

# TOWN OF VIENNA COMPREHENSIVE PLAN

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Prepared by

The Town of Vienna, Dane County, Wisconsin  
with Staff Assistance From Dane County Regional Planning Commission

## I. Introduction

### **What is a Comprehensive Plan?**

A comprehensive plan is a long-range plan for development of a community that recognizes the physical, economic, social, political, aesthetic, public safety<sup>1</sup> and related factors of the community.

A land use plan is only one component of a comprehensive plan. Other components typically include housing, economic development, natural resources, community facilities, and implementation.

(Taken from the Land Use Guidebook for Dane County, Wisconsin)



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### **The Wisconsin Comprehensive Planning Law (Smart Growth)** [s. 66.1001 Wis. Stats.]

The State of Wisconsin's Comprehensive Planning Law, also known as Smart Growth, requires that all programs and actions of local governmental units that affect land use must be guided by and consistent with that governmental unit's adopted comprehensive plan after January 1, 2010.

## **THE LAW DEFINES A COMPREHENSIVE PLAN AS CONTAINING NINE REQUIRED ELEMENTS:**

- Issues and opportunities
- Housing
- Transportation
- Utilities and Community Facilities
- Agricultural, Natural and Cultural Facilities
- Economic Development
- Intergovernmental Cooperation
- Land Use
- Implementation

The Comprehensive Planning Law in Wisconsin requires public participation at every stage of the comprehensive planning process. "Public participation" is defined as adopting and implementing written procedures for public participation that include but are not limited to broad notice provisions, the opportunity for the public and impacted jurisdictions to review and comment on draft plans, and the holding of a public hearing prior to plan adoption. The Comprehensive Planning Law standardizes the procedure for adopting a comprehensive plan. The plan commission must submit a recommendation on the comprehensive plan to the chief elected body. The local governing body may then adopt and enact the plan by ordinance.

<sup>1</sup> Public safety was added to the Dane County description at the request of the Planning Commission.

In addition to ensuring local residents and businesses have the opportunity to review and comment on the plan, that the Comprehensive Planning Law requires that copies of the draft and final comprehensive plans be sent to adjacent communities, the Wisconsin Land Council, the regional planning commission, the public library serving the area, and all other area jurisdictions that are located entirely or partially within the boundaries of the community.

## **Required Comprehensive Planning Goals that Must be Addressed by Planning Grant Recipients**

Listed below are the fourteen local comprehensive planning goals as described in s. 16.965(4), Wis. Stats.:

1. Promotion of the redevelopment of lands with existing infrastructure and public services and the maintenance and rehabilitation of existing residential, commercial and industrial structures.
2. Encouragement of neighborhood designs that support a range of transportation choices.
3. Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources.
4. Protection of economically productive areas, including farmland and forests.
5. Encouragement of land uses, densities and regulations that promote efficient development patterns and relatively low municipal, state governmental and utility costs.
6. Preservation of cultural, historic and archaeological sites.
7. Encouragement of coordination and cooperation among nearby units of government.
8. Building of community identity by revitalizing main streets and enforcing design standards.
9. Providing an adequate supply of affordable housing for individuals of all income levels throughout each community.
10. Providing adequate infrastructure and public services and an adequate supply of developable land to meet existing and future market demand for residential, commercial and industrial uses.
11. Promoting the expansion or stabilization of the current economic base and the creation of a range of employment opportunities at the state, regional and local levels.
12. Balancing individual property rights with community interests and goals.
13. Planning and development of land uses that create or preserve varied and unique urban and rural communities.
14. Providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety and that meets the needs of all citizens, including transit-dependent and disabled citizens.

## **The Role of the Comprehensive Plan for the Town of Vienna**

This planning document is intended to be a living guide for the future overall development of the Town of Vienna. It serves the following purposes:

- The plan acts as a benchmark to where the community is now in terms of current strength, weaknesses, opportunities and threats to quality of life.

- It also provides a means of measuring progress for existing and future Town leaders.
- It clearly defines the direction and manner that the Town of Vienna would like to grow and how that growth should occur.
- It identifies what resources and infrastructure will be needed to facilitate that growth and provides direction on how to meet those needs effectively and efficiently.
- It also recommends areas where the Town's land use implementation tools can be strengthened.
- It can be used as supporting documentation for Town policies and regulations as well as public grant funding requests for public projects.
- In addition to the Town Land Division and Subdivision Ordinance, it will be a primary document used by the Town Plan Commission, and the Town Board to evaluate requests for rezoning within the Town of Vienna.

The most important function the plan will serve is as a resource manual to assist in the evaluation of land use related requests and the provision of design recommendations for various types of development. It establishes a standard by which all land use decisions in the Town need to be based. Communities who consistently make land use decisions based on their comprehensive plan reduce their exposure to legal action, increase their opportunities to save money and improve the quality and compatibility of new development.

**Notice of Severability.** It should be clearly noted that the policies in this plan are not intended to implement or enforce themselves, and therefore rely on local, county, state and federal ordinances, statutes and regulations to enforce these policies. This plan often references specific edits that are recommended to one of the many regulatory ordinances, statutes, and other tools available to the Town of Vienna to implement the desired directives presented herein. The primary implementation tool for much of this plan will be the Town's Land Division and Subdivision Ordinance. In the event that a court should determine that a portion of this comprehensive plan is invalid, such invalidity shall not affect the other provisions of this comprehensive plan.

## **Element 1 - Agricultural Goals, Objectives and Policies**

(NOTE: These goals, objectives and policies refer to areas designated as "Agriculture" on the Proposed Land Use Maps in this document. Specific land use related policies are defined in the Land Use Element of this plan.)

### **Agricultural Goal 1:**

**Continue to maintain the Town's rural character through the preservation of agriculture.**

**Objective 1.0:** Emphasize the preservation of agriculture as the primary land use in the Town of Vienna through the enforcement of state, county and Town regulations.

#### *Policies:*

1.01 **Applicable Zoning** - The predominant zoning classification within Agricultural Preservation areas as shown on the Proposed Land Use Map is the Exclusive Agriculture classification of the Dane County Zoning Ordinance (s. 10.123, Dane County Code).<sup>2</sup>

1.02 **Amendment of the Land Division and Subdivision Ordinance** - Update and maintain the Town's Land

Division and Subdivision Ordinance as the primary tool to control residential development within the Town.

**1.03 Density Policy** - Within Agricultural Preservation areas that are outside of approved urban service areas, limit non-farm residential development to a maximum density of one unit per 75 contiguous acres.

Implementation of this policy will be primarily achieved through a combination of enforcement of the Town of Vienna Land Division and Subdivision Ordinance, and A-1 Exclusive Agriculture zoning.<sup>3</sup> (See also Section 1.04 Tenure Policy)

**1.03.1 Definition of Contiguous** - For purposes of this plan, the term "contiguous" is defined to mean parcels of land which share a common boundary, including a connection at only one point (i.e. a public road, navigable waterway or railroad shall not be considered to break up contiguity).

NOTE: This definition differs from Dane County's definition which states Lots or parcels shall be considered contiguous if they share a common boundary for a distance of at least sixty-six (66) feet. Roads, navigable waterways and other public easements do not affect contiguity.

<sup>2</sup> Except for areas within the extraterritorial zoning jurisdiction of the Village of DeForest, where a separate extraterritorial zoning ordinance and agricultural classification applies to this area.

<sup>3</sup> The land division and subdivision ordinance does not apply to approved urban service areas. See Housing Element for details.

