

TO: Town of Rock. Attn: Chairman Pete Winistorfer

CC: Attorney Larry Konopacki, Counsel for Town of Rock

FR: Attorney Mitchell Olson, Counsel for Coulee Frac Sand, LLC

RE: Application for Conditional Use Permit

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Coulee Frac Sand, LLC (“Coulee”) hereby submits the following statement to address potentially applicable standards in the Town of Rock Zoning Ordinance (“Town Code”) to its pending application for a Conditional Use Permit and proposed Developers Agreement. This submission will specifically address sections of the Town Code.

## **SECTION 2 – Definition of “Conditional Use”**

The Town of Rock Zoning Ordinance includes a definition of “Conditional Use.” Coulee interprets this term as follows:

- A conditional use, special exception, and special permit are equivalent terms. These are uses permitted by a zoning ordinance, but which cannot be located in a zone as a matter of right. The use is permitted in the zone only under the conditions specified in the ordinance or imposed by the issuing body. Douglas W. Kmiec, Zoning and Planning Deskbook, Sec. 6.04. *See also* Wis. Stat. §60.61(4e)(a)1. “Conditional uses are certain land use types which are of such special nature and the impacts of which are so dependent on specific circumstances that determination in advance of where and when they should be permitted is impractical.” Brian W. Ohm, Guide to Community Planning in Wisconsin, Sec. 4.2.4.
- A local government is obliged to apply its zoning ordinance consistent with 2017 Wisconsin Act 67. Any conditions imposed by the ordinance or the local government must follow Act 67. A local government must afford a fair and reasonable opportunity for an applicant to meet reasonable conditions for a conditional use permit. A zoning ordinance cannot be written or applied such that a conditional use permit is impermissible under all circumstances. *See* 2017 Wisconsin Act 67 and discussion below.

## SECTION 4.09 -- NON-METALLIC MINING OVERLAY DISTRICT

### A. Purpose.

#### *Coulee Statement:*

- i) Coulee recognizes the purpose as stated and is committed to designing and operating the proposed mine site based on siting, buffering, screening, height limits, access routing, and noise, vibration, air quality and water quality controls, as set forth below. The purpose can be readily met by these controls, which all are documented in the proposed Developer's Agreement:
  - a. Buffering, Setbacks, and Visual Screening – The Site Plan and Operation Plan depict the setbacks, and screening methods to be employed, and the visual impact of same. Coulee will make strategic use of existing mature tree stands, and design and construction of berms, to isolate the processing area in terms of sight and sound. (*See Coulee's prior submissions*)
  - b. Height Limitations – The Coulee Site Plan is compliant with all regulations with respect to height of structures and stock piles. Moreover, per the attachments to the Operation Plan, screening measures offset line of sight visibility to said features in a significant manner. (*See Coulee's prior submissions*)
  - c. Access Routing – Coulee's Operation Plan specifies a haul route of County V north to US Hwy 10. County V is to be improved to a 4-season road to accommodate traffic. (*See accompanying documents*) County V is already a significant arterial with truck traffic. The addition of Coulee's haul trucks will not create a significant change in overall road usage. (*See accompanying documents*) The Developer's Agreement, at Section 5, provides additional limits on Coulee's usage of Town Roads, requires avoidance of school bus times of day, and specifies dust control on public roadways.
  - d. Noise -- The Developer's Agreement specifies adequate noise limits and controls. (*See Section 16*) Coulee has designed the Site Plan to contain operating noise through the use of earthen

berms, tree plantings, existing forests, and wetland areas. The processing plant will be surrounded by 35 foot tall pine trees and 20 foot tall berms. The plant will not be visible to some neighbors, while others will see only the top of the plant tower. After overburden is removed and the 12 foot excavation berm is built, the excavator will operate 17 feet below the top of the excavation berm. The excavation operation will not be visible to neighbors and will limit noise from the excavation machinery. All such screening will insure that the uses, values, and enjoyment of surrounding properties will not be unreasonably impacted.

