based on use district classifications. This literal reading of the Gravel Statute creates particular issues in cases in which a heavy industrial use (such as Transitory Extraction Use) would be approved by a court within a residential or other district, due to the direct conflict with achieving the objectives specified in the ZEA that provides that “[a] local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and *other natural resources*, . . . to facilitate adequate and efficient provision for transportation systems, . . . and to promote public health, safety, and welfare.”

As this zoning authority has been interpreted, the “scope of the power to protect the public health, safety, and welfare within the zoning context is not confined to elimination of filth, stench, and unhealthy places, but includes the authority to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.” *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). In addition, a community is authorized to enact land-use regulations to enhance the quality of life by preserving the character and desirable aesthetic features of a city. *Penn Central Transportation Co. v New York City*, 438 US 104 (1978).

- (d) Authorization and operation of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts creates an impossible regulatory challenge for the Township, particularly in comparison with the authorization of nearly any other use considering the distinct impacts of the Transitory Extraction Use on the immediate surrounding area, as well as the area along the haul route utilized by the Transitory Extraction Use.
- (e) Approval of a heavy industrial Transitory Extraction Use operation in residential or other zoning districts is directed by a literal reading of the Gravel Statute without expressly stated regard for, and in conflict with, a community’s Master Plan in accordance with which zoning is to be established. The ZEA, MCL 125.3203, provides that “[a] zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, . . . to conserve *natural resources* and energy, to *meet the needs of the state's residents for . . . other natural resources*, . . . industry, . . . and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, . . .to reduce hazards to life and property, to facilitate adequate provision for a system of transportation . . . *A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources*, and the general and appropriate trend and character of land, building, and population development.”

In light of the fundamental issues described above relating to the Silva Standard, the courts may ultimately find the Gravel Statute invalid and unauthorized. Until this legal issue has been resolved, the Township has concluded that the only permissible means of zoning that could provide a reconciliation of the Gravel Statute with the ZEA as a whole, and with the common law of zoning, is an invocation of the planned unit development authorization in MCL 125.3503 for approving uses in residential and other zoning districts. This invocation would require classification of Transitory Extraction Uses as “planned unit developments.” For the reasons spelled out in paragraphs A.1 and A.2, above, the Gravel Statute standing alone fails to provide an express reconciliation with the ZEA as a whole, or with the common law of zoning under the judicially established standard of Due Process. The utilization of the planned unit development authorization is within the intent of the ZEA as a whole for providing a permissible means of achieving

such reconciliation. The ZEA, in MCL 125.35033(3), provides that “[t]he planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions,” thus affording the means of reconciliation. The standards in this Part II are intended to provide the needed equitable procedures recognizing due process principles and avoiding arbitrary decisions.

Accordingly, a Transitory Extraction Use Planned Unit Development zoning classification (“Transitory Extraction Use PUD”) is hereby established, and an applicant for a Transitory Extraction Use must meet all of the requirements contained in this Part II, which are deemed to be within the authorization provided by MCL 125.3205 and MCL 125.3503. A property for which a Transitory Extraction Use PUD is approved shall be classified on the Zoning Map as “Transitory Extraction Use PUD.”

Approval of a Transitory Extraction Use PUD shall require amendment of the zoning ordinance in accordance with Part II of this section, and shall not be deemed to be the subject of administrative approval.

B. APPLICATION FOR TRANSITORY EXTRACTION USE PUD; STANDARDS FOR REVIEW

- (1) The application form for Part II of this section shall be approved by resolution of the township board, and shall require the submission of sufficient information for use by the Township in reviewing the relevant issues, including:
 - (a) The issues required to be considered based on the Silva Standard in the Gravel Statute; and
 - (b) The more specific standards in the Gravel Statute specified in subparagraphs MCL 125.3205(5) (a) – (f).