**1.03.2 Areas To Be Included in Density Calculations** - Permanent bodies of water, mapped wetlands, floodplains or environmental corridors are to be included with the original farm acreage when determining the eligible density of non-farm development. Rights of way shall also be included in the original farm acreage for purposes of calculating density.

**1.03.3 Split-Tracking Policy** - Any residential rezone or residential building site(s) created in the Agricultural Preservation Area on or after January 1, 1986 shall be subtracted from and count against the total available splits from the original parcel.

**1.03.4 Identification of Original Farms** - Farm parcels or units are defined as contiguous lands under single ownership, with roads and other public rights-of-way not interrupting contiguity (i.e. land on two sides of a road or meeting at a single point owned by the same person or persons is considered part of a single farm unit.

**1.03.5 Source of Measurement Data** - The source of data to be utilized when determining the size of the original farm parcel on or after January 1, 1986 should be net acreage data including rights-of-way.

a) Definition of Parcel - For purposes of this plan, the term "Parcel" is defined to mean contiguous lands under single ownership.

b) Definition of Single Ownership - For purpose of this plan, the term "single ownership" may include any land singly owned by one individual, jointly owned

by a married couple including that individual, family-owned including that individual, or owned by a partnership or corporation in which the individual is a member.

c) Definition of Split, Density Unit or Land Division - For the purposes of this plan, the term "split" "density unit," or "land division" are used interchangeably and is defined to be any countable non-farm residential use created on or after January 1, 1986 as per the split tracking policy under 1.04.

**1.03.6 Rounding** - If a density calculation results in a fraction, the calculation is rounded down to the nearest split.

**1.03.7 Separation of Existing Farm Buildings** - Separation or division of existing farm buildings or structures would be exempt from this policy and not count as a residential building split as per the density limitation of one split per 75 acres. In order to be eligible for consideration under this policy existing structures proposed for separation or division from the primary residence must be effectively functioning as a part of a farming operation. This date was based on the 20-year period up to the adoption of this comprehensive plan. or otherwise usable for such operations as determined by the Town Plan Commission and/or Town Board.

**1.03.8 Phased Elimination of the Family Split Exemption** - Between the date of adoption of this plan and December 31, 2008, landowners who have owned land in the Town of Vienna since January 1, 1986 may divide and rezone parcels for immediate family members. Such land divisions will count as a building site or 75 acre split under this density policy for immediate family. The family exemption may result in the approval of additional splits that would otherwise not be allowed under the applicable zoning ordinance and Town Land Division and Subdivision Ordinance. Any parcel that exceeds the number of available splits under this policy will not be eligible for additional splits after December 31, 2008. Immediate family includes the following qualifications:

a) Exemption for Parents - The creation of no more than two residential lots on the original parcel as defined in January 1, 1986 to be occupied by the parents or parent of the landowner is permitted within the defined timeframe.

b) Exemption for Children - The creation of no more than one residential lot per child on the original parcel as defined in January 1, 1986 to be occupied by the child or children of the landowner is permitted within the defined timeframe.

c) Notice of Expiration of Exemptions - These exemptions will sunset on December 31, 2008. Petitions or land division proposals to be occupied by parents or children of landowners that are received for review by the Town of Vienna on or after January 1, 2009 must comply with the density policies of the Town Land Division and Subdivision Ordinance.

**1.03.9 Land Divisions Prior to January 1, 1986** - Any land divisions existing prior to January 1, 1986 do not count as splits and are not tracked for purposes of this comprehensive plan.

**1.03.10 Multiple Single Family Unit Residential (Subdivisions)** - Any proposed development with multiple (as in more than one) single-family units (homes) would be limited to one split (or lot) per unit within agricultural preservation areas, and is limited to one unit per lot. Multi-Family residential uses are strongly discouraged within the Town, including but not limited to duplexes, tri-plexes, four-plexes, and other multiple-unit residential structures such as apartments, condominiums and zero-lot line town homes.

**1.03.11 Non-Farm Development** - Any proposed non-farm, non-residential uses development such as cell towers, commercial buildings or other eligible uses that would require a rezoning, conditional use permit, or a certified survey map (CSM) will not be considered to have used a split for each lot or CSM.

**1.03.12 General Sale of Divided Land or Splits** - There is no provision to prevent the sale of divided parcels once an owner has requested and received approval for a split in this plan. However, splits or density units are not automatically transferred with a parcel when sold.

a) **Acknowledgement of Property Owners' Right to Sell Land** - The Town acknowledges that land-owners may sell their land at any time.

b) **Sale of Parcels Under 75 Acres** - For newly purchased parcels of less than 75 acres<sup>5</sup> in an agricultural preservation area there shall be no more than one available housing site available to the new owner. A new housing site under 75 acres will only be permitted if it complies with the applicable zoning requirements and is not subject to any other sort of permanent development restrictions (e.g. deed restrictions). Additional land divisions on parcels under 75 acres will be prohibited by the Town Land Division and Subdivision Ordinance and this comprehensive plan.

c) **Sale of Parcels 75 Acres or More** - For newly purchased parcels of at least 75 acres or greater in an agricultural preservation area, no more than one available housing site immediately available to the new owner. A housing site will only be permitted if it complies with the applicable zoning requirements and is not subject to any other sort of permanent development restrictions (e.g. deed restrictions). If permitted by the applicable zoning ordinance, additional homesites and land divisions will only be considered in 75-acre increments (see footnote 6), must be owned for at least 20 years, and meet the other siting requirements of the Town Land Division and Subdivision Ordinance and this comprehensive plan.

d) **Tracking of Tenure of Ownership When Sold** - Resale of newly purchased property resets any accumulated ownership years to zero, and does not

automatically carry forward any ability to build on a site unless specifically stated in the Town Land Division and Subdivision Ordinance and this comprehensive plan.

<sup>5</sup> The actual building footprint and lot area may be significantly less than 75 acres, but the proposal must permanently prohibit further development in an area at least equivalent to 75 acres.

**1.03.13 Sale of Lands to Local, State or Federal Governments** - Lands sold to local, state or federal governments will not count as a split unless otherwise stipulated by the Town of Vienna and Dane County.

**1.03.14 Transfer of Splits From Sale of Lands After Plan Adoption** - Splits or density units are not automatically transferred with a parcel if sold after adoption of this plan. Availability of splits for building homesites are defined in section 1.03.8 and 1.03.12.

**1.03.15 Mechanism for Tracking Splits Over Time** - For eligible splits through December 31, 2008, the Town of Vienna will coordinate with Dane County to ensure that any approved development results in a formal record of available splits to be incorporated into appropriate documents.

<sup>6</sup> This may be accomplished through deed restrictions or other means deemed appropriate by the Town Board in consultations with the Town attorney. A report should be developed as necessary with the assistance of Dane County Planning staff to regularly monitor available splits and to address areas where additional information may be needed. After this date, the Town of Vienna policy is that any sale of land, building site and/or required associated preservation area consisting of at least 75 acres and is not subject to any other sort of permanent development restrictions (e.g. deed restrictions) must be owned for a minimum of 20 years before being eligible for a land division.

**1.03.16 Non-Conforming Parcels with A-1 Exclusive Zoning** - Parcels that are less than 35 acres and zoned as A-1 EX are not allowed a new homesite. These parcels may not be further divided unless rezoned in accordance with the policies and maps in this comprehensive plan.

**1.03.17 Annexed Lands** - If part of an original farm is annexed into a city or village, the applicable number of splits that would go with that land are retired and are not transferable to the remainder of the farm.