- e. Vibration – Vibration is only a by-product of blasting. Coulee has no intention to blast as part of its operation. However, there is a chance that unknown geologic conditions may cause the need for limited blasting to extract resources. If so, the Developer’s Agreement incorporates strict limitations on blasting, including prior notice to the Town, pre-blasting surveys, compliance with Wis. Admin. Code SPS 307, and general limitation of blasting hours for 10AM to 3PM on weekdays.
- f. Air Quality – The Developers Agreement at Section 4, regulates Dust Control. Coulee is subject to a Fugitive Dust Control Plan. Coulee must comply with all Wisconsin DNR air controls. Because Coulee is only wet processing the sand and then shipping to Marshfield for dry processing, Coulee is not now subject to any WI DNR air monitoring requirements, and do not anticipate such controls.
- g. Water Quality Controls -- The Developers Agreement, at Sections 10, 11, 12 and 13, provides adequate water quality controls. WI DNR permits, regulation, and oversight will apply to ground water and surface water. DNR permits shall include WRAPP, SWPPP, wells, and wetlands.
- h. Coulee’s intention is that non-active mining land will be under continuous agricultural use during life of mine operation prior to disturbance where circumstance reasonably allow.
- i. Reclamation will be consistent with the Wood County Reclamation Plan and performed in phases following completion of each mining phase. There is a plan in place, subject to terms

of a Developers Agreement and Option to Purchase Agreement, for the transfer of mining land to the Town of Rock for public park purposes. (See Coulee Rock Park Brochure concept plan.)

j. Natural features will be preserved where possible, including 4 acres of pine forest along County V, 11.5 acres of wetland, and 4.4 acres of forest land in the southeast corner of the site. Mining will occur only on acreage already disturbed via agriculture.

ii) Coulee has received its NR135 Reclamation Permit, through Wood County, and stipulates that its activities at the proposed mine site will comply with said Reclamation Permit.

### C. Conditional Uses

#### *Coulee Statement:*

i) Development Site Standards

a) Net Lot Area –

141 acres. Lot Coverage is at 0.25%.

Based on tax parcel records, and using AutoCad Civil 3D referencing the Wood County coordinate system.

b) Lot Coverage –

Coulee stipulates that not more than 10% of the Net Lot Area will be covered by buildings.

#### CALCULATION:

Net Lot = 141 acres

Lot Coverage = .35 acres

Net Lot Coverage =  $.35/141$

Net Lot Coverage = .25%

c) Yards-

Coulee's Site Plan shows proposed setbacks from mine extraction areas, processing facilities, truck loading facility, and other structures. The setbacks proposed are sufficient to achieve the performance standards (visual effects, dust, protect water, and dust free roads) set forth in the Town Code. Setbacks are in excess to those specified by the township for commercial use properties. Preservation of natural screening elements, in particular stands of trees, was emphasized. Berms and screens of sufficient height will be constructed where needed to limit views into the mine processing area, with the exception of the highest areas of the plant and stockpile, in certain limited areas.

d) Exclusions- Coulee will comply within the scope of the exclusions listed at all times.

ii) Special Regulations

a) Parking –

Total spaces = 7

Off-Street Parking will be provided as follows, in compliance with the ratio specified by the Town Code:

Major Shift = 5 employee/1.5 (per Town Code) = 3.3  
rounded: 4 spaces

Visitor Parking = 2 spaces

Company Vehicle Parking = 1 space

b) Screening –

Within the confines of the Coulee property, screening will be constructed per the Coulee Screening Plan. Screening will limit public view of the premises to as reasonable an extent as

practicable. The mine site is 170 total acres with a variety of terrain surrounding it. While it is practically impossible to screen the property to render all operations within the 170 acres invisible, the screening plan is designed to best serve those adjacent property owners in proximity to the operation.

c) Hours of Operation-

The Developer's Agreement specifies hours of operation. These hours are designed to reasonably address possible impacts of Coulee's operations on adjacent property owners.

iii) Performance Standards

a) Visual Effects

Given the scope of the site and the surrounding terrain, it is economically impossible to create an entire visual barrier. This plan limits line of sight into the mine site to the maximum extent practicable, in particular for the properties in proximity to the processing and loading operations.

b) Dust

Coulee will comply with all applicable air regulations, including but not limited to DNR Registration Operation Permit; DNR Approved Fugitive Dust Control Plan; and MSHA required Air monitoring and testing protocol. Coulee will provide evidence of initial permitting to the Town. Coulee stipulates that ongoing compliance with such permits is a condition of its conditional use permit.

c) Protect Water

Coulee will comply with all applicable water regulations, including but not limited to DNR approved Storm Water Pollution Prevention Plan. Per the Developer's Agreement, Coulee is obliged to do baseline and annual testing of mine monitoring wells and testing of neighbor wells (final list of wells TBD). Coulee will voluntarily conduct realtime monitoring of

groundwater level via transducers in monitoring wells. Data will be available to Wood County Land and Water Conservation Department via shared database. Coulee will provide evidence of initial permitting to the Town. Coulee stipulates that ongoing compliance with such permits is a condition of its conditional use permit.