As explained above, reconciliation of the Gravel Statute and the ZEA as a whole requires application of all standards contained in this Part II. The standards in this Part II provide necessary clarification for considering the Silva Standard and specific standards in the Gravel Statute. All of the standards in this Part II shall therefore be deemed to guide and reconcile the statutory standards of the Gravel Statute with the implicitly authorized authority contained in the Zoning Enabling Act as a whole and MCL 125.3503 in particular.

An application for Transitory Extraction Use, including haul route, shall include a Transitory Extraction Use Plan, which shall provide a detailed plan for the property which is the subject of the rezoning, along with the property along all haul routes within the Township (including the Village of Metamora). The Transitory Extraction Use Plan shall be prepared by a licensed professional civil engineer, or comparable professional, and shall show the location, size, height, design, architecture or other measure and feature for and of buildings, structures,

improvements, operational plan, and other features. The details offered by the applicant for inclusion within the Transitory Extraction Use Plan may be required to be modified if relevant for decision making by the Planning Commission or Township Board based on facts that have come to light during the course of the process of consideration, including preliminary review of the application.

- (2) The standards of this ordinance section that shall guide and reconcile the statutory standards of the Gravel Statute with the authority contained in the Zoning Enabling Act as a whole are set forth in the several paragraphs of this subsection B, to be applied to both the Silva Standard and the more specific standards referenced above. These standards shall not be deemed to be exclusive considerations, and the Silva Standards may be interpreted as being clarified based on the application of sound planning principles.
- (3) The Silva Standard of Review for Legislative Consideration
 - (a) The Gravel Statute specifies that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. The applicant must demonstrate that no very serious consequences would result from the extraction, by mining, of the natural resources. In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied, as directed by the Gravel Statute.
 - (b) *Silva v Ada Township* directs that the “no very serious consequences” test is a part of the Due Process “reasonableness” test, a constitutional test applied to determine whether a zoning regulation meets the demands of Due Process. The *Silva* opinion directs that the courts are to apply this different, and more rigorous Due Process standard for “reasonableness” only when the zoning would prevent the extraction of natural resources. The *Silva* opinion has been overruled, and thus has application only by mandate of the Michigan legislature. Accordingly, in the Gravel Statute, the Michigan legislative branch directs the Michigan judicial branch to apply a separate and different interpretation of the Due Process clause only for Transitory Extraction Use.
 - (c) The Silva Standard that an applicant must meet for amendment of the zoning ordinance under this Part II requires an applicant to overcome the presumption of validity of existing zoning regulations, and imposes on such applicant the burden of demonstrating that the proposed Transitory Extraction Use, and all associated activities and haul route, would have “no very serious consequences” as provided in *Silva v Ada Township*, including the holdings in cases interpreting *Silva v Ada Township*, e.g., *American Aggregates Corp. v. Highland Township*, 151 Mich App. 37 (1986). Application of this general

standard shall be interpreted by the Planning Commission and Township Board on a case by case basis considering all relevant facts and circumstances.

(d) While the Gravel Statute specifically addresses natural resource use, other sections of the Zoning Enabling Act do as well. MCL 125.3201 directs that municipalities are to exercise zoning authority by *dividing the community into districts* to achieve the purposes of zoning, including the objectives of meeting “the needs of the state's citizens for . . . *natural resources*, . . . to facilitate adequate and efficient provision for transportation systems, . . . and to promote public health, safety, and welfare.” MCL 125.3203 directs that a “zoning ordinance shall be *based upon a plan* designed to promote the public health, safety, and general welfare, . . . to conserve *natural resources* and energy, to *meet the needs of the state's residents* for . . . *other natural resources*, . . . industry, . . . and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, . . . to reduce hazards to life and property, to facilitate adequate provision for a system of transportation . . . *A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development.*” These provisions of the ZEA may not be ignored in light of a single section of many sections of the ZEA. Unless and until the Gravel Statute is invalidated, the Gravel Statute must be reconciled with the Zoning Enabling Act as a whole.