**1.03.18 Transfer of Splits Between Different Original Farms** - The transfer of splits between different original farms is generally not permitted, even if the same individual or family owns them both. Exceptions may be considered if proposed splits or buildings sites are to be clustered on one farm, while measures to permanently preserve the other farmland are proposed. These sites remain subject to other policies of this plan, and applicable zoning and land division regulations.

**1.03.19 Previous Actions Exceeding Density Limitations** - In any area where previous

actions by either the Town of Vienna or Dane County resulted in a development exceeding its density limitations, the only case in 6 While it may be the Town's responsibility to track splits, establishing a base line figure and subsequent tracking will need to be accomplished with assistance from Dane County as the primary zoning enforcement entity. which additional splits or density units would be considered would be if a rezoning for such a parcel was requested by the owner and such a request was in compliance with the Town Comprehensive Plan.

**1.03.20 Continuation of Existing Development Limitations on Restricted Parcels** - Any deed restriction or otherwise legally enacted limitation on development directly associated with a particular parcel remains in full effect and is not impacted by any policy of this comprehensive plan.

**1.04 Tenure Policy** - Within Agriculture Preservation areas, require that a property owner must own his/her property for a minimum of 20 years prior to the date of application for a rezone or a land division before being able to divide off a parcel, building site with associated preservation area, or lot under density policies of this plan. (See also Section 1.03 Density Policy, and 3.01.2 Zoning for Farm Related Residential Uses)

**1.04.1 Ownership Transfer to Immediate Family** - Where ownership of farm parcels is transferred from one immediate family member to another, the years owned for the original owner will carry forward to the subsequent owner.

**1.04.2 Applicability of Tenure Policy to Alternative Farm Ownership** - Farms that are owned by a legally recognized entity, corporation, or group of persons other than an individual are also subject to this tenure policy. If an existing owner incorporates or establishes ownership with one or more individuals, the ability to divide up the property will be based on the duration of ownership from the original owner (or qualified immediate family member if the farm has been passed on) so long as that owner (or immediate family member) is part of the corporation and is a majority owner in that corporation. If at any time that owner (or immediate family member) ceases to be a part of the corporation, the ownership duration resets to zero years.

**1.04.3 Applicability of Splits Taken During Ownership Period** - Any residential splits since January 1, 1986 shall be subtracted from and count against the total available splits from the original parcel.

**1.05 Approvals** - The approval of land divisions and subdivisions are subject to review by the Town Plan Commission and Town Board based on their evaluation of the criteria defined in this plan, the applicable zoning ordinance, and the requirements of the Town Land Division and Subdivision Ordinance. **1.06 Other Resources** - Promote local, state and federal programs and resources that help farming be more economically feasible and foster sustainable agriculture in the Town of Vienna.

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## **Agricultural Goal 2:**

**Reduce and eliminate the potential for land use conflicts between farm and non-farm uses, as well as between farms.**

NOTE: Some goals, objectives, and policy recommendations in this plan may be impacted by or subject to statewide livestock operation siting requirements.<sup>7</sup>

**Objective 2.0:** Encourage the location, siting, and design of any new non-agricultural development to be conducted in a manner that does not conflict with neighboring uses.

*Policies:*

**2.01 Use of Onsite Buffers on New Non-Agricultural Development** - Any new nonagricultural development is responsible for providing an adequate buffer on its property between itself and existing farm operations. (Existing farms are not responsible for providing a buffer on their property to aide new development on adjacent properties.)

**2.02 Siting New Housing Away From Existing Livestock Facilities** - Discourage new residential uses from being built within 1/4 mile of an existing livestock operation or manure storage facility.

**2.03 Siting Controls on New Housing** - Any residential uses requested to be located in an area zoned Exclusive Agriculture must be done in accordance with appropriate zoning regulations and Town land division and subdivision regulations when applicable, including single-family homes.

**2.04 Preserving Large Agricultural Parcels** - Larger agricultural parcels are to be maintained if possible when siting any development in an agricultural area.<sup>8</sup>

**2.05 Maintaining Wetlands as Buffers** - Maintain existing wetlands as buffers between uses and as natural habitat for wildlife.

**2.06 Preserving Woodlands as Resource Areas** - Preservation of woodlands as groundwater recharge areas and erosion control areas are encouraged whenever feasible.

**2.07 Siting Based on Productivity and Compatibility** - Any proposed development in a primarily agricultural area meeting subdivision requirements should be located on

<sup>7</sup> Wisconsin Act 235 was signed in to law on April 13, 2004. The Act can be viewed at: <http://www.datcp.state.wi.us/core/environment/landwater/pdf/03Act235.pdf>. According to the Wisconsin Towns Association, the Wisconsin Livestock Siting Law (Sec. 93.90 of Wis. Statutes, created by 2003 Wis. Act 235) was designed to facilitate the siting of new and expanded livestock facilities in Wisconsin, yet retain some local government authority over facilities covered by the law. The law provided for Department of Agriculture, Trade, and Consumer Protection (DATCP) authority to develop state standards that would apply to covered livestock facilities. DATCP has developed the rule (ATCP 51) which will become effective May 1, 2006 for most designated livestock facilities, if the local government (town or county) want these livestock facilities to be covered by the state standards.

<sup>8</sup> Subject to state livestock siting regulations. non-productive, non-tillable land that does not significantly threaten or affect natural resources, neighboring properties, existing farm operations, or public safety whenever feasible.

**Objective 2.1:** Encourage the siting of intensive agricultural uses (e.g. livestock operations and manure storage facilities) in a manner that is compatible with neighboring uses. <sup>9</sup>

*Policies:*

2.11 Required Agricultural Zoning - Any new or expanded livestock farming operation must be sited on an agriculturally zoned parcel.

2.12 Impacts to Natural Resources and Neighboring Properties - All new or expanded livestock operations are encouraged to minimize or prevent whenever feasible any significant negative impacts to natural resources or neighboring properties.

2.13 **Applicable Regulations** - All new or expanded livestock farming operations must meet Chapter 14 of the Dane County Zoning Ordinance (Manure Storage), NR 151, NR 243, and ACTP 50 where appropriate.

2.14 **Best Management Practices** - All new or expanded livestock farming operations are strongly encouraged to incorporate the most current *Best Management Practices* (or BMPs) as identified by but not limited to the following agencies:

- Dane County
- Wisconsin Department of Agriculture, Trade and Consumer Protection.
- Wisconsin Department of Natural Resources
- National Resource Conservation Service
- University of Wisconsin Extension

2.15 **Coordination of Local, County, and State Policies** - Work directly with those agencies charged with the implementation of regulating livestock facilities to incorporate policies of the Town's comprehensive plan into their efforts, and to stay informed of any efforts to implement statewide regulations on siting of livestock facilities.

2.16 **Creation of Interim Town Siting Regulations** - While waiting for statewide siting regulations to be established, an interim Town ordinance to regulate siting of livestock facilities in the Town should be created and adopted that identifies buffer and setback requirements for all new and expanded livestock operations that is based on the following: <sup>10</sup>

<sup>9</sup> According to the Wisconsin Towns Association, the Wisconsin Livestock Siting Law (Sec. 93.90 of Wis. Statutes, created by 2003 Wis. Act 235) was designed to facilitate the siting of new and expanded livestock facilities in Wisconsin, yet retain some local government authority over facilities covered by the law. The law provided for Department of Agriculture, Trade, and Consumer Protection (DATCP) authority to develop state standards that would apply to covered livestock facilities. DATCP has developed the rule (ATCP 51) which will become effective May 1, 2006 for most designated livestock facilities, if the local government (town or county) want these livestock facilities to be covered by the state standards.