#### d) Dust Free Roads

Coulee will follow an established protocol for haul roads internal to the Coulee mine, and on the County V haul route, as follows, designed to maintain a dust free condition consistent with the background condition of the road:

The below image illustrates how sand is removed by forcing trucks to make a 90 degree turn on pavement. As can be seen, all traces of sand is gone from the pavement within feet of exiting the turn. We have designed the entrance/exit from the mine to force just such a 90 degree turn. Furthermore, there is a total of 480' of paved surface to travel before exiting the mine onto Cty Rd V, thus insuring all sand will be removed from the truck tires before entering the public road system. Sand build up on the mine driveway and loadout area will be visually monitored and swept using a powered broom and hopper system that picks up the sand and contains it within a hopper. The hopper is dumped back on the mine. This is a superior system to simple open powered brooms which generate a dust cloud while sweeping. Our system is enclosed and self-contained so as to minimize the generation of airborne dust. (*See Developer's Agreement, Sec. 4 and Fugitive Dust Control Plan*)



## SECTION 5.03 -- STANDARDS

*Coulee Statement:* With respect to the five (5) standards set forth in the Town Code, Coulee asserts that the following conditions can and will be satisfied by Coulee, and certain measures will be taken to ensure same, as follows:

A) *“That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.”*

- Preliminarily, it must be noted that no proposed land use can have zero impact on neighboring land uses. Coulee has designed this project, and agreed to terms in a Developer’s Agreement, which minimize impacts to health, safety, morals, comfort and welfare.
- *See generally* the above response to Sec. 4.09(A).
- The Town of Rock has included in its Town Code a “Nonmetallic Mining Overlay District,” which inherently suggests that a nonmetallic mine is a permissible use under certain conditions.



- Dozens of industrial sand mines have been in operation in Wisconsin for multiple years and have shown the capacity, when professionally operated in accordance with existing state regulations, to operate without endangering public health, safety and welfare.
- The ultimate proposed end use of the property, as a public park with high quality lake, is a beneficial long-term use subsequent to a relatively brief period of mining.

*B) "That the uses, values and enjoyment of other property in the neighborhood used for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance, or operation of the conditional use."*

- Coulee will not substantially impair or diminish the use and value of property. Again, all land uses have some impact on neighbors and their land use. Coulee has designed this project, and agreed to terms in a Developer's Agreement, which minimize impacts.
- The existing land uses in the neighborhood consist of agricultural, recreational, and rural residential. All such uses can continue, and will benefit from the "standards" employed in the Developer's Agreement.
- The proposed mining use is temporary in nature and will ultimately result in a reclaimed landscape, consisting of a lake and natural spaces, which may be considered a significant enhancement to the neighborhood and the entire Town.
- There is no market-based evidence that the proposed mining use will adversely impact the neighboring residential property values of parcels adjacent to the site. A report from Mr. Scott MacWilliams, Wisconsin licensed general appraiser, has been submitted to Town in support of Coulee's position.
- The Developer's Agreement will incorporate a Property Value Guarantee designed to provide an additional layer

of protection for the property values of those residential properties described therein.

C) *“That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.”*

- The existing land uses in the neighborhood consist of agricultural, recreational, and rural residential. All such uses can continue, and will benefit from the “standards” employed in the Developer’s Agreement.
- The proposed mining use is temporary in nature and will ultimately result in a reclaimed landscape, consisting of a lake and natural spaces, which may be considered a significant enhancement to the neighborhood.
- There is no known market-based pressure to convert current land uses of surrounding properties to a different use, such that the temporary mining use will not impact near-term nor long-term development of the area.
- There is no market-based evidence that the proposed mining use will adversely impact the neighboring residential property values of parcels adjacent to the site. A report from Mr. Scott MacWilliams, Wisconsin licensed general appraiser, has been submitted to Town in support of Coulee’s position.
- The Developer’s Agreement will incorporate a Property Value Guarantee designed to provide an additional layer of protection for the property values of those residential properties described therein.