(e) All of the detailed standards contained in this Part II are provided to reconcile the Gravel Statute with the Zoning Enabling Act as a whole, and shall be deemed implicit requirements of the Gravel Statute to be read into, and guide interpretation and decision making under, the Silva Standard that must be met by an applicant for amendment of the zoning ordinance to permit a Transitory Extraction Use. This Part II minimizes the ambiguity of the “no very serious consequences” rule by establishing more specific standards to understanding the meaning of the Rule within the context of the ZEA as a whole, applying the master planning component and other considerations compelled in order to place parties and review bodies on notice of the proofs needed in order to secure Transitory Extraction Use PUD approval. The Silva Standard of the Gravel Statute implicitly requires and directs clarification and interpretation based on recognized land use and zoning principles that are relevant to determining whether the applicant has proven that “no very serious consequences” would result from the applicant’s proposed Transitory Extraction Use.

(4) Specific Standards of Review for Township Legislative Consideration

The following additional specific standards shall be applied for the purpose of determining whether the applicant has proven that “no very serious

consequences” would result from the applicant’s proposed Transitory Extraction Use and associated activities and haul route, to the extent each is relevant. Each of the express standards from the Gravel Statute must be clarified in order to reconcile the Gravel Statute with the Zoning Enabling Act as a whole. All of the standards in this ordinance section shall be considered by the Planning Commission and Township Board in deliberating on the application, and shall guide decision making on the Township Board’s ultimate legislative decision.

(a) Existing Land Uses

1. The relationship of applicant’s proposed Transitory Extraction Use and associated activities with existing land uses anticipated to be impacted shall not produce unreasonable or inequitable results;
2. The impact of applicant’s proposed Transitory Extraction Use and associated activities on existing land uses in the vicinity of the property shall not produce unreasonable or inequitable results;
3. The proposed Transitory Extraction Use, including haul route, shall be capable of being designed, located, planned and operated so that that the public health, safety and welfare shall be protected in relation to existing land uses, and that the proposal will achieve such results.

(b) Property Values

1. The impact of applicant’s proposed Transitory Extraction Use and associated activities on property values in the vicinity of the property and along the proposed hauling route serving the property shall not produce unreasonable or inequitable results;
2. The proposed Transitory Extraction Use, including use of the haul route, shall not cause injury to the value of other property in the neighborhood in which it is to be located, or along the haul route.
3. The proposed Transitory Extraction Use, including use of the haul route, shall not unreasonably or inequitably affect the value of properties in the Township, including the Village of Metamora, which is part of the Township.
4. The proposed Transitory Extraction Use, including use of the haul route, shall be such that the proposed vehicles (including number and type); machines and equipment used in the operation, location and height of buildings or structures; location, nature and height of walls, fences and landscaping; and all other aspects of the proposed use will not unreasonably or inequitably affect the value of other uses and properties.

(c) Pedestrian and Traffic Safety

1. The impact of the proposed Transitory Extraction Use and associated activities on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property shall not be unreasonable or inequitable.
2. The proposed Transitory Extraction Use and haul route shall be consistent with and permissible under state, county, and/or local regulations that have been established for roadways, including regulations applicable to the use of roads for proposed haul routes.
3. The proposed Transitory Extraction Use, including haul route, shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district(s) impacted, taking into consideration the number, size, weight, noise, and fumes of vehicles, vehicular control, braking, and vehicular movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing the interaction of heavy vehicles used for the Transitory Extraction Use with children, the elderly or the handicapped.
4. The proposed Transitory Extraction Use, including haul route, shall be of a nature that will make vehicular and pedestrian traffic no more hazardous to children attending schools or other activities within the Township, including the Village of Metamora, which is part of the Township.
5. Overall, the proposed Transitory Extraction Use, including haul route, shall not result in children, older persons, or handicapped persons, including those who use the downtown Village of Metamora, which is part of the Township, being effectively required to forego or alter their activities.