**2.16.1 Required Setback for New Operations** - Any new livestock operation must incorporate a 1/4 mile setback or buffer between the operation site and any residential or commercial structures on neighboring parcels.

**2.16.2 Submittal Requirements for New Operations** - Any new livestock operation must submit a site plan and landscaping plan for review, comment and approval by the Town Plan Commission and Town Board.

**2.16.3 Required Setback for Expanded Operations** - Any expanded livestock operation must incorporate a 1/8-mile setback or buffer between the operation site and any residential or commercial structures on neighboring parcels. If it can be documented that affected neighboring property owners do not oppose a lesser setback, or the Town otherwise makes determination based on reasonable factors that the operation will not create a nuisance, the Town may consider whether to allow a setback less than 1/8 mile.

**Objective 2.2:** Encourage voluntary educational activities to help farmers coexist with their neighbors.

*Policies:*

**2.21 Public Information Efforts** - Publish a bi-annual article in the Town newsletter or other media available to the Town that alerts residents of high activity periods for farmers including spreading manure, night-time operations, farm equipment on local roadways, planting, harvesting, etc.

**2.22 Communication Between Neighbors** - Encourage farmers to notify their neighbors in advance of significant spreading of manure or manure hauling operations.

<sup>10</sup> According to the Wisconsin Towns Association, the Wisconsin Livestock Siting Law (Sec. 93.90 of Wis. Statutes, created by 2003 Wis. Act 235) was designed to facilitate the siting of new and expanded livestock facilities in Wisconsin, yet retain some local government authority over facilities covered by the law. The law provided for Department of Agriculture, Trade, and Consumer Protection (DATCP) authority to develop state standards that would apply to covered livestock facilities. DATCP has developed the rule (ATCP 51) which will become effective May 1, 2006 for most designated livestock facilities, if the local government (town or county) want these livestock facilities to be covered by the state standards.

### **Agricultural Goal 3:**

**Establish clear criteria for evaluating requests to rezone Exclusive Agricultural parcels.**

**Objective 3.0:** Define the criteria and review procedure for considering rezoning of any parcels currently under Exclusive Agricultural zoning.

*Policies:*

**3.01 Applicable Zoning Ordinances** - Any land divided for purposes of building a new single home under the Town's Land Division and Subdivision Ordinance must be zoned in accordance with relevant zoning requirements

(i.e. Dane County or DeForest ETZ).

**3.01.1 Zoning for Non-Farm Residential Uses** - Proposed new residential uses on an Exclusive Agricultural parcel not related to the existing farm operation may be rezoned to the proper residential zoning classification (based on lot size as defined in the applicable zoning ordinance), not be encumbered as to land uses in any fashion from previous land divisions or rezoning, and reviewed as to its consistency with this comprehensive plan.

**3.01.2 Zoning for Farm Related Residential Uses** - Proposed new residential uses on an Exclusive Agricultural parcel that are related to the existing farm operation may retain Exclusive Agricultural status if it can be documented that the new residential use is permanently to be used in relation to the existing farm operation by use of a deed restriction or other legally recognized guarantee.<sup>11</sup>

**3.02 Single-Family Home Sites and Subdivisions** - Proposed new single-family home sites should meet the following criteria:

**3.02.1 Siting Based on Land Productivity** - A proposed new single-family home site created under the Town Land Division and Subdivision Ordinance should be sited on non-productive or non-tillable land whenever possible. Proposed new home sites located in agricultural preservation areas as identified on the proposed land use map of this comprehensive plan must be at least two acres in size to provide for a reserve septic area.

**3.02.2 Minimum Buildable Area** - Proposed new home sites (i.e. building area) located in agricultural preservation areas must be at least two acres for installation or provision of reserve septic areas. Land divisions for a single-family residential home site must set aside the remainder of the 75 acres to be permanently protected from future development <sup>11</sup> This policy is intended to offer guidance to the proper zoning authority as to how land use decisions should be evaluated and enforced.

**3.02.3 Mitigating Impacts to Natural Resources** - A proposed new single-family home site should not significantly threaten or affect natural resources, especially groundwater resources.

**3.02.4 Siting Based on Compatibility with Neighboring Uses** - A proposed new single-family home site should be designed or sited in a manner that is compatible with neighboring agricultural uses or adjacent home sites.

**3.02.5 Impacts Relating to Driveways and Public Roads** - A proposed new single-family home site must be sited in such a manner as to not create unnecessary multiple driveways, driveways of excessive length, or the need for new public roadways unless otherwise required to meet the other objectives and policies of this plan.

**3.02.6 Preference for Grouping Home Sites on Parcels** - If a new single-family home site is proposed on a parcel where there is an existing home or homes, it should be located in close

proximity to existing homes in such a manner as to minimize impacts on productive agricultural lands whenever reasonable.

**3.03 Number of Units per Lot Allowed** - New residential development is limited to one unit per lot within the Town.

**3.04 Applicability of Land Division and Subdivision Ordinance to Multiple Single- Family Lot Proposals** - Proposed multiple single-family dwellings, lots or residential units (e.g., residential subdivisions) must meet all Town Land Division and Subdivision Ordinance requirements unless proposed in an adopted urban service area. Any proposed development with multiple (more than one) singlefamily units (or homes) would be limited to one split (or lot) per unit (or home) within agricultural preservation areas, and is limited to one unit (or home) per lot. Multi-Family residential uses are strongly discouraged within the Town, including but not limited to duplexes, tri-plexes, four-plexes, and other multiple-unit residential structures such as apartments, condominiums and zero-lot line town homes.

**3.05 Utility Availability for Multiple Single Family Lot or Qualified Multiple Single- Family Unit Proposals** - Proposals for multiple single-family dwellings, lots or residential units (e.g. residential subdivisions) may only be developed in areas where public sanitary sewer service is readily available and as identified in this comprehensive plan. There are currently two potential multi-unit single-family subdivision developments located directly between existing subdivision developments in the southeast part of the Town at this time ([see the Proposed Land Use Map](#)).

**3.06 Fiscal/Economic Impact Analysis** - Any proposed residential development that would require a rezoning may be required to complete a fiscal/economic impact analysis on anticipated service costs and revenue generation prior to issuance of a building permit, zoning certificate or other required Town Board approval.<sup>12</sup> Requirements of this analysis will be provided by the Town of Vienna, and will be standardized for all proposed development.

**3.07 Impacts Relating to Driveways and Public Roads** - Any new or expanded development that would require a rezoning must be sited in such a manner as to not create excessive driveways or the need for new public roadways unless 1) the development is part of an approved plat or 2) the development has been sited to meet other objectives and policies of this plan.

**3.08 Allocation of Splits (e.g., Additional Land Divisions)** - If rezoned from Exclusive Agriculture, split restrictions on future development on that parcel(s) will remain with that parcel by default unless otherwise agreed upon by the Town. Specifically, a first owner under this policy would have one split immediately available, and that owner could not utilize any further splits until they had owned the property for twenty (20) yearsóregardless of how many splits were available under the previous policy. Furthermore, subsequent owners would have to wait the full 20 years to divide off any property for building purpose. (See also 1.03.12)

**3.08.1 Additional Land Division Restrictions on Parcels** - Additional restrictions for future uses may be negotiated as a condition of approval from the Town. Any such restrictions will be recorded on the property deed unless otherwise agreed upon between the landowner and the Town.