D) *“That adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided.”*

- Utilities – The mine is located within an Alliant Energy regulated service area. However, the Alliant circuit is incapable of supplying 1 megawatt of power. Coulee will

contract with Clark County Electric Cooperative to construct dedicated power transmission lines to provide up to 1 megawatt of three phase power. There will be no load on neighbor utility circuits

- County V will serve as the Mine Site entrance. That route north to US Hwy 10 already serves a substantial amount of truck traffic. County V is designated for improvement to a four-season road in 2019.
- Drainage- See Stormwater Controls in Developer's Agreement. Coulee has designed a stormwater system with settling ponds to exceed State requirements relative to a 100 year rain event. Coulee will also be subject to SWPPP and WRAPP permits which must be issued by the WI DNR. Coulee will not proceed with excavation until the WRAPP is approved and will not proceed with processing sand until the SWPPP is approved.
- Maintenance of Entrance / Dust Control – Adequate controls will be in place per the above. Coulee will follow a protocol to minimize dust and debris on County Hwy V.

*E) "That adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion and traffic hazards in the public street."*

- County V will serve as the Mine Site entrance. That route north to US Hwy 10 already serves a substantial amount of truck traffic. County V is designated for improvement to a four-season road in 2019.
- Existing traffic, in combination with the 3 to 4 trucks employed by Coulee, will not create any "traffic congestion." Coulee's truck volume will only add an estimated 10% to daily traffic volume on the County V haul route.
- Coulee will cooperate with the Wood County Highway Commissioner to design and maintain any entrance/exit off of County V for the safety of all motorists.

- Coulee will provide adequate infrastructure so that trucks will not stage or park on Cty Rd V.
- Maintenance of Entrance / Dust Control – Adequate controls will be in place per the above. Coulee will follow a protocol to minimize dust and debris on County Hwy V.

## **SECTION 5.04 CONDITIONS AND GUARANTEES**

*Coulee Statement:* Section 4.04(B) addresses “secondary conservation areas.” Portions of the Coulee property may qualify as such based on “prime agricultural soils in blocks of 5 acres or more ... coinciding with crop lands, meadows, and pastures.” Under Section 5.04(B)(1), the Town “may apply” certain special conditions to permit requests.

The Coulee development is designed to promote the preservation of natural features. Coulee’s plan satisfies this criteria in the following respects:

- The Coulee site is not specifically recognized as significant wildlife habitat, sensitive environmental lands, nor a scenic vista.
- The proposed mining use is temporary in nature and, and detailed in this document, is subject to numerous controls to minimize impacts to natural features.
- The proposed mining use will ultimately result in a reclaimed landscape, consisting of a high quality lake and natural spaces, and is proposed to be dedicated to the public for a park. This end use qualifies as an enhancement to the neighborhood, an improved fish, waterfowl and other wildlife area, and an improved view shed.

Section 5.04(B)(4) addresses preservation of Roadway Frontage. Coulee’s project does not include any dwellings. All structures on the Coulee property will be at least 100 feet from a major arterial, and buffering will be established per Coulee’s Site Plans.

Section 5.04(C) addresses lot width, lot area, yards, height, parking and loading. Coulee will comply with all such provisions in the Town Code.

## **CONCLUSION: General Ordinance Interpretation and Application.**

Coulee has attempted to address the specific sections of the Town Zoning Ordinance which arguably apply to its application. With regard to those sections, and any other section(s) which may be deemed to apply, the Town is obliged to act in accordance with the following provisions of Wisconsin 2017 Act 67:

- 1) “If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town *shall grant* the conditional use permit.” Wis. Stat. §60.61(4e)(b)1.
- 2) “Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.” Id.
- 3) “Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” Wis. Stat. §60.61(4e)(a)2.
- 4) The requirement and conditions described under subd. 1 must be reasonable and, to the extent practicable, measurable, and may include conditions such as the permit’s duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town’s decision to approve or deny the permit must be supported by substantial evidence. Wis. Stat. §60.61(4e)(b)2.