(d) Identifiable Health, Safety, and Welfare Interests

1. If the property has been designated in the Master Plan as an appropriate site for heavy industrial use, this shall weigh in favor of the applicant under this provision, subject to consideration of the specific scope and impact of the operation and associated activities. Similarly, if the property has been designated in the Master Plan for non-industrial use, this shall weigh in favor of determining that the proposed Transitory Extraction Use would result in a very serious adverse consequence.

2. The impact of applicant's proposed Transitory Extraction Use and associated activities on identifiable health, safety, and welfare interests in the Township shall not be unreasonable or inequitable. For purposes of this ordinance, "health, safety, and welfare" shall have the meaning attributed to such terms by the courts, e.g., *Berman v Parker*, 348 U.S. 26 (1954); *Village of Belle Terre v Boraas*, 416 US 1 (1974), *Kyser* (majority opinion), *Cady v City of Detroit*, 289 Mich. 499 (1939), and *Hess v Charter Township of West Bloomfield*, 439 Mich. 550 (1992), including the manner in which such meaning has been reasonably determined by the Planning Commission and Township Board in the Master Plan and Zoning Ordinance, read as a whole, including the crucial and material stability and quality of life (see, e.g. dissenting opinion of Judge (later Justice) Davis in the Court of Appeals opinion in *Kyser v Kasson Township*, 278 Mich.App. 743, 773 [referenced with approval by the Michigan Supreme Court in *Kyser*, 486 Mich. 514, 519 (2010)]).
3. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably impact upon surrounding property in terms of noise, dust, fumes, smoke, air, water, odor, light, and/or vibration.
4. The proposed Transitory Extraction Use, including haul route, shall not have an adverse impact on economic development and 'placemking' in the historic Village of Metamora, which is a part of the Township, or in other areas within a reasonable proximity.
5. The proposed Transitory Extraction Use, including haul route, shall not be permitted to have impacts, or create a character, likely to render the applicable limitations of Township zoning on other property in the area and haul route unreasonable in terms of the limitations imposed by existing zoning regulations. For example, the heavy industrial nature of the proposed Transitory Extraction Use shall not be permitted to undermine reciprocity of advantage by creating impacts and character that would raise a reasonable question whether residential zoning restrictions on area property would represent arbitrary limitations on the use and enjoyment of such area property.
6. The proposed Transitory Extraction Use operation, including the haul route, shall be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping, and all other proposed aspects of the overall use, will not interfere with or discourage the appropriate development and use of adjacent land and buildings.

7. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable or inequitable limitations on the use and enjoyment of other property in the vicinity (zoning district or districts, as impacted) in which it is to be located and along the haul route, and will not be detrimental to existing and/or other permitted land uses in the zoning districts impacted or unreasonably impact on future re-development in the manner specified in the Master Plan.
8. The proposed Transitory Extraction Use, including haul route, shall not be detrimental to the development of new land uses in the zoning districts impacted.
9. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably burden the capacity of public services, infrastructure or facilities.
10. The proposed Transitory Extraction Use, including haul route, shall not unreasonably or inequitably burden retail uses, arts and culture, equestrian activities, non-motorized vehicle travel or recreation, school use, parks, playgrounds, residential uses, or result in the physical vulnerability or degradation of historic uses and resources, including the creation of the need for added public or private expenditures for maintenance of buildings, structures, and infrastructure.
11. The proposed Transitory Extraction Use, including haul route, shall not cause unreasonable diesel fumes, dust, truck noise or physical/mental health issues, including along the haul route, and including within the historic downtown of Metamora Village, which is a part of the Township.

(e) Overall Public Interest in the Proposed Extraction

1. The overall public interest in the extraction of the specific natural resources on the property both in absolute terms and in relative terms shall be weighed in relation to the adverse consequences likely to occur, and unreasonable or inequitable consequences shall not be permitted.
2. Public interest in the proposed Transitory Extraction Use shall be measured against any inconsistencies with the interests of the public as are proposed to be protected in Master Plan for the area to be impacted by the Transitory Extraction Use and haul route.
3. Public interest in the proposed extraction shall be measured against any inconsistencies with regard to physical, historic, and economic interests in relation to the Transitory Extraction Use and haul route.