**3.09 Waiver of Split Restrictions** - Restrictions on residential splits may also be waived at the discretion of the Town if eliminating such restrictions does not permit development contrary to this land use plan.

**3.10 General Commercial Uses** - Requests for rezoning for general commercial uses will only be considered in the Commercial Development District with the Village of DeForest as identified on the Proposed Land Use Map.<sup>13</sup>

**3.11 Limited Agriculture Related Commercial Uses** - Limited agriculture related commercial uses requiring a rezoning may be considered in other areas of the Town if:

**3.11.1 Proposed Customer Service Area** - The primary market served by such a use is local farmers.

<sup>12</sup> An individual single family home will not be required to conduct a fiscal/economic impact analysis

<sup>13</sup> Mutual adoption of a joint land use map for this area by both the Town of Vienna and the Village of DeForest is strongly recommended. The Town has currently defined commercial zoning districts within the ETZ area.

**3.11.2 Compatibility with Agricultural Uses** - The proposed use does not disrupt existing agricultural lands operations.

**3.11.3 Compatibility with Residential Uses** - The proposed use does not create a conflict with neighboring residential uses (e.g., excessive traffic, noise, dust, light, etc.).

**3.11.4 Reuse and Rehabilitation of an Existing Property** - The site is an appropriate, safe reuse of a parcel not currently usable in its current state for agriculture or residential use due to its previous use.

**3.11.5 Voluntary Restrictions on Business Operations** - The petitioner formally agrees to not expand the proposed business to a degree that goes against the previous criteria (i.e. through a development agreement).

**3.12 Limited Reuse of Agricultural Buildings** - Limited, low-intensity non-agricultural use of existing agricultural related buildings<sup>14</sup> with excess capacity may be permitted without a change in zoning if <sup>15</sup>:

**3.12.1 Limited Traffic Impacts** - The additional use does not generate more than 10 trips per day by persons not directly involved in the farming operation.

**3.12.2 Restrictions on Outdoor Storage** - The additional use does not require outdoor storage of vehicles, or other materials.

**3.12.3 Compatibility with Residential Uses** - The additional use does not create a conflict with neighboring residential uses (e.g., traffic, noise, dust, light, etc.).

3.12.4 **Signage** - Signage is subject to the following restrictions: a) Size - No more than one sign totaling less than 10 square feet is permitted. b) Lighting - No lighting or other electric illumination is permitted. c) Location - The sign must be hung on the building structure where the limited, low-intensity non-agricultural use is located.

3.13 **Reuse of Inactive Quarry Facilities** - Limited reuse/rezoning for an inactive quarry facility may be considered if: 14 The construction of new buildings for commercial use on agricultural parcels is not permitted, unless the owner rezones the applicable parcel or portion of the parcel. 15 While the Town does not have the authority to allow a use change without County approval or possibly a County zoning change, the Town does make a recommendation based on the policies of this planning document.

3.13.1 **Accelerated Reclamation** - The quarry facility in question will be reclaimed to a level and schedule mutually agreed to between the Town and the owner prior to the development of the proposed use.

3.13.2 **Traffic Safety** - The location of the proposed use does not adversely impact Town roadways, create unsafe travel conditions, or cause undue maintenance of roadways by the Town without adequate compensation from the owner/operator to the Town.

3.13.3 **Compatibility with Agricultural Uses** - The proposed use does not disrupt existing agricultural lands operations.

3.13.4 **Compatibility with Residential Uses** - The proposed use does not create a conflict with neighboring residential uses (e.g., traffic, noise, dust, light, etc.).

3.13.5 **Reuse and Rehabilitation of an Existing Property** - The site is an appropriate, safe reuse of a parcel not currently usable in its current state for agriculture or residential use due to its previous use.

3.13.6 **Voluntary Restrictions on Business Operations** - The petitioner formally agrees to not expand the proposed business to a degree that goes against the previous criteria (i.e. development agreement).

3.13.7 **Site Planning and Landscaping** - A formal site plan and landscaping plan is prepared by the petitioner to allow for comment and approval by the Town Plan Commission and the Town Board.

3.13.8 **Environmental Assessment Requirement** - An environmental assessment is prepared by the petitioner to allow for comment and approval by the Town Plan Commission and the Town Board. (A full environmental impact analysis may be required by the Town Board if the Environmental Assessment (EA) does not satisfactorily address all known and potential environmental concerns.)

3.13.9 **Cessation of Mining Activity** - The petitioner waives the right to conduct any further mineral extraction on the site.

3.13.10 **Regulatory Measures** - The development of the proposed use must follow all applicable Town, County and State ordinances and regulations.

3.13.11 **Compliance with Comprehensive Plan** - The proposed use meets all other requirements outlined in this plan (including the section on Mineral Extraction uses.)

3.14 **Industrial Uses** - No industrial uses are currently designated in the Town Proposed Land Use Plan.

3.15 **Fiscal/Economic Impact Analysis** - Any proposed commercial, industrial or other non-agricultural development that would require a rezoning may be required to complete a fiscal/economic impact analysis on anticipated service costs and revenue generation prior to issuance of a building permit, zoning certificate or other required Town Board approval.16 Requirements of this analysis will be provided by the Town of Vienna and will be standardized for all proposed development.

3.16 **Impacts Relating to Driveways and Public Roads** - Any new or expanded commercial, industrial or other non-agricultural development that would require a rezoning must be sited in such a manner as to not create excessive driveways or the need for new public roadways unless 1) the development is part of an approved plat or 2) the development has been sited to meet other objectives and policies of this plan.

3.17 **Splits After Rezoning** - If rezoned from Exclusive Agriculture, split restrictions on commercial development designated in this plan do not remain with that parcel by default. However, the Town may require split restrictions if it is determined that the site may be converted to residential uses in the future, or if farmland preservation efforts would be best served by requiring some degree of limitation on future splits. Such uses would need to be in compliance with other ordinances and policies of this plan. Any restrictions would be negotiated as a part of the approval process.

3.18 **Mechanism to Document and Track Use Restrictions** - Additional restrictions may be negotiated as a condition of approval from the Town. Any such restrictions will be recorded on the property deed unless otherwise agreed upon between the landowner and the Town.

**Agricultural Goal 4 (Mineral Extraction): Develop additional local siting, nuisance and reclamation restrictions on active and potential quarrying operations with an emphasis on encouraging the reclamation of existing facilities within the Town of Vienna.**

**Objective 4.0:** Establish a set of local policy guidelines to evaluate new and expanded mineral extraction operations in relation to their impact on the Town, both as an individual site and in conjunction with the total number of approved and open sites within the Town of Vienna.

*Policies:*<sup>16</sup>

An individual single family home will not be required to conduct a fiscal/economic impact analysis

**4.01 Evaluation of Proposed Quarry Sites** - The Town of Vienna will evaluate any proposed quarry use to see if it is consistent with the Town Comprehensive Plan and neighboring uses.

**4.01.1 Compatibility with Agricultural Uses** - That it is not an activity that will limit the use of surrounding land for agricultural purposes.

**4.01.2 Compliance with Farmland Preservation Agreement and Regulations** - That it is not an activity which will conflict with agricultural operations subject to a farmland preservation agreement (or zoning certificate) on the subject property.

**4.01.3 Compatibility with Existing or Planned Uses** - That it is not an activity that will conflict with 1) existing agricultural operations on other properties, 2) existing or planned residential uses, or 3) existing or planned commercial uses.