4. Public interest in the proposed extraction shall be measured against any likely creation of valid environmental concerns, including without limitation impairment, pollution and/or destruction of the air, water, natural resources and/or public trust therein.
5. Public interest in the proposed extraction shall be measured against public costs likely to be caused by the proposed Transitory Extraction Use, including haul route, considering alternative supplies of gravel.

C. DETERMINATION OF A TRANSITORY EXTRACTION USE APPLICATION TO REZONE THE APPLICANT'S TO PROPERTY PLANNED UNIT DEVELOPMENT

- (1) The determination of a Transitory Extraction Use Application may consist of an approval of rezoning, or an approval of rezoning with conditions, or a denial of rezoning.
- (2) An approval of rezoning, with or without conditions, shall include and incorporate a Transitory Extraction Use Plan as approved by the Township, and a Transitory Extraction Use Agreement, all as described below. Any conditions, if any, that may be required with the approval shall also be specified in such an approval.
- (3) An approval of rezoning with conditions shall include:
 - (a) A specification of the duration of the rezoning, which will state a termination date for the effect of the approval. This specification shall be based on findings that balance the public interest in providing the natural resources to be extracted against the public interest of freeing the area of the Township and residents that will be adversely impacted by the Transitory Extraction Use, including use of the haul route, from the burdens and costs allowed under the Gravel Statute due to the finding that the resources to be extracted and transported are needed to a sufficient degree.
 - (b) Approval of a Transitory Extraction Use Agreement, which shall clarify for all interested persons, including the public, the rights and obligations of the Township and the applicant and owner(s) of the property.
 - (c) Other conditions that conform to the requirements of applicable law.
- (4) A denial of rezoning shall include a statement of reasons why the applicant has failed to satisfy its burden of proof that approval of the application would result in "no very serious consequences."

D. TRANSITORY EXTRACTION USE AGREEMENT

A Transitory Extraction Use Agreement shall mean a written agreement approved and executed by the Township, the applicant, and all owners of the property to be rezoned, incorporating all relevant terms of the approval, the approved Transitory Extraction Use Plan, any and all Transitory Extraction Use Conditions, and any other terms relevant to the land and operation to which the rezoning will apply. A Transitory Extraction Use Agreement shall include the following as applicable to the facts and circumstances:

1. Acknowledgment that the Rezoning to Transitory Extraction Use classification is based on the application submitted and Transitory Extraction Use Plan, and that the duration of a Transitory Extraction Use will be temporary in nature, i.e., “extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations.” *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982). Thus the Agreement shall specify the duration of the rezoning and the termination date, as found and determined by the Township Board based on its deliberations and balancing of public interests.
2. Acknowledgment that the conditions and Transitory Extraction Use Agreement are authorized by all applicable state and federal law and constitution, and that the Agreement is valid and entered into on a voluntary basis and represents a permissible exercise of authority by the Township.
3. Acknowledgment that the property in question shall not be developed or used in a manner inconsistent with the Transitory Extraction Use Agreement, including Transitory Extraction Use Plan, and that any material deviations in development and use from such Plan shall constitute a nuisance per se under MCL125.3407.
4. Acknowledgment that the approval and Transitory Extraction Use Agreement shall be binding on and inure to the benefit of the applicant, the property owner(s) and Township, and their respective heirs, successors, assigns, and transferees.
5. Acknowledgment that, when the Transitory Extraction Use zoning authorization terminates, no development or use shall be undertaken or permits for development issued until a new zoning district classification of the property has been established, and that the Township will not unreasonably delay in acting on the establishment of a new zoning district classification.
6. Acknowledgment that each of the requirements and conditions in the Transitory Extraction Use Agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements,

is roughly proportional to the increased impact created by the use represented in the approved Transitory Extraction Use Rezoning, taking into consideration the changed zoning district classification and the specific use authorization granted.

7. Affidavit in recordable form, signed by the applicant and all owners of the property to be rezoned, to be recorded for the purpose of providing notice of the approval as well as the restrictions and conditions to the approval. The rezoning to Transitory Extraction Use shall not be effective unless and until the affidavit is recorded with the office of the Lapeer County Register of Deeds.

E. REVIEW PROCESS – PLANNING COMMISSION

- (1) To seek an amendment of the zoning classification applicable to the property to Transitory Extraction Use PUD classification, the applicant shall submit an application in the form approved by resolution of the Township Board.
- (2) The application shall provide written documentation and evidence describing in detail and making the requisite demonstration with regard to each of the criteria on the issue of whether “no very serious consequences” shall result in relation to the property and haul route, and in the community, as described in detail in this Part II. Prior to conducting a public hearing, the Township shall review the application and documentation submitted in support of the application and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The public hearing on the application to amend the zoning classification shall not be noticed until the applicant has cured the deficiencies found to exist in accordance with this procedure. The Planning Commission may require the applicant to make a preliminary presentation for informational purposes prior to conducting a public hearing.
- (3) After providing the notice required for changing the zoning classification of a property, the Planning Commission shall conduct a public hearing on the application to determine whether the applicant can and does satisfy the applicant’s burden of proof that “no very serious consequences” shall result from applicant’s use of the property and haul route, as described in detail in this Part II. The hearing shall begin with an introduction by the Planning Commission chairperson, or a person designated by the chairperson. The applicant shall then be given the opportunity to make the showings required in this ordinance. At the completion of the applicant's presentation, either at the same meeting or at a subsequent meeting if additional time is needed in order to thoroughly address the subject matter, the Township, through its representatives, may address and offer evidence or argument on the issues. Members of the public shall then have the opportunity to address and offer evidence or argument on the issues. If requested, the applicant shall be provided with an opportunity to rebut evidence and argument presented, but for efficiency purposes shall not be permitted to duplicate evidence on matters included in applicant’s earlier

presentation. Likewise, any new matters addressed by the applicant may be rebutted by representatives of the Township and members of the public. The public hearing shall then be closed.

- (4) After the public hearing has been closed, either at the same meeting at which the public hearing was completed, or at a later meeting held within a reasonable time, the Planning Commission shall, based on the evidence presented, adopt findings and recommendations on whether the applicant has made a sufficient showing on whether there would be “no very serious consequences” as a result of the proposed Transitory Extraction Use and haul route, applying the standards contained in this Part II and all other applicable principles and law. Township representatives may assist the Planning Commission with the preparation of such findings and recommendations.
- (5) Following all of the hearing procedures and requirements specified above, the Planning Commission shall forward to the County (if required) its findings and recommendations on whether to amend the zoning ordinance map to approve a rezoning of the property to the Transitory Extraction Use PUD classification, along with the Transitory Extraction Use Plan and Agreement.

F. REVIEW PROCESS – COUNTY AND TOWNSHIP BOARD

- (1) After any required action is taken by the County, the Planning Commission shall forward a summary of public hearing comments, along with its findings and recommendation, to the Township Board. The Planning Commission shall also forward to the Township Board the proposed Transitory Extraction Use Plan and Agreement.
- (2) The Township Board shall, taking into consideration the evidence from the public hearing, the Planning Commission’s recommendation, and any additional evidence presented to the Township Board, act on the application for a rezoning of the property to Transitory Extraction Use PUD classification. The Township Board may direct changes in the Plan and Agreement (including a direction for representatives of the applicant and Township to negotiate proposed changes and present them to the Board). The Board’s action may then consist of approval of rezoning, approval of rezoning with conditions, or denial of rezoning. Before taking such action, the Township Board may conduct an additional public hearing at its discretion or based on a request made in accordance with the Zoning Enabling Act.
- (3) If the Board acts to approve or approve with conditions, the approval shall also include the Transitory Extraction Use Plan, Transitory Extraction Use Agreement, and a determination of the permitted duration of the rezoning, considering that that the duration of a Transitory Extraction Use will be temporary in nature, i.e., “extraction of natural resources is frequently a temporary use of the land and that the land can often be restored for other uses and appropriate assurances with adequate security can properly be demanded as a precondition to the commencement of extraction operations.” *Silva v Ada Township*, 416 Mich. 153, 160-161 (1982).