**4.02 Acreage Cap Guideline** - The Town of Vienna establishes a policy guideline that no more than 975 acres<sup>17</sup> be approved for mineral extraction sites within the Town at any one time unless the owner/operator of a site enters into a an agreement with the Town of Vienna that address the appearance, access, impacts, potential nuisances, overall safety, and the timely reclamation of proposed sites. This guideline does not automatically limit the maximum number of open acres nor automatically approve a proposed site that falls within the acreage guideline.

**4.03 Regulatory Requirements** - All operations must conform to all appropriate federal regulations administered by the Mine Safety and Health Administration (MSHA), the Wisconsin Department of Natural Resources (WDNR) and Dane County

**4.03.1 Chapter 14** - Erosion Control & Stormwater Management; **Chapter 11** - Shoreland and Wetland Regulations; **Chapter 10** - Zoning; and Chapter 74 Reclamation of the Dane County Code of Ordinances (DCCO).

**4.03.2 Chapter 30 - DNR Administrative Code**

**4.03.3 Village of DeForest Extraterritorial Zoning Code**

**4.04 Conditional Use Permit Requirements** - All proposed operations must obtain a Conditional Use Permit ("CUP") under the Dane County Zoning Ordinance and/or the Village of DeForest Extraterritorial Zoning Ordinance and must meet the minimum site plan requirements thereof. The operator must secure a CUP for the mineral extraction operation from Dane County or the Village of DeForest (via the ETZ Committee) and must meet all applicable requirements of Dane County or the Village of DeForest and the State of Wisconsin. Proposing operators will be required to meet or exceed all applicable public hearing requirements, including

<sup>17</sup> Based on research from the Town Clerk and Dane County Planning, there are currently 826 approved acres in the Town of Vienna as of March 28, 2005. The Town reserves the right to amend this guideline as necessary. The Town is proposing to

use 150 acres as a planned growth figure if the approved figure is amended or updated. timely notification of the proposed use to neighboring property owners. (Notifying all residents within at least a 1/2 mile of the proposed mineral extraction site is recommended.)

**4.05 Application Submittals** - A complete copy of the Dane County application or the Village of DeForest Extraterritorial Zoning Application must be submitted to the Town as a part of the conditional use process.

**4.06 Required Operational Agreement with the Town of Vienna** - Any proposed mineral extraction operation may only receive a recommendation for approval at the Town level if the owner/operator of the site enters into a specific operational contractual agreement with the Town of Vienna that addresses appearance, access, potential impacts, potential nuisances, overall safety, and timely reclamation.

**4.06.1 Emphasis on Reclamation of Existing Sites** - Owner/operators with existing sites in the Town of Vienna will be strongly encouraged to address any appearance and reclamation concerns raised by the Town Board or Town Plan Commission with their existing sites within the Town. The Town reserves the right to consider the status and condition of existing sites when evaluating new or expanded proposals from owner/operators already operating other facilities. Additional screening for existing sites or accelerated reclamation of existing sites is strongly recommended. The Town Plan Commission and Town Board will consider reclamation efforts for existing sites more favorably than mere screening alone.

**4.06.2 Agreement as a Condition of Town Approval** - Operational agreements between the operator and the Town of Vienna will be required for all new or expanding quarrying operations. Failure to enter into an agreement will result in an unfavorable recommendation from the Town Plan Commission and Town Board to Dane County through the Conditional Use Permit review process.

**Objective 4.1:** Establish a set of local policy guidelines that governs what issues must be addressed in any operational contract agreement between the Town of Vienna and an owner/operator of a proposed new or expanded mineral extraction site.

*Policies:*

**4.11 Basis of Operational Agreements** - Operational agreements between the owner/operator and the Town of Vienna will be based on a set of common guidelines but will be individually negotiated for each new or expanded site.

**4.11.1 Review of Operational Agreements** - Operational agreements will be reviewed on an annual basis unless otherwise agreed upon, and such agreements will be required to be renewed before continued operations will be allowed.

**4.11.2 Potential for Additional Requirements** - Individual requirements more stringent than established minimums may be negotiated by the Town of Vienna and the owner/operator of the proposed mineral extraction operation as conditions of Town approval of the conditional use permit.

**4.11.3 Justification for Conditions and Restrictions in Operational Agreements** - The Town of Vienna may place certain conditions and restrictions on proposed uses and operations to protect against any activity that may be considered a nuisance, hazardous, harmful, offensive, or otherwise adverse to the environment and/or town roads, or may be detrimental to the value of the neighborhood or the community, or the public health, safety and general welfare of the community.

**4.12 Minimum Terms and Covenants** - Any agreement required for a recommendation of approval by the Town of Vienna to Dane County must meet or at least address the minimum terms and covenants as outlined as follows:

**4.12.1 Description of Premises.** The legal description of the property to be used as the quarry must be provided and shall include a description of the total size of the property and the total amount of the property subject to mining. There shall be a minimum 150 feet setback from the conditional use permit (CUP) boundary unless otherwise agreed upon from the perimeter of the property where no mining will occur.

**4.12.2 Use.** The mineral extraction operations to be conducted on the Property shall be clearly defined and may include the removal of rock, gravel, sand, or any other minerals from the earth from excavating, stripping or leveling. These operations include reasonable accessory uses for mineral extraction, including, but not limited to, blasting, crushing, sorting, washing (with settling basins), stockpiling and sale of aggregate material. Specific limitations regarding operating hours for all uses (including accessory uses) shall be defined in the agreement.

**4.12.3 Term.** The agreement shall commence on the date the CUP is issued by Dane County and shall continue in effect for so long as the CUP is in effect. The agreement shall be reviewed annually unless otherwise agreed upon by the Town Board to insure compliance with its terms. The projected duration of operation shall be included in the agreement.

**4.12.4 Description of Operations.** The quarry will be used to produce aggregate mineral products for various purposes, including, but not limited to, construction of buildings and roads. The quarry operations will consist of: a) Removing topsoil and overburden to form berms at the perimeter of the quarry for the purpose of noise reduction, landscaping and reclamation, b) Blasting to loosen rock from the quarry wall, c) Crushing of the rock into appropriately sized material to meet government and private contractor specifications, d) Washing crushed rock to meet those same specifications, e) Stockpiling the crushed rock and other aggregate in accordance with appropriate size and physical characteristics, f) Selling and hauling the crushed rock and aggregate from the quarry site and related activities. g) Equipment to be used in the quarry operations include earthmovers, bulldozers, loaders, scrapers, trucks, rock drills, blasting equipment, conveyors, dewatering pumps, primary, secondary, and tertiary crushers, sizing and washing equipment, seismographic monitoring equipment and scales. All equipment and their operation shall be screened from view by way of berms, plantings, and/or fencing.