G. EFFECT OF APPROVAL

- (1) Approval of a rezoning of property to Transitory Extraction Use classification shall authorize the owner of the property to apply for permits for construction and operation of a Transitory Extraction Use, including permits required under a separate Township Ordinance established for the regulation of extraction use operations. The approval shall become effective in the manner and on the date provided by law and after recordation of the Affidavit that is part of the Transitory Extraction Use Agreement, whichever is later (see Section D, above).
- (2) The Transitory Extraction Use classification shall expire following a period of two (2) years from the effective date of the rezoning unless:
 - (a) The period for securing permits and commencing bona fide construction is extended by the Township Board for good cause within the effective period; or
 - (b) Approved bona fide development of the property pursuant to building and other required permits issued by the Township commences within such two (2) year period and proceeds diligently and in good faith as required by ordinance to completion.
- (3) In the event that bona fide development has not commenced within the permissible period of time calculated under sub-paragraph (2) above, the Transitory Extraction Use classification shall be void and of no effect.
- (4) If development and/or actions are undertaken on or with respect to the property in material violation of the Transitory Extraction Use classification approved by the Township Board, including Transitory Extraction Use Plan, Transitory Extraction Use Agreement, and all conditions established with the approval, such development and/or actions shall constitute a nuisance *per se*. MCL 125.3407. In such case, the Township may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the Transitory Extraction Use approval, Plan, Agreement and conditions, the Township may withhold or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of other lawful action to achieve compliance.
- (5) At the end of the authorized duration of the Transitory Extraction Use, either or both of the following actions may be taken:
 - (a) The property owner may seek a new Rezoning of the property, including a new application for rezoning to Transitory Extraction Use classification, in which case the property owner shall have the obligation to newly demonstrate a "Need for the Natural Resources," taking into account the adverse impacts of the terminated Transitory Extraction Use endured already; and/or

- (b) The Township may initiate a new Rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for rezonings in townships.

Until such time as a new zoning district classification of the property has become effective, no development or operations shall be undertaken or permits for development issued. The Township will not unreasonably delay in acting on the establishment of a new zoning district classification

H. FEE

The applicant for a rezoning Transitory Extraction Use classification under this section shall pay as a fee the Township's costs and expenses incurred in the review and evaluation of the application and preparation of documents for approval. An escrow shall be established in an amount specified by Township Board resolution, and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.

I. OPERATIONAL REGULATIONS

- (1) Approval of rezoning under this section of the zoning ordinance shall be subject to separate Township ordinance established for the regulation of extraction use operations. Commencement of work for the operation, and any and all other operation activities, shall require permits for construction and operation of a Transitory Extraction Use, as specified in applicable Township ordinances.
- (2) Exemption: Usual and customary land balancing by cutting and filling in preparation for immediately planned and approved development in accordance with other applicable ordinance and law, not involving the extraction of natural resources for sale or use as contemplated under MCL 125.3205, shall be exempted from the provisions of this Section.

J. OTHER ZONING ORDINANCE SECTIONS SUPERSEDED AND REPEALED

This amendment of the zoning ordinance shall supersede all other provisions in the Zoning Ordinance addressing the authorization of Transitory Extraction Use, including all uses intended to be addressed in MCL 125.3205. Consequently, the following provisions of the Zoning Ordinance applicable prior to the effectiveness of the ordinance embodying this amendment, shall be and are hereby repealed:

- (1) Section 1429. Mining of Earth Materials.
- (2) . . .