**4.12.5 Other Operational Regulations.** Regulations regarding specific operations related to this general plan of operations are described as follows:

a) **Blasting.** Prior to commencement of any blasting the Town may, at request of operator, inspect all buildings, structures and wells within a pre-determined radius (500 to 1,300 feet recommended) of the perimeter of the property to determine the present condition and quality of the buildings, structure and wells. Inspections shall be conducted by independent qualified inspectors agreeable to the Town selected and paid for by operator. Water quality tests may also be desirable where potential contamination may be an issue for neighboring properties with wells. All blasting shall be conducted in strict accordance with the State of Wisconsin regulations and will be undertaken by licensed blasters. No explosives shall be stored on the quarry site. No blasting will have peak particle velocity that exceeds 0.3 inches per second (unless otherwise agreed upon in writing) when measured in accordance with State of Wisconsin blasting regulations. Blasting will only occur between set hours of operation (8 a.m. and 4 p.m. recommended), Monday through Friday. No blasting will occur on Saturdays, Sundays or legal holidays. Records of blasting shall be made available to the Town upon request. No flyrock may leave the property. Written notice shall be provided to all residents within 500 feet, unless otherwise agreed upon, of the mineral extraction site one week prior to the start of any scheduled blasting sequence. The operator shall submit to Town of Vienna proof of sufficient liability insurance coverage for any potential damage to structures located within 500 feet of the blast site or as otherwise determined in the agreement between the operator and the Town of Vienna. Sufficient liability insurance coverage shall be defined in the agreement between the operator and the Town. Seismograph testing and blasting records shall be filed with Dane County and copied to the Town of Vienna before the end of each calendar year.

b) **Damage Claims.** Any damage caused by quarry operations to buildings, structures and wells shall be subject to compensation by operator in accordance with the procedures identified in the agreement.

c) **Claims Procedures.** Any damage to buildings, structures and wells caused by blasting or from quarry operations shall be compensated by operator in accordance with the following procedures:

1. Any claim for damage shall be presented to operator in written form, with a sworn certification, estimate of damage, and request for payment.
2. Operator shall have the right to inspect the building, structure, or well to determine whether, in its own good faith judgment, the damage was caused by quarry operations or blasting.
3. In the event of a dispute, operator shall post 125% of the amount of claimed damage with a bank identified by the Town and the matter shall be referred to the University of Wisconsin- Madison Department of Geological Sciences or other qualified neutral party for determination of the cause of the damage claimed by

the property owner. Such determination shall be promptly rendered after presentation. Operator shall pay the claim within five (5) business days of decision if the decision maker determines that blasting or quarry operations caused the damage.

4. In the event of a dispute, operator shall take reasonable steps to mitigate any inconvenience to the property owner pending a decision by the University of Wisconsin-Madison Department of Geological Sciences or other neutral consultant. The nonprevailing party to the dispute shall have the responsibility for payment of all costs and reasonable attorney's fees of the prevailing party and the costs of the University of Wisconsin- Madison Department of Geological Sciences or other qualified neutral consultant incurred in rendering its decision.

d) Noise. Operator will create a landscaped earthen berm (recommended to be a minimum eight feet in height) around the opened area of the quarry for the purpose of mitigating the noise, visual and safety concerns of the neighbors. The berms shall be seeded. Operator shall require all trucks entering and leaving the quarry to have proper muffler systems. Noise levels from the mineral extraction operation shall not exceed 75 decibels within 50 feet of the nearest residence unless otherwise agreed upon without obtaining a permit to exceed this sound level from the Town of Vienna. A study of the potential noise that will be generated from the proposed mineral extraction site shall be done by an independent engineer and submitted to the county and the Town Board for approval as a part of the CUP process. In addition to the required use of equipment mufflers and berms, the operator shall use landscaping, walls, etc., to assure that the noise does not exceed the maximum permitted level.

e) Transportation. Access to the quarry area shall be identified and agreed upon in writing prior to start up of operations. If this road is a Town road, it will be constructed and maintained at a width, capacity and overall design as recommended by the Town Engineer. Any road or intersection improvements required to service this operation (including acceleration and deceleration lanes if deemed necessary) will be improved and maintained at the operator's sole expense in accordance with standards set by Town Engineer<sup>18</sup> or the county highway department to allow for safer truck movements in and out of the quarry. The improvements will be made prior to the commencement of any hauling out of the quarry except for hauling of material necessary to improve the intersection. The entrance road will be paved. Haul roads will be maintained in a dust-free manner in accordance with local, state, and federal regulations. Restrictions on use of Town roads may be placed on the operation, only to be lifted by the Town Board in unusual circumstances. A detailed traffic study will be conducted and submitted to the Town that addresses the effects of trucking on traffic volume, patterns, safety, and roadway capacity on all affected routes within 1/2 mile of the quarrying operation.

f) Hours of Operation. Hours of operation for trucking and crushing shall be identified and agreed upon (6:00 a.m. to 4:00 p.m. recommended), not including maintenance time, Monday through Friday. These hours may be expanded with the approval of the Town Board if the quarry operations are being performed for public contracts. Operations on Saturdays, Sundays and nationally recognized holidays are not allowed unless written permission is obtained from the

Town Board. <sup>18</sup> The Town Engineer may require additional maintenance at the owner/operator's expense if it can be documented that the mineral extraction operation has resulted in the road's PASER rating to drop below a score of "7."

g) Stormwater Control. Stormwater in the opened area of the quarry shall be controlled by use of one or more of the following methods: grading, contouring, berming, landscaping and using detention ponds. Stormwater within the quarry area shall be directed to detention areas. All operations must be in accordance with Dane County stormwater regulations. h) Dust Control. Operator will maximize dust control in accordance with local, state and federal regulations. The site's ingress/egress roads shall be paved from the public highway a minimum distance into the site as agreed upon with the Town of Vienna. Dust shall be controlled so that there are no visible emissions at the boundaries of the permitted mineral extraction area. Air monitoring may be required to be conducted at the operation site or at other potentially impacted areas if determined to be necessary by the Town. i) Impact on Groundwater. A hydrologic study, done by an independent firm, to provide verification that the mineral extraction operation will not affect the quantity or quality of water in nearby wells, lakes, streams, or wetlands shall be submitted to the Town for comment as a part of the CUP process.

**4.12.6 Reclamation Plan.** The quarry shall be reclaimed to farming agricultural uses unless otherwise agreed upon in writing by the Town Board. All quarry operations will be developed in sequenced phases and reclaimed as new areas of the quarry are developed as defined in the agreement with the Town. Reclaimed areas shall be covered with overburden and topsoil and shall be seeded as soon as practicable after placement of the topsoil. The quarry shall not have more than an identified and agreed upon acreage opened for mining at any time. A detailed quarry operations plan showing the reclamation pattern must be provided to the Town as a condition of entering an agreement. Topsoil on the property shall remain on-site. Sufficient amounts of overburden shall remain on-site for reclamation needs. A detailed recovery plan that specifically identifies how topsoil and overburden will be managed on-site must be provided as a part of the conditional use permit (CUP) process and application. The reclamation plan must identify what sorts of fill materials are to be utilized on the site. Only materials that will allow the site to return to agricultural use or be sufficient for building purposes will be allowed. Final reclamation of the last opened area shall be finished within one (1) year after all active mining operations have ceased.<sup>19</sup> Operator shall post a bond or letter of credit in an amount equal or exceeding the estimated cost of reclamation as agreed between the operator and the Town of Vienna payable to the <sup>19</sup> Active mining is defined as the harvesting of in tact mineral deposits, excluding mined materials that are being stored on site. A site shall be considered to be inactive if there has not been more than 30 days of active mining in any given two-year period. Town of Vienna to insure compliance with the reclamation plan.<sup>20</sup> The Town of Vienna may consider effectiveness of previous reclamation activities at other extraction sites within the Town when negotiating terms with owner/operators of multiple sites, including terms on completing acceptable reclamation at these other sites.

**4.12.7 Permits and Environmental Compliance.** Operator shall secure all permits from federal, state and local authorities necessary to open and operate the quarry prior to commencement of any quarry operations. Operator shall be responsible that all permits remain

in full force and effect during any quarry operations and for the term of the agreement.

4.12.8 **Insurance.** Operator will secure public liability insurance in an amount to be jointly determined by the operator and the Town naming the Town, its agents, representatives and engineer as an additional insured as the Town's interests may appear during the term of the agreement. Operator shall be responsible for ensuring that insurance coverage remains in full force and effect during any quarry operations and for the term of the agreement.

4.12.9 **Perimeter Fencing.** Operator shall maintain adequate perimeter fencing as required by the Town of Vienna, Dane County, Wisconsin DNR, and Mine Safety and Health Administration (MSHA) regulations. The quarry shall be posted "NO TRESPASSING OR HUNTING" and include signage warning of the quarrying activities on the associated property placed at regular intervals (300 feet is recommended as a maximum). The haul road and any other access roads, shall have a gate securely locked when the quarry is not in operation.

4.12.10 **Notification of Existence of Quarry.** Operator shall supply to the Town written reports describing the nature, extent, location and duration of its activities that the Town shall have available for interested residents and prospective applicants for subdivision approval, zoning approvals or building permits. The burden is on the applicant (i.e. person or persons proposing a new use or building) to identify existing active and approved mineral extraction facilities that may affect a building or development prior to their application. All quarry operators are required to provide the Town a copy of the annual activity and reclamation reports provided to Dane County each year at the time such reports are required to be filed with Dane County. All reports will be available at the Town Hall for public review. 20 These funds must be available at all times for at least 18 months after reclamation is completed. A minimum amount of \$1,500 per acre (above and beyond any amounts required by Dane County) is recommended, unless otherwise agreed upon by the Town.

4.12.11 **Quarry Advisory Committee.** Operator shall participate in the affairs of the Quarry Advisory Committee established by the Town Board. The Quarry Advisory Committee shall advise the Town Board regarding issues that may arise during the term of the agreement. The Quarry Advisory Committee will consist of a Town Board representative, one representative from the property owners or neighboring residents within the predetermined radius of the property, and a Plan Commission representative. The Town Board will select the members of the Committee. The function of the Quarry Advisory Committee is to prepare and make recommendations to the Town Board for: community relations, complaints by area residents concerning quarry impacts, and for initial consideration and recommendations concerning other aspects of quarry operations as they may arise from time to time during the term of the agreement. In addition, if the Quarry Advisory Committee believes that there has been a violation of any term of the agreement, then in such event, the chairperson of the Committee shall give written notice of such violation to the Town Clerk and affected operator(s). Thereafter, the Quarry Advisory Committee will investigate the potential violation and make a report back to the Town Board within thirty (30) days. The Town Board may act on such report as it sees fit; and further, if the Town Board determines that there has been noncompliance with the provisions of the agreement, then the Town Board may proceed with enforcement set forth below. Operator shall reimburse the Town for the expenses

of the Quarry Advisory Committee. The Committee will meet once per year or as necessary to address concerns with quarry operations.

4.12.12 **Enforcement.** The Town shall enforce any agreement by the commencement of an action in the Dane County Circuit Court. Prior to commencing such action, the Town Board shall give the operator thirty (30) days' advance written notice of any alleged default under the agreement, and the operator shall have the right to cure such alleged default within such thirty (30) day period or within such other periods of time as the parties may mutually agree. If the alleged default is not cured, the Town Board is entitled to seek such equitable or other relief as it may deem appropriate, including, but not limited to, its actual costs and attorney's fees. This section is solely for the benefit of the parties to the agreement.

4.12.13 **Right of Inspection.** The Town Board and/or Quarry Advisory Committee shall have the right to periodically inspect the property during normal business hours upon reasonable advance notice to operator. Such inspection will be carried out by the Town Engineer or other designee of the Town Board and will not disrupt quarry operations. The inspecting agent will observe all safety procedures as specified by operator. A representative of the operator may be present during any such inspection.

4.12.14 **Indemnification.** In the agreement between the operator and the Town, the operator shall agree to indemnify and save harmless the Town, its agents, representatives, board members, officers, Town Engineer, and employees from any and all liability, loss or damage<sup>21</sup>, costs, attorneys' fees and expense that the Town or its agents, representatives, board members, officers, Town Engineer, and employees suffer as a result of any proceeding, action or claim against the Town arising in any way out of the operation or use of the mineral extraction site. The operator's agreement to the indemnification in this section of the agreement shall run with the mineral extraction site and be perpetual. The operator may be required to include adequate insurance to cover this indemnification obligation.

4.12.15 **Waiver.** No waiver of any breach of the agreement shall be held to be a waiver of any other subsequent breach. The failure of the Town to enforce at any time any of the provisions of the agreement, or to exercise any option which is herein provided, or to require any time performance by operator of the provisions hereof shall be in no way construed to be a waiver of such provision, nor in any way affect ability of the agreement or any part thereof or the right of the Town to thereafter enforce each and every provision.

4.12.16 **Severability.** If any portion of the agreement is held invalid, the remainder of the agreement shall not be affected thereby.

4.12.17 **Recording.** It is understood that the agreement may be recorded with the Dane County Register of Deeds.

4.12.18 **Effective Approval.** Approval and adoption of the agreement by the Town does not constitute approval or disapproval by the Town of the mineral extraction site, the need for the

site, and/or the feasibility or method of operation. The parties acknowledge that Dane County or the Village of DeForest is vested with the final decision-making authority as to whether to grant a Conditional Use Permit for mineral extraction, dependent upon whether or not the proposed site is in or out of the Extraterritorial Jurisdiction of the Village of DeForest.

4.12.19 **Applicable Law.** The agreement shall be interpreted according to the laws of the State of Wisconsin.

4.12.20 **Conflict.** In the event there is any conflict between the terms and conditions of the agreement with the Conditional Use Permit issued by the county, the terms and conditions of the Conditional Use Permit shall prevail and control.<sup>21</sup> Whether caused in whole or in part by the negligent act of omission by the Town together with its agents, representatives, board members, officers and employees.

4.12.21 **Required Escrow Amounts.** The Town of Vienna reserves the right to require stand alone escrow deposits from the owner/operator.

a) Landscaping - A minimum dollar amount<sup>22</sup> may be required to ensure that landscaping plants and trees survive after planting and that other landscaping work is completed. The Town can utilize these funds for this purpose at its discretion. The Town of Vienna will hold this amount for 18 months after completion of all landscaping as required in an adopted landscaping plan for the quarry site. The Town Engineer shall make a determination when landscaping as been completed. At the end of this 18-month period, any remaining funds will be returned to the operator. If no problems occur with required landscaped areas, the full amount will be returned to the operator. Specific landscaping plans and requirements will be incorporated into an agreement between the operator and the Town.

b) Roadway Maintenance - Operators may be required to make capacity improvements to Town roads prior to approval of the proposed facility if the Town Engineer determines that the current road capacity is inadequate. All improvements will be made at the sole cost of the operator. In addition, a minimum dollar amount per affected mile of Town road as determined by the Town Engineer may be required for operations that utilize Town roadways.<sup>23</sup> The Town may utilize these funds for this purpose at its discretion. This amount will be held for one (1) year after the Town of Vienna approves final reclamation. At the end of this one-year period, any remaining funds will be returned to the owner/operator. If no problems occur with affected Town roads or associated right of way, the full amount will be returned to the operator. Specific amounts for improvements or maintenance will be incorporated into an agreement between the operator and the Town.

<sup>22</sup> A minimum of \$10,000 is recommended. The final amount should be based on anticipated landscaping costs.

<sup>23</sup> A PASER rating of 7 will be the standard utilized to evaluate the condition of affected roadways.

**THIS DOCUMENT CONTINUES...**

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